

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-699-2022 (O&M)

Reserved on: 17.7.2023

Date of Decision: 26.7.2023

Anand

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Ram Avtar Sheoran, Advocate
for the appellant.

Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 2.8.2022, upon Sessions Case No. 35 of 2019/2020, by the learned Additional Sessions Judge-cum-Judge, Fast Track Special Court under POCSO Act, Bhiwani, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 376(3), and, 506 of the IPC, and under Section 6 of the Protection of Children From Sexual Offences Act, 2012 (in short 'the POCSO Act'), thus the learned trial Judge concerned, proceeded to record a finding of conviction against accused-appellant. Moreover, through a separate sentencing order, drawn on 4.8.2022, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for life for an offence punishable under Section 6 of the POCSO Act, besides also imposed, upon the convict sentence of fine, as comprised in a sum of Rs. 50,000/-, and, in default of payment of fine amount, she sentenced the convict to undergo rigorous

imprisonment for a period of one year. Moreover, the learned convicting Court also sentenced the convict to undergo rigorous imprisonment for a period of three years, for the commission of an offence punishable under Section 506 of the IPC, and, also imposed, upon him the sentence of fine, as comprised in a sum of Rs. 5,000/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of one month.

2. Both the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

3. It was also ordered, that the amount of fine, if realized, be paid to the child victim to meet the medical expenses and rehabilitation, as per Section 6(2) of the POCSO Act. It was further ordered, that a sum of Rs. 5.00 lakh, be paid as compensation to the victim, as sufficient amount payable under victims compensation fund or other scheme or fund established by it thus for the purposes of compensating and rehabilitation of victim under Section 357-A of the Cr.P.C., or any other laws for the time being in force, or where such fund or scheme does not exist, rather by the State Government.

4. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PW-14/A is assigned. The narrations carried in Ex. PW-14/A are, that on 26.3.2019, the mother of the victim moved a complaint to police alleging that she was widow of Kalu Ram. She used to reside in a rented accommodation of Krishan Foji near Ravidas Temple, Gujro Ki Dhani, Bawri Gate, Bhiwani. She has three children including two daughters and one son. She used to earn her livelihood by doing labour work. Her 15 years old daughter was deaf and dumb since the time of her birth. She used to study in Adarsh ITI School, and, used to stay alone at home several times. Once, the teacher of the child victim called her and told that the child victim was not physically fit. She got herself checked from a private doctor and found that the child victim had five months pregnancy. On being inquired, the child victim told that Anand, who used to stay in the house of his maternal grandfather Krishan Foji, had committed rape upon her. On the basis of said information, a case under Section 376(3) of the IPC, and, under Section 6 of the POCSO Act, was registered.

Investigation proceedings

6. During investigation, the child victim was medico-legally examined at General Hospital, Bhiwani. The case property pertaining to her was taken in police possession. Her statement under Section 164 of the Cr.P.C. was also got recorded with the help of photographer and expert Sharda Devi. On 26.3.2019, accused Anand was arrested. He was medico-legally examined at General Hospital, Bhiwani. An application was moved for conducting the abortion of the child victim. She was got admitted in Post Graduate Institution of Medical Sciences, Rohtak. On 6.4.2019, the abortion of the child victim was conducted. Case property pertaining to her

abortion was taken in police possession. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned Court concerned.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for offences punishable under Sections 376(3) and 506 of the IPC, and, under Section 6 of the POCSO Act. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 14 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. He also chose to adduce defence evidence, and, led one witness into the witness box.

9. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charges (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

10. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

11. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Analysis of the birth certificate of the prosecutrix, to which Ex. PW-13/A becomes assigned

12. Initially an allusion is made to the birth certificate of the prosecutrix, to which Ex. PW-13/A, is assigned, and, wherein the prosecutrix is revealed to be a minor on the date of commission of the charged offences. Since Ex. PW-13/A emanated from the institute, where the prosecutrix was undertaking studies, therefore, the revelations therein, but unfolding that the prosecutrix, at the relevant stage was a minor, thus enjoy an aura of conclusivity, as no cogent thereto rebuttal evidence becomes adduced. Thus, the learned counsel for the convict-appellant cannot argue that the sexual overture(s), if any, as made, by the accused towards the prosecutrix, was but consensual.

13. Since PW-13/A was tendered into evidence by PW-13 Rajesh Kumar, during the course of his examination-in-chief, yet during the course of his being subjected to a grilling cross-examination, there is no efficacious rebuttal to the recitals, as carried therein, which but unfold, that the prosecutrix was a minor at the time of commission of the charged offences. Resultantly, creditworthiness is acquired by PW-13/A. Reiteratedly, consent, if any, as purportedly purveyed by the prosecutrix to the convict, becomes completely meaningless.

Analysis of the testimony of the prosecutrix, who stepped into the witness box as PW-6

14. Uncontrovertedly, the prosecutrix is both deaf and dumb. However, in terms of Section 119 of the Indian Evidence Act, provisions whereof stand extracted hereinafter, a deaf and dumb witness, who is but able to make voiced speakings, thus is permitted to adduce evidence in any other manner, whereby, he or she make it intelligible, inasmuch as, by writing or by signs, but such writings must be written and the signs are required to be made in open Court.

***119. Dumb witnesses.**—A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.*

15. Therefore, when the prosecutrix stepped into the witness box as PW-6, the learned defence counsel raised an objection that the interpreter concerned, was not in a position to make an effective deposition, as he was unable to interpret the expression(s) through sign language, as became made by the child victim. Consequently, after accepting the above objection, the learned trial Judge concerned, deemed it fit and proper to arrange for some other independent interpreter, hence with whose aid, the expressions, as made through sign language by the child victim, after becoming ably interpreted, thus could be reduced into writing. In consequence, the learned trial Judge concerned, through an order drawn on 23.10.2019 deferred the recording of the examination-in-chief of the child victim.

16. However, when the child witness re-stepped into the witness box on 2.12.2019, then on the said date, the statement of the child victim, as became made by her under Section 164 of the Cr.P.C., thus became assigned

Ex. PW-6/A, besides was taken to be her statement in her examination-in-chief. The said statement (supra), as became enclosed in an envelope, was retrieved therefrom, whereupon it was shown to the child witness, and, she then admitted her statement in her examination-in-chief. Therefore, but obviously the said Ex. PW-6/A is to be construed to be the apposite statement, thus made by PW-6, during her examination-in-chief.

17. The effect of the above statement, as made by the prosecutrix, before the learned Magistrate concerned, and, to which Ex. PW-6/A, is assigned, thus being treated as her statement in her examination-in-chief, on hers stepping into with witness box, as PW-6, before the learned Magistrate concerned, is that, thereby in terms of Section 164 (5-A) of the Cr.P.C., provisions whereof become stand extracted hereinafter, thus proven exhibit PW-6/A, rather assuming evidentiary importance.

18. Be that as it may, yet the hereinafter extracted provisions, as carried in Section 164(5-A) of the Cr.P.C., thus do require theirs becoming interpreted, and, also require their application to PW-6/A.

Section 164 (5-A) Cr.P.C.

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

²[(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, ³[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB,] section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the

manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.]

19. If this Court concludes, that the provisions of Section 164(5-A) of the Cr.P.C., are applicable to the statement, as, made by the prosecutrix, before the learned Magistrate concerned, and, to which Ex. PW-6/A, is assigned, thereupon Ex. PW-6/A thus would become completely covered within the ambit of the provisions (supra). Resultantly, this Court would take the said statement to become validly assigned the mantle qua the same being her testification, thus in her examination-in-chief, and, before the learned trial Judge concerned. The contents of the said statement are ad verbatim extracted hereinafter.

“It is stated that a boy in the name of Anand, in the month of eleventh, came on the upper portion for zim. At that time, I was present at home. My sister was sleeping and my mother was not present at home. Anand came for zim and called me while making signal. When I did not go, he brought me while caught holding my hand as at that time, the door of the room

was open. At that time. I was cooking food. He had torn my clothes. I tried to rescue myself but he did not allow. He committed rape upon me. He has already done the same time and again. He brought me with him on the motor-cycle. He time and again raised the alarm of the motor-cycle, but I refused. He came there time and again. Lastly, he came in the month of March. He had done the aforesaid act, when my mother leaves the home. I did not disclose about the same to my mother because, he extended threat to kill me. My mother is not residing with me. I and my sister alone are living. My brother is residing with the mother. My mother came at once in the evening and then went away and he came behind. I and Anand are residing in one house. He was also seeing me while I was bathing.”

20. An incisive perusal of the contents of the statement Ex. PW-6/A, reveals that though the prosecutrix was deaf and dumb, but yet the learned Magistrate concerned, did evidently take to appoint an interpreter, thus for hers becoming facilitated to record the statement of the child victim. Moreover, in terms of the second proviso of the provisions (supra), the learned Magistrate concerned, also proceeded to videograph the entire proceedings, which resulted in the exhibit (supra) becoming recorded by the learned Magistrate concerned. Moreover, a statutory certification is also made on Ex. PW-6/A, by the learned Magistrate concerned, and with speakings therein, that the said statement was voluntarily made before her, and, that it had been spoken while writing, and, that the contents thereof became admitted to be correct by the interpreter(s) concerned, whose names become disclosed in Ex. PW-6/A.

21. If so, when there is thus completest compliance with the provisions of Section 164(5-A) of the Cr.P.C., besides when there is an evident speaking in the above extracted apposite statutory provision, that the

statement which is made in terms of Section 137 of the Indian Evidence Act, thus shall be construed as a statement in lieu of examination-in-chief. Therefore, given the above made interpretation to Section 137 of the Indian Evidence Act, and, also upon applying the said interpretation to the statement Ex. PW-6/A, the resultant consequence, is that, when there is thus complete compliance with the mandate of Section 164(5-A) of the Cr.P.C., thereby with the prosecutrix in her examination-in-chief, rather admitting the contents of Ex. PW-6/A, and/or hers not belying the contents of Ex. PW-6/A, nor hers reneging from the contents thereof, thus begets, as but a natural corollary, a firm conclusion from this Court, that thereby the prosecutrix has rendered a confidence inspiring, and, truthful account in respect of the penal occurrence.

22. The prosecutrix also, with the aid of the interpreter, became subjected to a grilling cross-examination by the learned defence counsel. However, after the prosecutrix making the hereinafter echoings in her cross-examination, the interpreter Sh. Parveen Kumar was concluded to be not in a befitting position to effectively communicate with the victim, and, thereby on his request, an interpreter from the institute, where the child witness was studying, thus was ordered to be summoned. Therefore, the cross-examination of the child witness was deferred from 2.12.2019 to 4.12.2019.

“I do not know the name of my school. My statement was recorded by the police prior to recording the statement before the Magistrate. I had disclosed the name of my school before the police. I do not know which name I disclosed before the police as my school name. I do not remember how much time back, I had got recorded my statement before the Magistrate. I do not remember if I had disclosed 4.3.2019 as the date of offence before any authority including the Court.”

23. On 4.12.2019, the learned defence counsel, with the aid of an interpreter from the institute where the child witness was undertaking

studies, thus made cross-examination, upon the prosecutrix. However, after some part of the cross-examination of the prosecutrix becoming recorded, the trial Court, yet noticed that some of the suggestions, as became put to the prosecutrix, by the defence counsel, thus through the interpreter, were not understandable to her, and, also noticed that, she was unable to understand the sign language of the interpreter concerned, and, her mother.

24. Be that as it may, even if the learned trial Judge concerned, through an order made on 4.12.2019, did proceed to, for the above stated reasons, drop the makings of cross-examination(s) upon the prosecutrix. However, yet for the above reasons, the learned defence counsel cannot argue, that thereby there is lack of able echoings through sign language, thus by the prosecutrix, rather of a vivid truthful narration qua the penal occurrence. The reason for making the above conclusion, stems from the factum, that the hereinabove extracted statement of the prosecutrix, as becomes carried in her cross-examination, was made at a stage when there was no dispute with respect to the understandability of the sign language of the prosecutrix, thus by the appointed interpreter, who was thus then aiding the learned defence counsel, in his making cross-examination(s), upon, the prosecutrix. Therefore, since the above extracted portion of the cross-examination, as made upon the prosecutrix, thus bespeaks, that therein a suggestion became meted to her, that her statement was recorded by the police prior to the recording of her statement before the Magistrate. Moreover, when it also becomes echoed therein, that she has, as a matter of fact, recorded her statement before the learned Magistrate concerned. Therefore, when thus the defence does not refute the making of the contents of Ex. PW-6/A. In addition, when there is no contest to the validity of the signatures of the prosecutrix, as occur(s) on Ex. PW-6/A, nor also when the

veracity of the certification, as made at the foot of Ex. PW-6/A, thus by the learned Magistrate concerned, became tested, nor also when the echoings made therein with respect to the voluntariness of the making of the apposite statement, besides also when in respect of there being complete compliance with the mandate of Section 164 of the Cr.P.C., thus rather never became attempted to be engulfed in a shroud of doubt. Consequently, the effect thereof, is that, utmost evidentiary sanctity is to be meted to Ex. PW-6/A, which for the reasons (supra), has to be tenably treated, both in terms of Section 119 and Section 137 of the Indian Evidence Act, to be the apposite statement thus made in her examination-in-chief, by the prosecutrix, rather before the learned trial Judge concerned. In consequence, thereby the charge drawn against the convict-appellant becomes invincibly proven.

Evidence corroborative to the testification of the prosecutrix

25. Amplifying force to the above conclusion becomes augmented from PW-4 Kapoor Singh, who video-graphed the entire judicial proceedings, as became drawn before the learned Magistrate concerned, wherebefore whom the prosecutrix had made her statement Ex. PW-6/A. The said witness, during his examination-in-chief, has proven the apposite DVD, to which Ex. PW-4/A, is assigned. Since the above exhibit has not been proven to be false or a false document, either through the learned Magistrate concerned, becoming summoned, thus for belying the factum of PW-4 videographing the entire judicial proceedings, nor also when the learned defence counsel, rather chose to send the said DVD Ex. PW-4/A to the Forensic Science Laboratory concerned, for eliciting an opinion therefrom, with respect to the veracity of the same, or with respect to the contents thereof being morphed. Therefore, the effect of the absence of adduction of the above evidence, thus to bely the making(s) of PW-4/A,

when becomes entwined, with the learned defence counsel not asking for the summoning of the learned Magistrate concerned, who recorded it, for then his attempting to bely the contents of Ex. PW-6/A, thereby it has to be reinforcingly concluded, that the entire judicial proceedings, as drawn by the learned Magistrate concerned, thus resulting in the making of Ex. PW-6/A, were untainted proceedings, thereby they do inevitably establish the guilt of the convict-appellant, in the commission of the charged offences.

Medical evidence

26. PW-8 Dr. Pooja Sinha, on her stepping into the witness box, proved the factum of the prosecutrix becoming aborted. She, in her examination-in-chief, has also deposed, that after the aborting of the foetus, as was carried in the womb of the prosecutrix, she handed over the placenta and abortus/foetus to the police for DNA examination. She has, on the basis of the DNA report Ex. PC, proved that the convict-appellant was the biological father of the aborted foetus, as was carried in the womb of the prosecutrix.

27. PW-15 Dr. Vikas Rewaria, who made a medical examination of the accused, has in his examination-in-chief, deposed that he had handed over the copy of the MLR pertaining to the accused-appellant, besides had had handed over the pubic hair, two cotton swabs of glans penis and venous blood sample and underwear to the police. One sealed parcel with the seal of FSL, upon becoming opened in Court, thus therefrom one underwear became retrieved, and, to which Ex. MO1, was assigned. In his cross-examination, he has deposed, that the seal remained in the casualty of the hospital, and, further stated, that the seal was used by the medical officer, who remained present in the casualty. However, he has also stated that the sealed sample cannot be tampered with the help of syringe.

28. The handing of placenta and abortus/foetus to the police for DNA examination, being made thereons, by PW-8, besides the handing over of pubic hair, two cotton swabs of glans penis and venous blood sample and underwear pertaining to the accused-appellant, to the police, thus become spoken by PW-15, and, the said speakings remain unrebutted. Moreover, when PW-15, also stated that thereafter the said collections became sealed by the doctor, working in the Casualty Department of the hospital concerned, and, with PW-15 also evidently testifying, that the seals, as made on the said parcels rather were unamenable for being tampered with, rather through syringe(s). Therefore, with both PW-8, and, PW-15, making the afore candid speakings about the handing over of the respective placenta and abortus/foetus of the prosecutrix, and, about the handing over of pubic hair, two cotton swabs of glans penis and venous blood sample and underwear of the accused, to the police, and, which thereafter did come to be sealed, does foster a conclusion from this Court, that the said apposite parcels, but in an untampered, and, sealed condition, thus became deposited in the malkhana concerned.

29. Moreover, the above made prima facie conclusion becomes firmly secured on a reading of the deposition of PW-14 SI Vidhyawati. The said witness, in her examination-in-chief, deposed that the items, as handed over to her by Dr. Pooja Sinha, as appertaining to the child victim, were taken into possession by her through recovery memo Ex. PW-10/B. Moreover, she has also deposed, that the items handed, as, over to her by Dr. Vikas Rewaria, who thus conducted the medical examination of the accused, hence were taken into possession through recovery memo Ex. PW-14/G. Furthermore, she has also deposed therein, that the said parcels were deposited in the malkhana of Police Station Women Bhiwani. Accordingly,

the abortus/foetus and placenta of the prosecutrix, are spoken in her examination-in-chief, to be assumed possession, through recovery memo Ex. PW-10/B, and, thereafter with hers deposing that thus on 1.4.2019, hence the said items becoming deposited in the malkhana of the police station concerned. Necessarily when through the above recovery memo(s), the possession of the relevant items (supra), respectively belonging to the accused, and, to the prosecutrix, thus became handed over to the police, by both the doctors concerned, whereafter when the said parcels were enclosed in sealed parcels, and, subsequently they were evidently deposited in the malkhana concerned. Consequently, when able unrebutted proof qua the valid collections of the apposite items, thus in sealed covers, besides when valid able unrebutted proof qua each becoming deposited in the malkhana concerned, in an untampered, and, an unspoiled condition, thus evidently emerges. Therefore, the learned defence counsel cannot argue, that there was any infirm collections of the relevant items, nor can he argue that the said collections never became sealed in sealed cloth parcels, nor can he argue, that the same became never deposited in an untampered sealed condition in the police malkhana concerned.

30. Moreover, on a reading of the affidavit Ex. PW-2/A, as became tendered into evidence by PW-2 EASI Neelam Devi, the incharge of the malkhana concerned, thus during the course of her examination-in-chief, it does also emerge, that subsequent to the deposit of the said parcels, as became recovered through the recovery memos Ex. PW-10/B and Ex. PW-14/G, the items (supra) were kept in safe custody. Moreover, on 1.4.2019, vide RC No. 96 of 1.4.2019, the said items were removed from Malkhana of Women Police Station, Bhiwani, and, were deposited in RFSL Sunaria, Rohtak. On 7.4.2019, she speaks that SI Vidyawati handed over to her a

parcel of jar containing foetus and an envelope containing papers, duly sealed by the seal of the doctor along with the sample seal. Vide RC No. 110 of 10.4.2019, LC Sunita was sent to RFSL, Sunaria for depositing the aforesaid parcel to RFSL, Sunaria. PW-3 LC Sunita has corroborated the fact of the parcels (supra), being delivered to her by PW-2, for theirs being transmitted to the FSL concerned.

31. The RFSL, Sunaria, on receiving the said relevant items for examinations, being made thereons, made the hereinafter report, to which Ex. PA, becomes assigned-

“Laboratory Examination

Laboratory examinations were carried out to detect the presence of semen on the exhibits, by performing chemical test and microscopy. Based upon these examinations, the results obtained are given below:-

1. Human semen was detected on exhibit-1 (salwar) and exhibit-4) (underwear). However, semen could not be detected on rest of the exhibits mentioned above.

Note 1. After examinations, the exhibit(s) along with its/their original wrapper(s) has/have been sealed with the seal of SSO/MD/BIO, RFSL, Sunaria, RTK.

2. The result relates only to the items tested above.

3. Exhibit-I and P-VIII forwarded to DNA Division, FSL (H) Madhuban for comparison/matching.”

32. Moreover, on a reading of above report of the FSL concerned, it emerges, that Exhibit-1 and P-VIII, were forwarded to DNA Division, FSL (H) Madhuban for their inter se comparisons/matchings. Accordingly, the DNA division concerned, to whom Exhibit-1 and P-III were sent, on making their examinations, thus made a conclusion on 30.4.2019, and, to which

Ex. PB, is assigned. The said conclusion becomes extracted hereinafter.

“Result of Examination

DNA was extracted from item No. 1 and 8 and subjected to Autosomal STR analysis by using Identifiler plus kit. There is no amplification of male DNA in item No. 1, which is necessary to compare with DNA profile of item No. 8.

Conclusion

Since male DNA is not indicated on source of item No.1 (salwar), which is necessary to compare with the DNA profile of Aanand (source of item No. 8) ”

33. Moreover, one sealed parcel, containing the aborted material of the prosecutrix, was sent to RFSL, Sunaria for an examination being made thereons. The said sealed parcel became deposited with the RFSL concerned, by LC Sunita vide RC No. 110 of 10.4.2019. However, RFSL concerned, vide letter dated 11.4.2019, to which Ex. PD, is assigned, forwarded the same to DNA Division, FSL (H), Madhuban for apposite comparisons/matchings thus thereof being made. On receiving the said sealed parcel, the DNA Division, Forensic Science Laboratory (H), Madhuban, Karnal, made the hereinafter report on 24.10.2019, and, to which Ex. PC, is assigned. Importantly the above date of making of Ex. PC, thus on 24.10.2019, is important, as it is but made subsequent to the earlier made transmissions thereto by the RFSL Sunaria. Moreover, since the opening of the said report reveals, that the relevant items were received in untampered sealed parcels. Therefore, the above disclosures, as made in Ex. PC, does support a conclusion, that the relevant items were enclosed in untampered, and, unspoiled sealed parcels. In consequence, it cannot be but argued before this Court, by the learned counsel for the appellants, that the report of the FSL, is not relatable to the sealed cloth parcels, wherein, the relevant items were occurring, nor he can argue, that the relevant items did not

become enclosed in sealed cloth parcels, nor he can argue, that such sealed parcels were tampered or spoiled.

“Description of parcel(s) and condition of seal(s)

Received one sealed parcel, seals were in tact and tallied with the specimen seal.

Description of article contained in parcel(s)

Parcel No.	No. of Seal impression	Description of parcel(s)
3.	5-MCHR Doctor	One sealed plastic jar labelled as Abortion of Shruti D/o Kalu Ram, MLR No. MR/26/2019 dated 26.3.2019, containing:- 3) One foetus marked as item No. 3.

Result of Examination

DNA was extracted from item No. 3 and subjected to Autosomal STR analysis by using Powerplex fusion kit. DNA profile obtained from item No. 3 is compared with DNA profile of item No. 8 (in case FSL No. 19/SU/B-585, DNA-265/19).

The allelic pattern of item No. 3 matches with the allelic pattern of item No. 8.

Conclusion

The autosomal STR analysis conclusively proves that the DNA profile of source of item No. 3 (foetus) is the biological relates to DNA profile of Aanand (source of item No. 8) (in case FSL No. 19/SU/B-585, DNA-265/19).”

34. Thus, a conjoint reading of the report(s) of the doctors concerned, who proved the apposite MLR of the victim Ex. PW-9/C, thus with the reports of the FSL concerned, does foster an inference, that therethroughs corroboration, is acquired by the untainted testification of the victim, who stepped into the witness box as PW-6. The reason for assigning credence, to the report of the FSL concerned, rather containing the hereinabove extracted results, as, arises from their apposite examination(s),

becomes comprised, in the factum, that the learned defence counsel failed to project, through adduction of cogent evidence, that human semen, as became detected on Exhibit-1, and, on Exhibit-4, as became unrebuttedly evidently collected, as deposed by PW-9, rather not belonging to the accused, nor also when he has not adduced any cogent evidence, that the collection of Exhibit-4 (underwear) was inaptly made, and/or, that the said exhibit never belonged to him.

35. In sequel, when there is an inter se corroboration inter se confidence inspiring testification of the prosecutrix, thus with the MLR Ex. PW-9/C, besides with the report of the chemical examiner concerned, who in Ex. PC after making the apposite DNA profilings, has recorded a conclusion, that convict-appellant, is the biological father of the aborted foetus, thereupon, the charges drawn against the convict do become proven to the hilt.

Final order

36. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes imposed upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed, besides also the consequent thereto sentence(s), as became imposed upon the convict-appellant, by the learned convicting Court, is also maintained, and, affirmed. If the convict-appellant is on bail, thereupon, the sentence(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

37. Records be sent down forthwith.
38. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 26th , 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No