

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-895-2022 (O&M)
Date of decision : 07.11.2023

SONU -APPELLANT

VERSUS

STATE OF HARYANA -RESPONDENT

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

Present : Mr. D.K. Prajapati, Advocate
for the appellant.

Mr. P.P. Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict of conviction drawn on 24.08.2022, upon, Case (CIS) No.105 of 2020, by the learned Additional Sessions Judge, Special Court, Kaithal. Moreover, the instant appeal is also directed against the order of sentence, as became drawn on 25.08.2022, by the learned convicting court concerned, whereby, it sentenced the convict/appellant in the hereinafter extracted manner:-

Under Section 450 of the Indian Penal Code (hereinafter referred to as the 'IPC')	To undergo R.I. for a period of 10 years and to pay a fine of Rs.10,000/-. In default of payment of fine, he shall further undergo R.I. for a period of 2 months.
Under Section 376(3) of the IPC	To undergo R.I. for a period of 25 years and to pay a fine of Rs.25,000/-. In default of payment of fine, he shall further undergo R.I. for a period of 5 months.
Under Section 6 of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act')	To undergo R.I. for a period of 25 years and to pay a fine of Rs.25,000/-. In default of payment of fine, he shall further undergo R.I. for a period of 5 months.
Under Section 18 of the POCSO Act	To undergo R.I. for a period of 10 years and to pay a fine of Rs.5,000/-. In default

(In alternate 376 read with Section 511 of the IPC)	of payment of fine, he shall further undergo R.I. for a period of 1 month.
Under Section 506 of the IPC	To undergo R.I. for a period of 2 years and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall further undergo R.I. for a period of 1 month.

All the above sentences were ordered to run concurrently.

2. Therefore, but obviously, the convict/appellant becomes aggrieved from the verdict of conviction (supra), as became rendered upon him, by the learned convicting court concerned, besides becomes aggrieved from the order of sentence (supra), as became imposed upon him, vis-a-vis, the charges, as became drawn against him for offences punishable under Sections 450, 376(3), 506 of the IPC, and, under Sections 6 and 18 of the POCSO Act.

Factual background

3. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.P10 has been assigned. The narrations carried in Ex.P10 are, that the victim, who was a minor at the relevant time, was being harassed by her neighbour Sonu son of Kanto (hereinafter referred to as ‘convict/appellant’) since long. He used to tease her on her way and also used to pass filthy comments. However, since the father of the victim fell seriously ill around 3-4 months prior to the relevant date, during the lock-down, the victim went to the house of the convict/appellant for seeking help, being neighbour, whereupon, he told her that he would help her, only in case she would love him. Under compulsion, the victim gave her consent and by taking advantage of her situation, the convict/appellant committed wrong act with her

at her home as well as extended threats to injure her and her father, in case she disclosed the incident to anyone. At that time, the mother and elder brother of the victim had gone to Bhiwani due to illness. Due to fear of defamation in the society as well as threats given to her by the convict/appellant, she did not tell the incident to anyone. Thereafter, the convict/appellant started harassing and teasing her repeatedly. Thereupon, she disclosed the whole facts to her mother. Three-four times, the convict/appellant entered her house in the night and harassed her, but, in the Panchayat, he used to admit his guilt and accordingly, matter used to get compromised. On 20/21.08.2020, the victim was sleeping in her room on bed. In the night, the convict/appellant entered her house and after laying down on the bed, he started doing wrong acts with her. After opening the string of her salwar, he tried to rape her, whereupon, she woke up. The convict/appellant gagged her mouth with his hand and threatened her not to make noise, otherwise, he will kill her. However, the victim pushed him and raised noise. Her family members woke up and her father tried to apprehend the convict/appellant, but, he fled away from the spot after pushing them. The convict/appellant teased the victim and tried to rape her and had also extended threats to injure her. Consequently, the victim got registered the instant appeal FIR.

Investigation Proceedings

4. After registration of case, investigation was conducted by L/Assistant Sub-Inspector Babita. During investigation, site plan of the place of occurrence was prepared; statements of witnesses were recorded under Section 161 of the Cr.P.C.; child-victim was recovered; statement of child-victim was recorded under section 164 of the Cr.P.C.; the convict/appellant

was arrested and after completion of investigation proceedings, challan was prepared and presented against him to face trial before the court.

Trial Proceedings

5. On finding a prima facie case for the commission of offences punishable under Sections 450, 376(3), 506, and, under Section 376 read with Section 511 of the IPC, besides for the commission of offences under Sections 6 and 18 of the POCSO Act, thus the learned trial Judge concerned, vide order dated 08.02.2021, chargesheeted the convict/appellant.

6. The prosecution in support of its case examined as many as 11 witnesses and placed reliance on documents exhibited as Ex.P1/PW1 to Ex.P35/PW11. Subsequently, the learned public prosecutor closed the prosecution evidence, and thereafter the learned trial Judge drew proceedings under Section 313 Cr.P.C, wherein, the convict/appellant pleaded innocence and claimed false implication. The convict/appellant also chose to adduce defence evidence and availed the said opportunity, through his examining two defence witnesses, i.e. DW1 Meenu and DW2 Sunil Kumar, and, thereafter closed the defence evidence.

Submissions of the learned counsel for appellant

7. The learned counsel appearing for convict/appellant has contended before this court, that the impugned verdict of conviction, and, also the consequent therewith substantive sentence(s) of imprisonment and of fine, as became imposed upon the convict/appellant, are based on a gross misappreciation and non-appreciation of evidence. Therefore, he has made a submission before this Court that the appeal be allowed, and, the impugned verdict be quashed and set aside.

Submissions of the learned State counsel

8. On the other hand, the learned State counsel, has also made an argument before this Court, that the impugned verdict of conviction and also the consequent therewith sentences of imprisonment and of fine, as became imposed upon the convict/appellant, thus through the impugned decision, rather do not suffer from any legal fallacy, and as such, he has argued that the impugned decision(s) be maintained and affirmed.

Analysis of the submissions addressed before this Court by the learned counsel for the convict/appellant

9. The learned counsel appearing for the convict/appellant has vigorously argued before this Court, that since PW2 Dr. Sonali Dhillon has, in the apposite MLR (Ex.P3), as became drawn vis-a-vis the victim, failed to make any speakings therein, thus exemplificatory, that any external injury marks became inflicted upon the victim, or, upon the convict/appellant. Therefore, he has contended that the sexual encounters, if any, which occurred inter se the convict/appellant and the victim rather were completely consensual.

For the reasons to be assigned hereinafter, this Court rejects the above made submissions

10. The paramount reason for rejecting the above submission ensues from the factum, that unless cogent evidence emerged, but suggestive, that the victim had, at the relevant stage, arrived at the age of consent, thereupon, if also both the victim and her mother make unblemished and untainted testifications with respect to the penal occurrence, resultantly, this Court would proceed to affirm both the verdict of conviction (supra), and, also the consequent thereto order of sentence (supra), as became imposed upon the

convict/appellant.

11. For determining the factum, whether at the relevant stage, the victim had arrived at the age of consent, it is but deemed necessary to gauge from the birth certificate of the victim, whether then she had arrived at the age to thus mete a valid consent to the convict, to subject her to coitus.

12. In the above regard, it is thus necessary to allude to the birth certificate of the victim. The birth certificate of the victim became tendered into evidence by PW7. To the said birth certificate became assigned Ex.P19. A reading of the exhibit (supra) reveals, that at the relevant stage, the victim was a minor, thus was completely disabled to purvey any valid consent to the convict/appellant, for his subjecting her to coitus.

13. After PW7 tendering Ex.P19 before the learned trial Judge concerned, though he became subjected to cross-examination, but yet, on a reading of his cross-examination, nothing emerges, whereby, it could become concluded that the relevant entries occurring in Ex.P19 are false, or, unauthentic. Resultantly, Ex.P19 enjoys immense creditworthiness. Therefore, when the victim, in view of her date of birth entry, as becomes entered in Ex.P19, became completely disabled to purvey any valid consent to the convict/appellant, to subject her to coitus. In sequel, the above argument(s) anvilled, upon, the statement of PW2 Dr. Sonali Dhillon, who prepared MLR (Ex.P3), with unfoldings therein, that no external marks of injury became noticed by her, upon, the person of the victim, besides even if there are no marks of resistance occurring on the body of the convict, yet the absences of injuries (supra) of any portion of the body of both the victim, and, of the convict/appellant, thus are to be not carrying any evidentiary vigour, so as to

negate the testifications made by the victim and her mother.

Analysis of the testifications of the victim and her mother, who respectively stepped into the witness box as PW1 and PW3

14. The making of the above inferences would not per se prompt any firm conclusion from this Court, that thereby this Court is to affirm the impugned verdict. The reason for forming the above inference stems, from the factum, that only if the victim and her mother make untainted and unblemished testifications vis-à-vis the crime event, so as to prevail upon this Court to conclude, that their respective testifications, do inspire the trust and confidence of this Court, that resultantly this Court would proceed to affirm the impugned verdict of conviction, as became recorded vis-à-vis the convict/appellant.

15. In the aforesaid endeavour, it is necessary to refer to the testification, as became made by the victim before the learned trial Court concerned.

16. The victim stepped into the witness box as PW1, and, in her cross-examination, she has made echoings, which do completely corroborate the narrations, as made in the appeal FIR, to which Ex.P10 is assigned. Moreover, during the course of her examination-in-chief, the statement of the victim, as became recorded under Section 164 Cr.P.C. before the learned Illaqa Magistrate concerned, was also produced in a sealed envelope before the learned trial Judge concerned. After retrieval from the sealed envelope, of the apposite statement, to which Ex.P2 became assigned, the victim became confronted with the said statement. However, she admitted that the version as enclosed therein, thus was made by her rather both voluntarily and truthfully.

She also admitted, that at Point A of Ex.P2, she had subscribed her signatures. Furthermore, she also admitted that the MLR (Ex.P3) was prepared by the doctor concerned, in pursuance to hers becoming medically examined.

17. Though there is inter se corroboration inter se the testification (supra), as became rendered by the victim before the learned trial Judge concerned, thus with her previously made statement in writing. However, unless a close scrutiny of her cross-examination also reveals, that she has neither openly digressed, nor has grossly improved or embellished upon her previously made statement in writing to the police officer concerned, that thus this Court would assign complete creditworthiness to her statement(s), as occur(s) in her examination-in-chief.

18. However, a reading of her cross-examination, the relevant portion whereof becomes extracted hereinafter, thus openly reveals, that thereby the defence conceding to the narrations, as made by the victim in her examination-in-chief.

“...Except this, my father was not treated anywhere. I cannot tell from which gate accused Sonu entered my house. There are two gates in my house. There are no doors in the rooms. I cannot tell that how much time, accused Sonu stayed in my room. Papa and my brother Shubham apprehended accused Sonu on the alleged date. When accused gagged my mouth, I raised alarm. There are neighbourers in the vicinity of my house. Raju, Rampal, China etc. also reached. These persons are still residing in my neighbourhood. I cannot tell the time of scuffle which took place among my father, brother and accused Sonu....”

19. The further sequel of the defence rather in the above manner acquiescing to the convict/appellant committing the charged offences, is that,

the defence, as becomes propagated by the convict/appellant, that there was a demand of refund of monies by the uncle of the convict/appellant, vis-a-vis, the father of the victim, which however remained unheeded, thereby resulting in the convict/appellant becoming falsely implicated, but obviously becoming negated. Moreover, the further effect of the above acquiescence, is that, the exculpatory plea, as raised by the convict/appellant, that the father of the victim had borrowed a sum of Rs.1,50,000/- from the convict/appellant, and, when the convict/appellant demanded its return from the father of the victim, thus resulting in the false implication of the convict/appellant, thus also becoming completely negated.

20. Even otherwise, since no firm documentary evidence to support the above exculpatory pleas, remained adduced, thereby also the said exculpatory pleas become completely unfounded, and/or, are to be construed to be completely pretextual. In sequel, the effect of the acquiescence(s) (supra), as made vis-à-vis the prosecution story, rather by the learned defence counsel, while subjecting the victim to cross-examination, is that, thereby this Court being coaxed to conclude, that resultantly the prosecution has been able to unflinchingly prove the charges drawn against the convict/appellant.

Analysis of the statement of the mother of the victim, who stepped into the witness box as PW3

21. The mother of the victim, while stepping into the witness box as PW3, has rendered the completest corroboration to the testification, as became rendered by the victim. Though the testifications (supra), as became respectively rendered by the victim, and, by her mother, are thus rendered with the firmest inter se corroboration, but yet, for gauging the truth of the

testification, as made by the mother of the victim, it is also necessary to read her cross-examination. The relevant portion of the cross-examination, as became made upon PW3, becomes extracted hereinafter:-

“...Accused Sonu had entered in our house in the night of 21.08.2020 at about 01.00/01.30 a.m. No neighbour had come to our house at that time. Accused Sonu managed to run away when we tried to apprehend him...”

22. The above extracted portion of the cross-examinations, as became conducted upon the mother of the victim, thus naturally echoes an acquiescence of the defence, vis-à-vis, the prosecution story, as becomes encapsulated in the appeal FIR (Ex.P10). The consequence of the above, is that, with both the victim and her mother rendering unblemished and untainted testimony vis-à-vis the crime event, thereupon too, this Court becoming prompted to conclude, that the instant appeal directed against the impugned verdict of conviction, and, the order of sentence (supra) rather deserves to be dismissed.

Medical Evidence

23. Dr. Sonali Dhillon, who conducted medical examination upon the victim, stepped into the witness box as PW2. In her examination-in-chief, she tendered the apposite MLR, to which Ex.P3 is assigned. Furthermore, she also made speakings in her examination-in-chief, that after perusing the apposite FSL report (Ex.P23), bearing No.2020/B-6512 dated 07.09.2020, she was led to make an opinion, that there was a possibility of sexual intercourse becoming perpetrated upon the victim.

24. Though the learned counsel for the convict/appellant has argued, that since Ex.P3 does not, on its reading, make clear emergences, that semen belonging to the convict/appellant became detected on the relevant exhibits, as

became sent to the FSL concerned, for their respective examinations. Therefore, he has argued, that thereby the entire edifice of the prosecution case rather completely collapses.

25. Moreover, the learned counsel for the convict/appellant has also argued, that since PW2, in her cross-examination, has echoed, that when she made an examination of the person of the victim, she observed that her hymen was torn, but since she has further disclosed, that the said tearing(s) of the hymen of the victim rather was old. Therefore, he has argued, that the above echoings made by PW2, in her cross-examination, negates the guilt of the convict/appellant, vis-a-vis, the charged offences.

However, both the above made submissions are rudderless, and, thus they are required to be rejected.

26. The reason for drawing the above inference ensues from the factum, that even if the FSL concerned did not observe any semen of the convict/appellant, thus to be occurring on the vaginal swabs of the victim, besides also even if PW2, has stated in her examination-in-chief, that the tearing(s) done to the hymen of the victim, rather were old tear(s), yet the above echoings, do not at all taint, nor underwhelm the efficacy of the consistently made testifications by the victim and by her mother.

27. Since the primary rule for assuring the judicial conscience of this Court, that the charges drawn against the convict/appellant are, or, are not to be assigned any creditworthiness, is but rested on the plank of creditworthiness of the statement of the victim. Resultantly, when for all the reasons (supra), this Court has firmly concluded, that the victim has rendered a truthful, unblemished, and, but obviously a confidence inspiring testification,

vis-à-vis, the crime event. Therefore, when the above rule, relating to this Court proceeding to uphold the verdict of conviction recorded against the convict/appellant, thus becomes completely established.

Final Order

28. In consequence, for all the reasons (supra), this Court does not find any merit in the instant appeal and is constrained to dismiss it. Consequently, the instant appeal is dismissed and the impugned verdict of conviction and the consequent therewith sentences (supra), as become imposed upon the convict/appellant, by the learned trial Judge concerned, are affirmed and maintained.

29. All pending application(s) stand disposed of accordingly.

30. If the convict/appellant is on bail, thereupon he is ordered to be forthwith taken into custody

31. Case property, if any, be dealt with in accordance with law, after expiry of the period of limitation, for filing an appeal. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

07.11.2023
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Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No