

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1111-2022 (O&M)
Date of decision : 07.11.2023

SANTOSH PASWAN -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 03.09.2022, upon, Case No. SC/182/2021, by the learned Additional District and Sessions Judge, Fast Track Court, Sonapat. Moreover, the instant appeal is also directed against the order of sentence, as became drawn on 07.09.2022, by the learned convicting court concerned, whereby, it sentenced the convict/appellant in the hereinafter extracted manner:-

Sr. No.	Under Section	Sentence
1.	6 of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act')	R.I. for life and to pay a fine of Rs.50,000/-. In default of payment of fine or a part thereof, further R.I. for a period of 1 year.
2.	506 of the Indian Penal Code (hereinafter referred to as the 'IPC')	R.I. for 3 years and to pay a fine of Rs.10,000/-. In default of payment of fine or a part thereof, further R.I. for a period of 2 months.

Both 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 Section 6 of the POCSO Act, and, Section 506 of the IPC.

Factual background

3. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.P21/PW12 has been assigned. The narrations carried in Ex.P21/PW12 are, that the victim, who was 13 years old at the relevant time, fell sick and started vomiting, upon which she started screaming and disclosed her mother/complainant about the incident, which took place two months ago, when Santosh Paswan (hereinafter referred to as the 'convict/appellant'), who was residing in their neighbourhood, repeatedly raped her forcibly on three occasions and also criminally intimidated her from disclosing the incident to her parents or family members, else he would kill her. Out of fear, the victim did not disclose about the commission of offence to any person. Consequently, the complainant/mother of the victim got registered the instant appeal FIR.

Investigation Proceedings

4. After registration of case, investigation was conducted by L/SI Sudesh (PW17). During investigation, age proof of the victim was obtained from Barota School. The victim was medico legally examined and the case property was taken into police possession from the doctor concerned. Thereafter, counseling of the victim was conducted from CWC. Statement of the victim, under Section 164 Cr.P.C., was got recorded before the Id.

Magistrate concerned. Ultrasound of the victim was got conducted and the case property was obtained from the doctor concerned. On 3.2.2021, FSL team inspected the spot and prepared one parcel. Higher Officers also inquired the matter. On 4.2.2021, the convict/appellant was formally arrested. While being in custody, the convict/appellant suffered his disclosure statement. Pursuant to his disclosure statement, he got demarcated the place of occurrence. On 5.2.2021, the convict/appellant was medico legally examined and case property was obtained from the doctor concerned, which was deposited in Malkhana. On 9.2.2021, scaled site plan was got prepared from the draftsman concerned. The case property was deposited in FSL Madhuban. Short stay/MLC file of the victim was obtained from GH, Sonapat. After completion of the investigation, final report under Section 173 Cr.P.C. was prepared against the convict/appellant and presented before the learned trial Court concerned.

Trial Proceedings

5. On finding a prima facie case, the learned trial Court concerned, vide order dated 10.03.2021, chargesheeted the convict/appellant for the commission of offences punishable under Section 6 of the POCSO Act, and, for the commission of offences punishable under Section 376(2)(n), 376(3) and 506 of the IPC.

6. The prosecution in support of its case examined as many as 17 witnesses and placed reliance on documents exhibited as Ex.P1 to Ex.P31/PW17, and, on Ex.PX and Ex.PY. 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 though opted to adduce defence evidence, however, without any defence evidence being adduced, the defence evidence was closed.

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 sentences 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 be maintained and affirmed.

Birth certificate of the victim (Ex.P19/PW11)

9. A studied perusal of the birth certificate, as appertains to the victim, plainly reveals, that she was born on 06.05.2007. Since the alleged occurrence took place, when she was yet a minor, therefore, when at the relevant stage, she was completely disabled to mete any valid consent to the convict/appellant, to subject her to coitus. Resultantly, the argument, if any, as addressed before this Court, that the sexual encounters, as entered into inter se the convict/appellant and the victim were thus completely consensual, is

naturally to be construed to be of no legal worth.

10. The overwhelming reason for assigning credence to the date of birth of the victim, as entered in her birth certificate (supra), stems from the factum, that the making of the said entry therein, ensued from the corresponding entries, as became entered in the Aadhar Card of the victim.

Analysis of the testification of the victim, who stepped into the witness box as PW1

11. The victim stepped into the witness box as PW1, and, in her examination-in-chief, she made narrations, which are in complete tandem with her previously made statement in writing. Moreover, during the course of her examination-in-chief, the statement made by her under Section 164 Cr.P.C. before the Illaqa Magistrate concerned, became produced in a sealed envelope, and, after retrieval therefrom of the said statement, to which Ex.P1 is assigned, thus the same became shown to the victim. On Ex.P1 being shown to the victim, she firmly stated, that the said exhibit was voluntarily recorded by her, before the Illaqa Magistrate.

12. Since the echoings made in Ex.P1, relevant contents whereof, are extracted hereinafter, do candidly reveal, that the victim had attributed culpability to the convict/appellant, vis-à-vis, the charged offences, besides when the Illaqa Magistrate concerned, while stepping into the witness box as PW10, has also during the course of his examination-in-chief, proven Ex.P1. In addition, when at the foot of Ex.P1, a statutory certification (Ex.P14/PW10) occurs with clear speakings thereins, about the said statement becoming voluntarily made by the victim. In consequence, especially when PW10 remain un-cross-examined by the learned defence counsel, resultantly,

immense creditworthiness is to be assigned to Ex.P1. In sequel, the testification as made by the victim, vis-à-vis, the crime event, thus becomes both unblemished, besides untainted, thereby leading this Court to assign credence thereto.

“...Question: What do you want to say?

Answer: Two months ago, I was alone in my room at Barota. It was noon. My uncle's son Santosh came to my room and locked the door. He tied my mouth with chunni. He also slapped me. Then he took me on bed and committed rape upon me. He said to me not to tell this to anyone and threatened me and what proof of this you have. I did not tell this to anyone due to fear then day before yesterday I told all things to my Bhabhi Rinku because I was vomiting from last 3-4 days. Then Bhabhi told to my brother. Brother told to my mother and took me to doctor...”

13. Though a wholesome reading of the testification of the victim is imperative, thus this Court is also required to be reading the echoings made by the victim in her cross-examination. However, a close scrutiny of the cross-examination, as became conducted upon the prosecutrix, rather does not unfold, that therein the learned defence counsel has been able to elicit any echoings to any apposite suggestions, whereby, this Court may become constrained to conclude, that the version as spelt by the victim in her examination-in-chief, thus becoming either whittled down or becoming disrobed, vis-à-vis, its efficacy.

14. In sequel, this Court construes the statement of the victim to be confidence inspiring, and, is led to uphold the verdict of conviction and the consequent thereto order of sentence (supra), as became imposed upon the convict/appellant by the learned trial Court concerned.

15. Though the learned counsel for the convict/appellant has made a

vigorous submission before this Court, that the testification of the victim rather loses its creditworthiness, thus on the score, that her mother, who stepped into the witness box as PW2, resiling from her previously made statement in writing. Therefore, he argues, that this Court be led to record a verdict of acquittal, vis-à-vis, the convict/appellant.

Reasons for rejecting the above submission

16. This Court is not inclined to accept the above made submission. The reason is but simple, inasmuch as, even if the mother of the victim, did resile, from her previously made statement in writing, and, though she also remained unscathed, even during the course of hers being cross-examined by the learned Public Prosecutor concerned, upon the apposite leave being granted to him by the learned trial Judge concerned. However, the cardinal principal for construing whether the charges drawn against the convict/appellant are well founded, and/or, are ill founded, is made dependent solitarily on the unblemished testification of the victim, than the testification contrary thereto, as becomes rendered by any other prosecution witness. Therefore, when for all the reasons (supra), this Court has assigned immense creditworthiness to the testification, as became rendered by the victim, therefore, any exculpatory testification, as becomes rendered by the mother of the victim, thus becomes completely inconsequential.

Medical Evidence

17. Dr. Anuradha Jain, who conducted medical examination of the victim, stepped into the witness box as PW5. During the course of her examination-in-chief, she tendered into evidence her affidavit, to which Ex.P8/PW5 becomes assigned. The contents of the said affidavit are extracted

hereinafter:-

“1. That Manisha D/o Sushil Paswan aged 13 years female was admitted with history of sexual assault two months back, on same day, her Ultra sound was done on 01.02.2021. It showed seven weeks live fetus, cardiac activity positive. Patient was brought by police S.I. Sudesh, father and mother. Father, mother and patient wanted termination of pregnancy. Then we made a board of three doctors i.e. 1. Dr. Anuradha Jain, 2. Dr. Pankaj Keshwani Forensic expert and Dr. Ekta Medical Officer.

2. I performed the procedure of dilatation and curettage on 02.02.2021 and sent the products of conception for DNA Profile to FSL Madhuban with proper seal. Patient was discharged on 03.02.2021 in a healthy condition.”

18. A reading of the above extracted statement of the examining doctor, as comprised in the exhibit (supra), though reveals, that the victim became beset with seven weeks' live fetus. Nonetheless, the learned counsel for the convict/appellant argues, that since in her cross-examination, she has revealed, that on a perusal of the DNA report (Ex.PY), there is no echoing, thus suggestive, that the blood of convict/appellant and the blood of victim rather have any compatibility with the conception material. Consequently, the learned counsel for the convict/appellant argues, that when the best forensic evidence (Ex.PY), fails to relate the conception material, either to the blood group of the convict/appellant, and/or, to the blood group of the victim. Resultantly, he argues that thereby, the otherwise confidence inspiring statement of the victim, but loses its tenacity.

However, for the reasons to be assigned hereinafter, the above made argument is an idly made argument and deserves rejection

19. The reason for making the above inference becomes garnered from the factum, that a reading of the results of the DNA report (supra), which

becomes extracted hereinafter, are exemplificatory, that the lack of apposite incompatibility rather ensuing from only partial amplification of DNA, which is stated to be not sufficient to make a conclusive DNA profiling. Furthermore, the absence of the DNA expert making the apposite compatibility, is also disclosed therein, to be emanating from degradation of DNA, or, presence of PCR inhibitors.

“Laboratory Examination

DNA was extracted from above items and subject to amplification of 23 Autosomal STR markers by using Powerplex fusion PCR amplification kit. The amplicons obtained were further analyzed in ABI3500 Genetic Analyzer. The electropherogram obtained after STR analysis were observed as below:-

- 1. The item no.3 yielded amplification of DNA, whose genotype is estimated to be of male i.e. XY.*
- 2. The item no.4 yielded only partial amplification of DNA which is not sufficient to conclude DNA profile. This is indicating degradation of DNA or presence of PCR inhibitors.*
- 3. The item no.6 yielded amplification of DNA whose genotype is estimated to be of female i.e. XX.*

OPINION

The Autosomal STR analysis indicates that DNA profile could not be obtained in item no.4 (Product of conception) which may be due to degradation of DNA or presence of PCR inhibitors. Hence no comparison could be made with item no.3 (Blood of accused) and item no.6 (blood of victim).”

20. In the wake of the above inconclusive results, as carried in the DNA report (supra), it but cannot be concluded, that the said results thus hold any exculpatory effect, vis-à-vis, the convict/appellant. Contrarily, the absence of conclusive findings in the report of the DNA report, when is planked upon the above insufficiencies, and/or, upon degradation of the DNA items. Therefore,

the inability of the DNA expert to make any unflinching finding relating to apposite compatibilities, especially when the said inability ensued, from the above deterrences. Consequently, the report of the DNA expert, does not spark any conclusion from this Court, that thereby the otherwise confidence inspiring statement of the prosecutrix rather loses its evidentiary tenacity.

Final Order

21. 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.

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

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

24. Case property, if any, be dealt with in accordance with law, after the expiry of the period of limitation, for thus filing an appeal. The record(s) 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