

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-1174-2022 (O&M)

Reserved on: 17.7.2023

Date of Decision: 25.7.2023

Des Raj @ Desu

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Mr. Sushil Bhardwaj, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 31.10.2019, upon Sessions Case No. 286 of 2018, by the learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Patiala, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 376, and, 506 of the IPC, the learned trial Judge concerned, proceeded to record a finding of conviction against accused-appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for a period of twelve years for an offence punishable under Section 376 IPC, besides also imposed, upon the convict sentence of fine, as comprised in a sum of Rs. 3,00,000/-, and, in default of payment of fine amount, she sentenced the convict to undergo rigorous imprisonment for a period of two years. Moreover, the learned convicting Court also sentenced the convict to undergo rigorous

imprisonment for a period of four years, for a charge drawn for 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. 20,000/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of four months. It was also ordered, that out of the fine amount (i.e. Rs. 3,20,000/-) Rs. 20,000/- be adjusted towards the cost of litigation, and, the remaining amount of Rs. 3,00,000/-, be paid to the victim by way of compensation.

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. 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

4. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PW-7/B is assigned. The narrations carried in Ex. PW-7/B are, that on 6.8.2018, SI Manbir Singh along with fellow police officials, was present at the turning of Warraichan, Samana in connection with patrolling, where he came across the victim daughter of Vinod Kumar resident as a tenant in the house of Vikram Singh at Roshan Colony, Ward No.4, Samana, who was accompanied by her father Vinod Kumar and mother Ash Rani. The victim got her statement recorded with SI to the effect

that they are two sisters and one brother. She is eldest of all and her date of birth is 8.3.2006 and is studying in 6" standard in Little Flower School, Samana. Her father is running a sweet shop. Earlier, they used to reside in the same colony as a tenant in the house of Jassu Singh, where in one of the room accused Des Raj @ Desu used to reside as a tenant and due to which they were known to each other. The victim further stated that in the month of February 2018, one night, but she does not remember the exact date, when her entire family members were sleeping in their respective rooms. Des Raj came to her room, called her and thereafter forcibly hugged her. He then took her to his room and made her lie on the bed. He removed her clothes forcibly and committed rape upon her person. He threatened that if she disclosed about the incident to her parents, he would eliminate her. Out of fear, she did not disclose about the same to any of her family member. Again in the month of June 2018, during night, Des Raj forcibly took her to his room and on that night, after removing her clothes, he tried to commit rape upon her person forcibly. Her father Vinod Kumar came there and saw the accused attempting to commit rape upon her. In the morning, her father persuaded Des Raj, who confessed his guilt before him. They did not inform the police about the incident at that time for the sake of honour of their family. However, thereafter again Des Raj started threatening to eliminate her and her parents. On the basis of the statement of the victim, ruqa was sent to the police station, and, formal FIR was registered against the accused.

Investigation proceedings

5. During investigation, statements of the witnesses were recorded. Medico legal examination of the victim was got conducted at Civil Hospital, Samana. Thereafter, the accused was arrested. 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

6. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw charges against the accused, for offences punishable under Section 4 of the Protection of Children from Sexual Offences Act or in the alternative for commission of offences punishable under Section 376 of the IPC, and, under Section 506 of the IPC. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

7. In proof of its case, the prosecution examined 10 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, but did not lead any defence witness into the witness box.

8. 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

9. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent thereto order of sentence, requires 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

10. 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 testimony of the prosecutrix, who stepped into the witness box as PW-1

11. The prosecutrix, who stepped into the witness as PW-1, proved the contents of the appeal FIR, to which Ex. PW-7/B is assigned, and, also proved the statement, as became made by her under Section 164 of the Cr.P.C., before the learned Magistrate concerned.

12. Initially an allusion is made to the birth certificate of the prosecutrix, to which Ex. PW-6/C, is assigned, and, wherein the prosecutrix is revealed to be a minor on the date of commission of the charged offences . Since Ex. PW-6/C emanated from the Registrar of Births and Deaths, who is the lawful authority to make entries in the register of Births and Deaths. 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 rebuttal thereto 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.

Irrelevant of the ossification test in the face of the date of birth of the prosecutrix becoming proven from Ex. PW-6/C

13. Since the best evidence in respect of the date of birth of the prosecutrix, is comprised in the apposite birth certificate, to which

Ex. PW-6/C is assigned, therefore, any reliance, as placed upon the ossification test, as became conducted upon the prosecution, is an inapt reliance, thus for proving, that given the revelations therein, that the estimated age of the victim-prosecutrix, is 15 to 17 years, and, but with a margin of error of 1- 1 and half years, besides with the benefit of the upper margin, thus being purveyable to the accused, thereby prima facie making the prosecutrix to be major at the relevant time, and, also prima facie making her lawfully capacitated to mete consent, if any, to the sexual overtures of the accused, besides thus becomes inconsequential, and/or is completely irrelevant, thus to determine the age of the prosecutrix.

14. The prosecutrix, on hers stepping into the witness box as PW-1, has in her examination-in-chief, thus made echoings which are in complete alignment with her previously made statement in writing, besides are in complete alignment with her statement Ex. P2, as became made by her before the learned Magistrate concerned.

15. Moreover, Ex. P2 became produced in a sealed envelope before the learned Magistrate concerned, and, after the contents thereof becoming retrieved therefrom, the statement of Ex. P2 was shown to the prosecutrix, and, the latter then thus admitted qua hers voluntarily making the said statement, and, also admitted the occurrence of her signatures thereons. She also then identified the accused present in Court.

16. The prosecutrix was subjected to the ordeal of a rigorous cross-examination. A reading of the cross-examination, as made upon the prosecutrix, does not unravel, that she either belied or contradicted the speakings, as became made by her in her examination-in-chief. Therefore, utmost sanctity is to be accorded to the testification, as made by her, thus during her examination-in-chief. Moreover, sanctity is also to be accorded

to her statement, as made before the Magistrate concerned, and, to which Ex. P-2 is assigned, wherein, she assigned an incriminatory role to the convict-appellant.

17. What coaxes this Court to assign the completest sanctity to Ex. P-2, is comprised in the factum, that therein exist an unrebutted certificate made by the learned Magistrate concerned, but with a candid echoing therein, thus reflective, that the prosecutrix had voluntarily made incriminatory attributions against the convict-appellant. Therefore, but obviously the charge drawn against the convict-appellant becomes invincibly established.

Medical Report

18. The doctor who conducted the medical examination, upon the prosecutrix, stepped into the witness box as PW-3, and, proved the MLR, as became drawn by her qua the prosecutrix, to which Ex. P6, became assigned. A reading of the MLR, as became proven by PW-5, does disclose that the echoings made therein by the prosecutrix, hence remaining unrebutted, during the course of PW-5 becoming subjected to a rigorous cross-examination. Therefore, the said echoings acquire evidentiary worth, and, thus corroborate the speakings, made by the prosecutrix while stepping into the witness box as PW-1. Moreover, in Ex. PW-5/A there occurs a speaking, that a penetrative sexual assault became perpetrated by the convict-appellant, upon the prosecutrix, thus thereby also an absolute corroboration is meted to the testification, as made by the prosecutrix, but with the speakings therein qua the charged offences becoming committed by the convict-appellant.

Report of the FSL concerned

19. Amplifying corroboration to Ex. PW-5/A, and, also to the

testification of the prosecutrix, is firmly secured from Ex. P-7, exhibit whereof is the chemical examiner's report, as made on swabs 1 and 2, as, became sent to the laboratory concerned, for their examination. On examinations of the above exhibits, as became enclosed in a sealed cloth parcel, the chemical examiner concerned pronounced an opinion, that spermatozoa was detected in the contents of exhibit I, whereas, he opined that, no spermatozoa was detected in the contents of exhibit III. Since exhibits (supra), as revealed by Ex. PW-9/A, thus were taken to the FSL concerned by PW9, who in an affidavit (Ex. PW-9/A), as tendered by him, during the course of his examination-in-chief, thus made therein pointed speakings qua the items (supra), as became sent for their examination(s) to the chemical examiner concerned, thus becoming enclosed in sealed cloth parcels, and, that the said parcels becoming deposited, thus in an untampered, and, in an unspoiled condition, in the malkhana concerned, and, thereafter the said sealed parcels, becoming despatched through Lady Constable Sukhwinder Kaur, to the FSL concerned, for examinations of the contents, as enclosed therein, thus being made thereon, at the FSL concerned.

20. Moreover, when Lady Constable Sukhwinder Kaur, who stepped into the witness box as PW-8, has during her examination-in-chief tendered into evidence her affidavit Ex. PW-8/A, contents whereof fully corroborate the speaking, as made by PW-9 in Ex. PW-9/A. Therefore, it has to be concluded, that the items, as became sent in sealed cloth parcels, for their examinations at the FSL concerned, were not only kept in safe custody but also was sent there in an untampered and in an unspoiled condition. In consequence, completest sanctity is to be assigned to the report of the FSL concerned, as made on the relevant items.

21. Moreover, since it has been unrebuttingly reflected in the MLR Ex. PW-5/A, as became drawn, and, became proved by PW-3, that swab No. 1 and swab No. 2, became collected, and, when it has also been unrebuttedly reflected therein, that the said collections became enclosed in sealed cloth parcels. Therefore, the affidavits Ex. PW-8/A, and, Ex. PW-9/A which make a reference to the said sealed cloth parcels, thus reiteratedly the collections thereof, and, thereafter theirs becoming deposited with the incharge of the malkhana concerned, and, subsequently theirs being sent for examination to the chemical examiner concerned, thus becomes proven to be efficaciously made. Therefore, a conclusion becomes mobilized, that not only, thus efficacious collections were made of the relevant items by PW-3, but also the said collections become enclosed in sealed cloth parcels, and, in the same condition, theirs being deposited with the incharge of the malkhana concerned, besides thereafter, but in an untampered and an unspoiled condition, theirs as reflected by the examiner reports, hence became received there. Therefore, the opinion made thereons, but voicing that spermatozoa was detected on the relevant item, but capitalizes an inference from this Court, that a penetrative sexual assault, became perpetrated, thus upon the victim-prosecutrix, by the convict-appellant. The reason being that since there is no challenge, on any permissible ground, thus to the report of the chemical examiner concerned, to which Ex. P7 is assigned, therefore, it acquires conclusivity. In sequel, since there is evident inter se corroboration inter se the confidence inspiring testification of the prosecutrix, thus with the MLR Ex. PW-5/A, besides also with the report of the chemical examiner concerned, thereby makes the charges drawn against the convict to become proven to the hilt.

Final order

22. 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, by the learned convicting Court, is also maintained, and, affirmed. If the convict 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.

23. Records be sent down forthwith.

24. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 25, 2023
Gurpreet

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