

In the High Court of Punjab and Haryana at Chandigarh

**CRM-A-2729-MA of 2018
Reserved on: 17.5.2023
Date of Decision: 26.5.2023**

State of Haryana

.....Applicant

Versus

Sukhdev

.....Respondents

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

Present: Mr. Raman Sharma, Addl. A.G., Haryana.

Mr. Ankur Sidhar, Advocate for
Mr. Rajesh Khandelwal, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. Through the instant application, the State of Haryana prays for special leave to appeal being granted, to challenge the verdict of acquittal, as made on 15.1.2018, upon Sessions Case No. 84-SC of 2016, by the learned Additional Sessions Judge-cum-Special Court for Heinous Crime Against Women, Hisar. The above made verdict of acquittal, upon the accused concerned, was in respect of charges drawn against him qua commission of offences punishable under Sections 363, 366, 376(2)(i) of the IPC, and, under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

Factual background

2. The genesis of the prosecution case, becomes embodied in the appeal FIR dated 4.7.2016. The narrations carried in the appeal FIR, are that

on 24.05.2016, Roshan Lal son of Jogi Ram resident of village Petwar came

to Police Station Narnaund and presented an application alleging therein, that on previous night i.e. 23.05.2016 at about 10:30 P.M., he along with his family members after taking meal were sleeping. In the next morning at about 6:00 AM, he found his daughter (victim) missing from her bed. He tried to trace out her in the neighbourhood but could not succeed. He also enquired her whereabouts from the relatives but no clue was found about her. The age of his daughter was about 15/16 years. He had suspicion that someone had enticed his daughter away for the purpose of getting solemnized marriage with her. He prayed for tracing out his daughter. Upon this application, present case was got registered.

Investigation proceedings

3. During investigation, on 06.06.2016 accused Sukhdev and prosecutrix were recovered from Narwana. After receipt of birth certificate of prosecutrix offence under Section 366 IPC was deleted and offence under Section 366-A IPC was added. The further investigation was carried out by Lady Sub Inspector Saroj Bala. The statement of the prosecutrix under Section 164 Cr.PC. was got recorded. She was also medico legally examined from General Hospital, Hansi. After receipt of medical report, offences under Section 376 IPC and Section 4 POCSO Act were added. The prosecutrix was handed over to her legal heirs. On 06.06.2016 accused was arrested and was got medico legally examined. His disclosure statement was recorded. Case property was deposited with Moharer Head Constable. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

IPC and Section 6 of the POCSO Act were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 12.8.2016, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

5. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against accused, for the offences punishable under Sections 363, 366, 376(2)(i) of the IPC, and, under Section 4 of the POCSO Act. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

6. In proof of its case, the prosecution examined seven 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.

7. As above stated, the learned trial Judge concerned, proceeded to acquit the accused for the charges (supra), as became drawn against him.

Reasons for dismissing the instant application

8. For the reasons to be assigned hereinafter, the asked for special leave to appeal against the verdict of acquittal (supra), is declined.

9. Admittedly, the prosecutrix was a minor at the stage of the penal offences becoming allegedly committed by the accused. Therefore,

consent, if any, as became purveyed by the prosecutrix, to the accused, for

the latter purportedly subjecting her to sexual intercourse, thus becomes completely irrelevant, besides insignificant. Nonetheless, on a closest scrutiny of the deposition of the prosecutrix, if unfoldments surge forth, thus making speakings that her testification is not confidence inspiring. Therefore, irrespective of the minority of the prosecutrix at the relevant stage, and, also irrespective of hers becoming legally capacitated to mete any valid consent to the accused subjecting her to coitus. Resultantly, thereupon, the accused would become entitled to a verdict of acquittal, being made upon him. In the above regard, for testing the creditworthiness of the testification of the prosecutrix, this Court has closely scrutinized her various statements, as became made by her, during the course of investigations, being made into the FIR (supra), as also has incisively read the testification as became made by her, before the learned trial Judge concerned.

10. The prosecutrix has, in her deposition, as, made before the learned trial Judge concerned, rather has made gross blatant, and, rife improvements over her previously recorded statement in writing, which are respectively enclosed in Ex. P-2 and Ex. P-3, thereby she is to be construed to be rendering a tainted and blemished version, in respect of the prosecution story. Therefore, no credence can be assigned to her testification, as, made before the learned trial Judge concerned.

11. In making the above conclusion, an allusion to Ex. P-2 is important. Ex. P-2 is the initially made statement by the prosecutrix, before the police. The said statement was made in the presence of a Legal Aid Counsel. In the said statement, she has stated that she had an amorous relationship with the accused, and, had voluntarily joined the company of the accused in the night of 23.5.2016. Furthermore, she has also detailed

thereins that they both went to Gurgaon, but on 6.6.2016, when they were

returning, the police arrested them at Narwana Bus Stand. However, therein she has stated, that the accused made sexual relations with her only once. In her statement Ex. P-3 also, which was recorded under Section 164 of the Cr.P.C., before the learned Magistrate concerned, the prosecutrix had stated that she voluntarily joined the company of the accused. However, she has also detailed therein, that the accused did not subject her to coitus.

12. Since the statement, as, made by the prosecutrix under Section 164 of the Cr.P.C., before the learned jurisdictional Magistrate concerned, does at its foot, carry a certification of the learned Judicial Magistrate concerned, thus manifesting that the statement (*supra*), as made by the prosecutrix, before him, is free from any fear or compulsion, becoming exerted upon her. Therefore, the said statement, unless it became resiled by the prosecutrix, during the stage of hers becoming confronted with it, thus would enjoy immense creditworthiness. In the above regard, an allusion to the statement, as, made by the prosecutrix, upon hers stepping into the witness box as PW-1, reveals that though during the course of her cross-examination, she became confronted to Ex. P-3, but yet she admitted the factum of hers recording Ex. P-3 before the jurisdictional Magistrate concerned. If so, the said statement Ex. P-3 does enjoy credence.

13. In the light of the above inference, being made by this Court, it has to be adjudged, whether the testification made by the prosecutrix, before the learned trial Judge concerned, thus was an embellishment or an improvement from Ex. P-3. If the testification, made before the learned trial Judge concerned, by the prosecutrix rather contradicts, embellishes or improves over Ex. P-3, thus her testification would acquire the taint of concoction or prevarication, thereby no credence would be assigned to the said testification.

14. A reading of the testification, made by the prosecutrix, before the learned trial Judge concerned, reveals that, she attributed therein an incriminatory role to the accused, thus of his holding her to coitus. If so, the said testification, thus for the above reason, is a rife, open or blatant improvement or embellishment from Ex. P-3, which she admits to become voluntarily made by her before the learned Magistrate concerned. Resultantly, the effect of hers improving or embellishing upon Ex. P-3, is that, no credence is to be assigned to her testification, as made before the learned trial Court. The further natural corollary thereof, is that, benefit of doubt is to be assigned to the accused, and, the accused is, thus entitled to become acquitted of the charges drawn against him.

15. Though, the forensic evidence was the best evidence in proof of the charges drawn against the accused. However, even the forensic evidence is extremely frail, and, weak. The reason being that, the DNA expert, in Ex. PA, has not assigned any opinion, about the material(s) sent to him for making the DNA profiling, thus upon their examination by him, rather revealing the incriminatory role of the accused. The reason so assigned, is that since the DNA profile, could not be obtained from item No. 1 and 3, which were necessary to compare with item No. 6, therefore, he declined to give an opinion, about the relevant inter se matching taking place. Resultantly, the said infirm DNA evidence also does not support the charges drawn against the accused. Moreover, Ex. P1, which is the report of the FSL, as made in respect of the biological origin of the semen inside the vaginal swabs of the prosecutrix, though, therein make a speaking about semen becoming detected in some of the vaginal swabs, and, on the other items sent thereto for examination. However, the biological origin of the semen found inside the vaginal swabs, has not been opined, nor obviously it

has been opined, that the biological origin of the semen inside the vaginal swab is related to the accused. Therefore, even on Ex. P1, no firm inference can be formed, that thereby the charges drawn against the accused becoming invincibly proven.

16. Be that as it may, even the factum of the prosecutrix joining the company of the accused in the night of 23.5.2016, is also doubtful. The reason being that, the prosecutrix has exculpated the accused, in her statement, made before the learned Magistrate concerned, and, to which Ex. P-3 is assigned. Moreover, it is highly enigmatic, that assuming the prosecutrix, joined the company of the accused on 23.5.2016, that such an ill-event could have yet happened, despite her father PW-3 Roshan Lal testifying, that at the relevant site, his daughter, and, his son, were sleeping with him in the room of the courtyard. If so, obviously on the appearance of the accused inside the house, being noticed, thus would have led to the accused becoming nabbed thereby, by PW-3-the father of the prosecutrix. However, when the above nabbing of the accused, by the father of the prosecutrix, at the relevant site, rather did not occur. Resultantly, the non-happening of the above, thus makes deep inroads into the truth of the prosecution case. Thus, benefit of doubt is to be assigned to the accused. Therefore, the accused was entitled to a verdict of acquittal, being made, upon him, as aptly became recorded by the learned trial Judge concerned.

Final order

17. Consequently, for the reasons assigned hereinabove, this Court finds no reason to interfere with the impugned verdict of acquittal, as made by the learned trial Court concerned. Thus, special leave to appeal against the verdict of acquittal, as made on 15.1.2018, upon Sessions Case No. 84-

application, seeking leave to appeal, is hereby dismissed. The impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. Personal, and, surety bonds, if any, furnished by the accused, are ordered to be forthwith cancelled, and, discharged.

18. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 26, 2023
Gurpreet

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