

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-396-DB-2013
Reserved on: 09.12.2024
Date of Decision: 13.12.2024

Rahul
.....Appellant
Versus
State of U.T. Chandigarh
.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Nandan Jindal (Legal Aid Counsel) and
Mr. Sachin Jain, Legal Aid Counsel and
Mr. Abhinandan Jindal, Advocate for the appellant.

Mr. Anil Kumar Landharia, Advocate with
Ms. Kanta Landharia, Addl. P.P. U.T. Chandigarh.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 7.1.2013, upon Sessions case bearing No.121 dated 16.11.2012, by the learned Sessions Judge, Chandigarh, wherethrough in respect of charges respectively drawn against the accused qua offences punishable under Sections 376, 506 of IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellant-convict.
2. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the appellant-convict in the hereinafter extracted manner.

U/S	376 IPC	Imprisonment for life and fine of Rs.20,000/-, in default of payment of fine, to further undergo RI for a period of two years.
U/S	376 IPC	RI for a period of six months and fine of Rs.1,000/-, in default of payment of fine, to further undergo RI for a period of one month.

3. Both the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the appellant-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. Out of the amount of fine, if realized, a sum of Rs.15,000/- was directed be paid to the victim, but after the expiry of period to file the appeal/revision, if any. The learned trial Court further recorded a satisfaction that since the compensation awardable to the victim under Section 357 Cr.P.C., as comprised in a sum of Rs.15,000/- rather is inadequate, thereupon he referred the said subject to the District Legal Services Authority, Chandigarh, for the latter deciding the awardings of more compensation to the victim under a scheme called 'Victim Compensation Scheme', as formulated in terms of Section 357-A Cr.P.C.

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.

Factual Background

5. The genesis of the prosecution case, is that on 11.08.2012, SI Usha Rani received a telephonic message that a minor girl (prosecutrix) had been admitted in Civil Hospital, Phase VI, Mohali in delivery case. On this information, SI Usha Rani along with ASI Gurmeet Singh, C. Samsudeen and Lady Constable Soni Devi reached Civil prosecutrix was Hospital, Mohali where prosecution was found admitted. After obtaining the opinion

of the doctor regarding her fitness to make the statement, her statement Ex.P-5 was recorded in the presence of her mother Rajni, to the effect that she is residing with her parents at House No.36, Sector 56, Chandigarh and studying in VIIIth standard in Government High School, Sector 40-A, Chandigarh. She is having two brothers out of which one is elder to her and the other is younger to her. One Rahul, who is her uncle ('Chacha') in relation, resides in village Daun and working at a Petrol Pump used to visit their house frequently. She also visited the house of Rahul along with her brother Pawan many a times. About 5-6 months back her uncle Rahul visited her house in Sector 56, Chandigarh and she was alone at that time. Her brothers were out of house to play and her parents were on their respective jobs. Her uncle Rahul forcibly committed rape upon her in her house and further threatened her that in case she informed regarding this to any one, he would put her as well as her family to death. Thereafter, Rahul committed rape upon her several times. She did not disclose about this to anyone out of fear. On previous night, she suddenly felt pain in her abdomen and when the pain became unbearable, she informed her mother who took her to Civil Hospital, Phase-VI, Mohali where she was admitted. When she reached hospital, there was a sudden surge of pain and something came out. The doctors immediately took stock of the situation and she came to know that she was pregnant and suffered a mis-carriage. She further alleged that she had become pregnant on account of rape committed by her uncle Rahul. She prayed for legal action against her uncle Rahul.

Investigation proceedings

6. Consequent upon the statement Ex.P-5 of complainant (prosecutrix), the police swung into action. SI Usha Rani took the

investigation of this case in hand. She made her endorsement Ex.P-8 underneath the statement made by complainant and sent the same to Police Station, Sector 39, Chandigarh through C. Samsudeen, No.1165 for registration of the case, on the basis of which formal First Information Report EX.P-10 under Sections 376, 506 of the Indian Penal Code was registered by ASI Kuldeep Singh. Thereafter, prosecutrix was got medico legally examined by way of moving application Ex.P-11 before the SMO, Civil Hospital, Phase-VI, Mohali and her MLR was obtained along with sealed parcel. After getting the prosecutrix medically examined from Civil Hospital, Phase-VI, Mohali, she was handed over to her mother. Accused Rahul was arrested by SI Usha Rani on the same day after disclosing the grounds of arrest vide memo EX.P-7, attested by C. Samsudeen, Rajni, and thumb marked by the accused. The medico legal examination of the accused was got conducted by C. Samsudeen from Government Multi Specialty Hospital, Sector 16, Chandigarh and his MLR Ex.P-3 was obtained. During the course of investigation, male fetus, blood sample of accused and sealed envelope in the name of Chemical Examiner were taken and sent for chemical analysis as well as for DNA examination. Rough site plan Ex.P-14 End scaled site plan Ex.P-16 of the place of occurrence Report of DNA Ex.P-17 from CFSL has been received. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure. After the completion of the necessary formalities of the investigation, the challan against the aforesaid accused was presented in the Court of learned Illaqa Magistrate, which in due course of time and after performance of the necessary formalities, was committed to the trial Court.

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-appellant, for the offences punishable under Sections 376 and 506 IPC. 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 9 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

9. 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.

10. As above stated, the learned trial Judge concerned, proceeded to convict the convict-appellant for the charge(s) (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonments, as well as of fine, upon the convict-appellant.

Submissions of the learned counsel for the appellant

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

Submissions of the learned State counsel

12. 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-appellant be dismissed.

Analysis of the submissions (supra)

13. The victim, as unfolded by Ex.P1, proven by PW-1, exhibit whereof encloses her date of birth, was born on 15.3.2000. Since PW-1 tendered the document (supra) during the course of her examination-in-chief, and, as such when during course thereof, the exhibit (supra) became made thereons. Therefore, the above made revelations therein as appertaining to the date of birth of the prosecutrix, do naturally acquire probative sanctity.

14. Even otherwise, since no other further evidence also became adduced by the defence, so as to bely the correctness of the disclosures (supra), as made in the exhibit (supra) thereby, grave evidentiary sanctity is to be assigned to exhibit (supra). Resultantly, since at the time of commission of the crime event, thus the prosecutrix was a minor. Therefore, she became completely incapacitated to make any lawful consent to the accused to subject her to coitus, nor any exculpatory plea erected upon any consent being purveyed by the victim to the accused, but naturally becomes completely inconsequential.

15. Moreover, when as hereinafter concluded rather the statement, as made by the victim/prosecutrix, before the learned trial Judge concerned, is confidence inspiring, and/or is not tainted with any vices of hers grossly improving or embellishing, upon her previously made statement in writing,

thereby utmost credence is to be assigned to the statement of the prosecutrix.

16. The victim stepped into the witness box as PW-4. In her examination-in-chief, she rendered a version, which is in alignment with her previously made statement to the police officer concerned. Moreover, during the course of her cross-examination, a sealed parcel enclosing therein, a statement made by her under Section 164 of the Cr.P.C., before the jurisdictional Magistrate concerned, became retrieved therefrom, and, was shown to the victim, who, admitted that her signatures exist thereons. Moreover, she also testified, that the accused had also threatened her.

17. Since the statement (supra), made by the prosecutrix under Section 164 Cr.P.C., enjoys immense evidentiary worth, thereupon the same also corroborates the testification rendered by the prosecutrix before the learned trial Judge, testification whereof, when for (supra) reasons is free, from any taint or blemish, thereupon the combined effect of (supra), but is that, when both (supra) become rendered with complete *inter se* corroboration. Resultantly, thereby the prosecution has succeeded in proving the charge to the hilt.

18. Significantly and reiteratedly, the prosecutrix-victim, as borne out from her school record Ex.P1, thus was a minor at the time of the commission of the alleged offences, thereby she was completely incapacitated to mete any lawful consent to the accused concerned, to subject her to coitus, nor when any exculpatory plea founded upon the sexual intercourse(s), if any, which occurred *inter se* the accused concerned, and, the victim, thus being completely consensual, rather is also completely inconsequential. Therefore too, the charge against the accused becomes proven to the hilt.

MLR of the victim Ex. P4

19. PW-3 Dr. Vineet Nagpal proved the MLR Ex. P4. After examining the patient, he echoes in his examination-in-chief that “*Patient expelled dead male abortus at about 10.25 p.m. in emergency ward.*”

FSL report Ex. P17

20. The report of the FSL concerned, is embodied in Ex.P17. The relevant portion of the said report is extracted hereinafter.

“Xxx

Opinion:

From the DNA profiling results of the above individuals and from the interpretations thereof,

1. Rahul (GPL item # 4127003) cannot be excluded as being the biological father of male fetus (GPL item # 4127001) of Victim Sonam (GPL item # 4127002C).

xxx”

21. In sequel, the result of the examinations, as made on the items enclosed in the sealed cloth parcels, result whereof becomes extracted hereinabove, when but clearly is suggestive, that thereby the prosecution has been able to prove the charge drawn against the appellant. Resultantly, therebys the results of the hereinabove extracted examinations, as made at the FSL concerned, do also support and corroborate the unblemished testification of the prosecutrix, as became rendered by her vis-a-vis the crime event, besides also lend support to the incriminatory disclosure(s), as are carried in the MLR concerned.

22. Emphatically, when the results of the examinations (supra), candidly reveal that the present appellant was the biological father of the male fetus which became evacuated from the womb of the victim.

Final order

23. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, do not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thus thereupon, he is ordered to be forthwith taken into custody, through the learned trial Judge concerned, forthwith drawing committal warrants against the accused.

24. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 13, 2024
Ithlesh

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