



In the High Court of Punjab and Haryana at Chandigarh

CRA-D-520-2023 (O&M)
Reserved on: 12.11.2023
Date of Decision: 22.11.2024

Shiv Kumar alias Shiva Appellant

Versus

State of Haryana Respondent

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

Argued by: Mr. R.N.Lohan, Advocate
for the appellant.

Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 17.3.2023, upon case bearing No. SC/135/2021, by the learned Judge, Special Court, Kaithal, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 363, 366, 376, 506 IPC, and, under Section 4 of the Protection of Children From Sexual Offences Act, 2012 (in short ‘the POCSO Act’), thus the learned trial Judge concerned, proceeded to record a finding of conviction against accused-appellant.
2. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the accused-appellant in the hereafter extracted manner-

<i>Under Section 4 of the POCSO Act</i>	<i>To undergo rigorous imprisonment for a period of eleven (11) years and to pay a fine of rupees Twenty Five Thousand (Rs. 25,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of five (5) months.</i>
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<i>Under Section 363 IPC</i>	<i>To undergo rigorous imprisonment for a</i>
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period of Three (3) years and to pay a fine of rupees Five Thousand (Rs. 5,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one (1) month.

Under Section 366 IPC

To undergo rigorous imprisonment for a period of Five (5) years and to pay a fine of rupees Five Thousand (Rs. 5,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one (1) month.

Under Section 376 IPC

To undergo rigorous imprisonment for a period of Two (2) years and to pay a fine of rupees Five Thousand (Rs. 5,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one (1) month.

3. All 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.

4. It was also ordered, that on realization of the fine amounts (supra), as imposed under Section 4 of the POCSO Act, by the convict-appellant, the same shall be paid to the child victim/prosecutrix through her natural/legal guardians.

Factual Background

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. P-22 is assigned. The narrations carried in Ex. P-22 are, that complainant 'R', who is the maternal uncle of child-victim namely 'S' made an application/complaint dated 13.3.2021 to the police, wherein he has stated that that he is resident of xxxxx, Siwan, Kaithal. They are three borthers and two sisters. His younger sister 'K' is married with Krishan son of Ajmer, a resident of xxxxx. She is blessed with one girl namely 'S' alias



'B', who is aged about 17 years and one boy namely 'V'. Since, 2-3 months, his niece 'S' alias 'B' was residing with his parents at village Sxxxx. He alleges therein, that on 12.03.2021, his mother 'KD', father 'RS' and 'S' were sleeping in their house, after taking meal and he was sleeping with his family in his house. At about 02.00 A.M., his mother 'KD' came at his residence and informed him that his niece 'S' is missing from home. The bolt of her room was closed from outside and when she raised noise, his father, who was sleeping in the another room had opened her door. Thereafter, he called his brother-in-law Krishan and disclosed the incident to him. He told him that earlier, Shiva son of Ishwar, resident of Rajound had abused her and Shiva must have taken his niece 'S' alias 'B' by alluring her. He is having suspicion that Shiva son of Ishwar had enticed away his niece. He further states therein that her niece was wearing purple embroidered suit, pink salwar, golden stole and shoes. On the basis of the said application/complaint, the appeal FIR became registered against the accused.

Investigation proceedings

6. During the course of investigations, site plan of the place of occurrence was prepared. Statements of the witnesses were recorded under Section 161 Cr.P.C., The child victim was recovered on 14.3.2021 from Bus Stand Jind. The statement of the child victim under Section 164 Cr.P.c. was recorded on 15.3.2021. Accused-appellant Shiv Kumar alias Shiva was arrested on 16.3.2021. 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

7. 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 Sections 363, 366, 376 and 506 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.

8. In proof of its case, the prosecution examined 15 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. He, however, chose to adduce defence evidence, but did not lead any witness into the witness box.

Submissions of the learned counsel for the appellant

10. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require 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. He rests the above submissions on the ground that-

(i) Though the appellant is alleged to have entered into the house of the prosecutrix at night, and, committed rape upon the prosecutrix, and, also inflicted injuries to her maternal grandmother, yet when the maternal grandmother of the prosecutrix remain unexamined, thereby he has argued, that the said omission on the part of the prosecution to lead the maternal grandmother of the prosecutrix into the witness box, is thus fatal to its case.

(ii) Moreover, the appellant is also alleged to after



administering some intoxicant to the prosecutrix, kidnap her to another place. However, when neither there are any external or internal injury marks on the body of the prosecutrix, nor when such injuries are reflected in the MLR to be occurring on the body of the prosecutrix. Therefore, the learned counsel for the appellant has argued, that the lack of existence of such injury marks but portrays, that no sexual encounter as such took place amongst the accused and the child victim.

(iii) The learned counsel has further argued, that the learned trial Court has erred in not considering the fact that the prosecutrix was not recovered from the possession of the appellant, and, was recovered from the Bus Stand, Jind, and, that no independent witness was joined at the time of the alleged recovery of the prosecutrix whereby it emanates that the minor never joined the company of the accused.

(iv) Furthermore, the learned counsel for the appellant has argued that there are inter se contradictions inter se the statement of the prosecutrix recorded under Section 164 Cr.P.C., thus with her statement made before the learned trial Court concerned, to the extent, that in her statement recorded under Section 164 Cr.P.C., she has stated that on 14.3.2021, in the morning at around 2/2.30 A.M, the appellant came to her house and after beating her maternal grandmother, he took the jewellery and money. She has further stated therein that the appellant took her somewhere after intoxicating her, and, did a wrong act with her. However, in her statement recorded before the learned trial Court concerned, she deposed that in the intervening night of 12/13.3.2021, at about 2.00/2.30 A.M., accused Shiv Kumar alias Shiva entered in their house and committed rape upon her. She has also deposed therein, that the appellant had also inflicted



that the appellant had taken her to another place after intoxicating her. Therefore, the supra inter-se supra contradictions make her testification to be not confidence inspiring.

Submissions of the learned State counsel

11. 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 submissions (supra)

12. The victim, as unfolded by Ex. P-14 proven by Shashi Kiran, Principal (PW-8), exhibit whereof encloses her date of birth, was born on 5.1.2004. Since PW-8 identified her signatures on Ex. P-14. Therefore, the above revelation made therein appertaining to the date of birth of the proesecutrix, does naturally acquire probative sanctity, as no efficacious cross-examination became conducted, upon the said witness, by the learned defence counsel, so as to bely the disclosures (supra), as made therein.

13. Even otherwise since no 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, thus acquires any tenacity.



examination-in-chief, she rendered a version, which is in alignment with her previously made statement to the police officer concerned. However, when 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, whereupon though she admitted that her signatures exist at Point-A of Ex. P-3. Moreover, though she also proceeded to identify the accused in Court, and, implicated him to be the person, who had made a penetrative sexual assault, upon her. In addition, though she also testified, that the accused had also caused injuries to her maternal grandmother, and, had also threatened her. However, the hereafter inter se contradictions do occur inter se her statement manifested in her examination-in-chief, thus with her statement which she admits to be made under Section 164 Cr.P.C., before the jurisdictional Magistrate concerned.

(a) In her statement recorded under Section 164 Cr.P.C., the prosecutrix states that on 14.3.2021, in the morning at around 2/2.30 A.M, Shiv Kumar, came to her house and after beating her maternal grandmother, he took the jewellery and money. She further states therein that the appellant took her somewhere after intoxicating her, and, did a wrong act with her.

(b) However, in her statement recorded before the learned trial Court concerned, she deposed that in the intervening night of 12/13.3.2021, at about 2.00/2.30 A.M., accused Shiv Kumar alias Shiva entered in their house and committed rape upon her. She has also deposed therein, that the appellant had also inflicted injuries to her as well as upon her maternal grandmother. She further deposed that the appellant had taken



15. It is on the above stated inter se contradictions that the learned counsel for the appellant has vigorously argued, that therebys the child prosecutrix has not rendered a confidence inspiring version in respect of the crime event, wherebys he has further argued, that the impugned verdict of conviction and consequent thereto imposition of sentences (supra), thus require interference.

16. However, for the reasons to be assigned hereinafter, the above argument even if assumingly, it has some force, yet it rather looses its tenacity.

Medical evidence

17. PW-14 Dr. Sonali Dhillon proved the MLR Ex. P-30, wherein, echoings occur thus suggestive, that a sexual assault became made, upon the child victim. The said witness was also shown lady shirt (Ex. MO/3), pubic hair (Ex. MO/4), two glass slides (Ex. MO/5 and Ex. MO/6), two vaginal swabs (Ex. MO/7 and Ex. MO/8), underwear of the victim (Ex. MO/9) and salwar of the victim (Ex. MO/10), upon which she admitted that these are the same items which became handed over by her to the police after examination of the child victim.

Report of the FSL concerned, to which Ex. P25 becomes assigned

18. Through R.C. No. 22505020210322150338/123 of 22.3.2021, five sealed cloth parcels became sent, through Dharampal Singh (8KTL) to the FSL concerned. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in sealed cloth parcels, hence made thereons an exculpatory opinion, opinion whereof, becomes *ad verbatim* extracted hereinafter.

“X X X X



Five sealed bar-coded parcel(s) revived in Biology Division of this Laboratory on 22.3.2021 through Trakea portal. The seal(s) on the parcel(s) were found intact and similar to the specimen seal provided. This report should not be used as a tool to vouch for the correctness of forwarding authority's details (police detail etc. appearing above) and the same are subject to verification from the concerned forwarding authority.

Description of article (s) contained in parcel(s)

Parcel No.	No. and seal impression	Description of parcel(s)
1.	4(SD)	Sealed paper envelope containing exhibit-1 stated to be of victim having Bar code No. 25050-210322-1012501 Exhibit-1- One dirty purple coloured lady shirt.
2.	4(SD)	Sealed paper envelope containing exhibit-2a to 2c stated to be of victim having Bar code No. 25050-210322-1012503 Exhibit-2a. Two microscopic glass slides Exhibit-2b. Two cottonwool swabs on sticks kept in a plastic container described as swab. Exhibit-2c. Very few strands of hair kept in a plastic tube described as pubic hair.
3.	4(SD)	Sealed paper envelope containing exhibit-3a and 3b stated to be of victim having Bar code No. 25050-210322-1012504 Exhibit-3a. One dirty brown colored underwear. Exhibit-3b. One dirty magent colored salwar.
4.	1-CH KTL	Sealed cloth parcel containing exhibit-4 stated to be of accused having Bar code No. 25050-210322-1012506 Exhibit-4. One dirty mehndi colored underwear.
5.	1-CH KTL	Blood sample stated to be of accused having Bar code No. 25050-210322-1012506 Forwarded to DNA Division as such.

Laboratory Examination

Laboratory examinations were carried out to detect the presence of semen on the exhibits by performing Chemical test and Microscope based upon these examinations, the results obtained are given below:-

Result of Examination

1. Human semen was detected on exhibit-3a (Underwear) & exhibit-4 (Underwear). However,



semen could not be detected on rest of the exhibits mentioned above.

X X X X”

DNA Report

19. The report of the DNA specialist at the FSL concerned, embodied in Ex. PA., becomes *ad verbatim* extracted hereinafter.

Description of parcels and condition of seals

Seals intact as per F.A.’s letter

Sealed paper envelope : 01

Sealed blood vacutainer : 01

Total : **02 (Two)**

Description of articles contained in parcel

Parcel 3: One sealed paper envelope sealed with ‘03’ seals of “PC FSL” containing exhibit ‘3’, labeled as 21/FSL MBN/2103222109, Barcode : 25050-210322-1012504.

Exhibit 2: One brown colored underwear.

Parcel 5: One sealed blood vaccuatiner sealed with ‘01’ seal of “CH KTL”, containing exhibit ‘5’, labeled as Barcode : 25050-210322-1012506.

Exhibit 5: One EDTA vial having liquid blood, stated to be of accused.

DNA Examination

The source of exhibits ‘3’ (underwear) and ‘5’ (blood sample of accused) were processed for DNA profiling. DNA was isolated from the source of exhibit ‘3’ (underwear) & ‘5’ (blood sample of accused). DNA profile was prepared by using AMPFLSTR GlobalfilerPlus Amplification kit. STR analysis was used for the sample. Data was analyzed by using Gene Mapper ID-X software.

Result of Examination

DNA profiles of male origin have been generated from the source of exhibits ‘3’ (underwear) and ‘5’ (blood sample of accused). Alleles from source of exhibit ‘5’ (blood sample of accused) are accounted in the alleles from the source of exhibit ‘3’ (underwear).



Conclusion

DNA profiling (STR analysis) performed on the source of exhibits '3' (underwear) & '5' (blood sample of accused) are sufficient to conclude that male DNA profile generated from the source of exhibit '3' (underwear) is similar to the male DNA profile generated from the source of exhibit '5' (blood sample of accused).

x x x x"

20. PW-15 Dr. Garima Chaudhary, who proved the report (supra) Ex. PA, deposed that upon receiving two parcels pertaining to the present case in the DNA Division FSL Madhuban from Biology Division FSL Madhuban, she conducted examination(s) over the contents thereof, and, prepared her report Ex. PA. PW-15. The said witness further deposed that the DNA profile generated from the source of underwear of victim was similar to the male DNA profile generated from the source of blood sample of accused.

21. The above results, as embodied respectively in Ex. P-25 and Ex. PA, do clearly underline the trite fact, that the semen found on the underwear of the victim, thus belonging to the blood group of the accused. The incriminatory opinion (supra) may have been impeached, but only when there was evidence suggestive, that all the supra collected incriminatory materials becoming not sent in an untampered and unspoiled condition to the laboratory concerned. However, the said evidence is amiss.

22. Consequently, immense evidentiary solemnity is carried by the incriminatory results (supra), as respectively enclosed in the reports respectively prepared by the FSLs concerned, and, to which respectively Ex.

P-25 and Ex. PA become assigned.



23. The further effect thereof, is that, since for the reasons (supra), conclusivity is acquired by the incriminatory opinion, rendered by the FSL concerned, besides when the said opinion is affirmed by the DNA expert concerned, wherebys when the said but naturally comprises the best forensic evidence, and, that too of a telling incriminatory effect. In sequel, since the best scientific evidence (supra) has a telling incriminatory effect, therebys the purported infirmity (supra) ingraining the testification rendered by the prosecutrix, thus thereins gets underwhelmed.

24. The reason for making the conclusion supra stems from the fact that from (supra) the rule of best evidence becomes satisfied, wherebys, the tainted testification of the child victim, thus becomes inconsequential.

Final order

25. 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-appellant, by the learned convicting Court, is also maintained, and, affirmed. If the convict-appellant 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.

26. Records be sent down forthwith.



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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

November 22, 2024
Gurpreet

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