

In the High Court of Punjab and Haryana at Chandigarh

1.

CRA-D-804-2022 (O&M)
Reserved on: 21.03.2024
Date of Decision: 18.4.2024
- Deepak

.....Appellant
- Versus
- State of Haryana

.....Respondent
2.

CRA-S-1683-2022 (O&M)
- Bhim alias Shubham

.....Appellant
- Versus
- State of Haryana

.....Respondent
3.

CRA-S-1975-2022 (O&M)
- Sahil

.....Appellant
- Versus
- State of Haryana

.....Respondent
4.

CRR-878-2022 (O&M)
- State of Haryana

.....Petitioner
- Versus
- Deepak and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Maninder Singh, Advocate
Legal Aid Counsel for the appellants
(in CRA-D-804-2022 and CRA-S-1975-2022)
and for the respondents (in CRR-878-2022)

Ms. Nancy Vashistha, Advocate
for the appellant (in CRA-S-1683-2022).

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. Since all the three appeals (supra) arise from a common verdict, made by the learned trial Judge concerned, hence all the above appeals as well as the criminal revision are amenable for a common verdict being made thereons.
2. All the three appeals (supra) are directed against the impugned verdict, as made on 10.8.2022, upon case bearing No. 234 of 2019, by the learned Additional Sessions Judge (Fast Track Special Court under POCSO Act), Yamuna Nagar at Jagadhari wherethrough in respect of charges respectively drawn against the accused qua offences punishable under Sections 363, 366, 328, 376-DB, 120-B, 201 of the IPC, under Section 5(m) and 5(g) punishable under Section 6 of the Prevention of Children from Sexual Offences Act, 2012 (for short ‘the POCSO Act, 2012), thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the accused-appellants in the hereinafter extracted manner.

<i>Name of the convict</i>	<i>Under Section</i>	<i>Imprisonment</i>
<i>Deepak</i>	<i>6 of the POCSO Act</i>	<i>To undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 50,000/-. In default of payment of fine, he shall further undergo simple imprisonment for a period of six months</i>
	<i>376-AB IPC</i>	<i>To undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 50,000/-. In default of payment of fine, he shall further undergo simple imprisonment for a period of six months</i>
	<i>366 IPC</i>	<i>To undergo rigorous imprisonment for 05 years and to pay a fine of Rs.</i>

		50,000/-. In default of payment of fine, he shall further undergo simple imprisonment for a period of three months.
	201 IPC	To undergo rigorous imprisonment for one years and to pay a fine of Rs. 5,000/-. In default of payment of fine, he shall further undergo simple imprisonment for a period of one month.
Sahil	366 IPC	To undergo rigorous imprisonment for 05 years and to pay a fine of Rs. 50,000/-. In default of payment of fine, he shall further undergo simple Imprisonment for a period of three months.
	120-B IPC	To undergo rigorous imprisonment for 05 years and to pay a fine of Rs. 50,000/-. In default of payment of fine, he shall further undergo simple imprisonment for a period of three months.
Bhim	366 IPC	To undergo rigorous imprisonment for 05 years and to pay a fine of Rs. 50,000/-. In default of payment of fine, he shall further undergo simple Imprisonment for a period of three months.
	120-B IPC	To undergo rigorous imprisonment for 05 years and to pay a fine of Rs. 50,000/-. In default of payment of fine, he shall further undergo simple imprisonment for a period of three months.

3. However, accused-appellant Deepak was acquitted of the charges drawn against him under Section 328 IPC.
4. All the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the appellants-convicts, 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.
5. The trial Court concerned, while relying upon Section 33(8) of

the POCSO Act, 2012 read with Rule 7 of the POCSO Act, 2012 and Section 357-A Cr.P.C. also ordered to make a payment of Rs. One lac as compensation amount to the victim. Further, the Trial Court concerned, in view of the notification issued by the Government of Haryana dated 27.10.2016, also ordered that since the victim is 11 years and 5 months old, therefore, ordered that she is entitled for 50% increase in the compensation amount i.e. Rs. 1,50,000/-. The said amount of compensation was ordered to be paid by the District Legal Services Authority, Yamuna Nagar at Jagadhari. Since the victim being a minor, therefore, it was also ordered that the said compensation amount be deposited in fixed deposit account fetching maximum interest with some nationalized bank, and, further ordered that the amount be drawn only upon the victim attaining the age of majority.

6. All the accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeals, before this Court.

7. Moreover, the State of Haryana has also instituted **Criminal Revision No. 878 of 2022**, before this Court, against the order dated 5.11.2019 passed by the learned trial Court concerned, whereby the accused-appellants were discharged from the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the SC/ST Act').

Factual Background

appeal FIR, to which Ex. P-34 is assigned. The narrations carried in Ex. P-34, are that on 6.7.2019 complainant 'D' father of the victim (names of complainant as well as the victim withheld to hide their identities in terms of explanation attached to Section 33(7) of the POCSO Act, 2012 appeared in Police Station Jathlana, and, filed a written complaint on the allegations that he has two children, younger one is victim child girl 'M'. She is aged 11 years and 6 months and has studied upto 4th class. On 5.7.2019 at about 10:30 pm, they had gone to sleep after having their meal. However, when he woke up at around 4:30 a.m. he found his daughter missing from the house. They kept searching for her, but could not trace her whereabouts. She had left the house without informing anyone and had taken a mobile phone with her. On the basis of the complaint, present FIR was registered under Section 365 IPC.

Investigation proceedings

9. During the course of investigations, the complainant produced the birth certificate of the victim. On 7.7.2019 the girl was produced by the complainant. Her statement was recorded and an application was moved before the doctor for medical examination of the victim. She was got medically examined and commission of rape was confirmed as such Sections 376 DB IPC and Section 6 of The POCSO Act were added. Her statement was got recorded from learned Magistrate under Section 164 Cr.P.C. wherein she categorically named accused Deepak, Sahil and Bhim. The accused were arrested on 9.7.2019. The accused had washed the clothes they were wearing at the time of commission of offence. Hence, Section 201 IPC read with 120B IPC was added. The mobile phones used by the accused and victim were recovered and phone call records were obtained

alongwith the certificate under Section 65B of Indian Evidence Act. 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.

Trial Proceedings

10. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to her, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw charges against the accused, for the offences punishable under Sections 363, 366, 328, 376-DB, 120-B, 201 of the IPC, under Section 5(m) and 5(g) punishable under Section 6 of the POCSO Act, 2012. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

11. In proof of its case, the prosecution examined 19 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

12. 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. They also chose to adduce defence evidence, but did not lead any witness into the witness box.

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

Submissions of the learned counsels for the appellants

14. The learned counsels for the aggrieved convicts-appellants have argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support 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

15. 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 convicts-appellants, 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 all the appeals (supra), as preferred by the convicts-appellants, be dismissed, and, that the criminal revision (supra) preferred against the order dated 5.11.2019, whereby the learned trial Judge concerned, did not take to frame charges against the accused for the offence punishable under the SC/ST Act, thus is required be allowed.

Reasons for dismissing the appeals (supra) filed by accused-appellants Deepak and Bhim @ Shubham as well as the revision (supra) filed by the State, and, the reasons for accepting the appeal filed by accused-appellant Sahil

16. The prosecutrix-victim, as borne out from her birth certificate Ex. 27, 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, or 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 completely inconsequential.

17. The statement of the victim-prosecutrix if trustworthy, and, confidence inspiring thereby absolute evidentiary sanctity is to be assigned thereto.

18. For determining whether the testification of the prosecutrix enjoys evidentiary creditworthiness, it is relevant to allude to her testification, rendered before the learned trial Judge concerned.

19. The prosecutrix stepped into the witness box as PW-1. After the learned trial Judge concerned, ascertaining from hers rendering intelligible answers to the relevant queries, as became put to her, thus declared that she was competent to depose as a witness, resultantly permitted her to testify before her. During the course of examination-in-chief of the prosecutrix, the statement made by her before the Illaqa Magistrate concerned, under Section 164 Cr.P.C., to which Ex. P-1 becomes assigned, was retrieved from a sealed envelope, and, was shown to the prosecutrix, whereupon she accepted the truthfulness of the contents thereof, besides accepted that she had voluntarily signed Ex. P-1, thus without any coercion or pressure becoming exerted, upon her. The contents of Ex. P1 are ad verbatim extracted hereinafter.

“Stated that last year June, 2018, I had gone to attend the marriage of some person at Jathlana. There, one boy namely Sahil, gave me a mobile number, by writing on a slip there. After two days, I called up to Sahil and asked that whose number is this, Sahil, did not disclose anything. After that a phone received on my mother's phone from the number, which was given to me by Sahil. Deepak talked from that number. Thereafter, talks started between me and Deepak. On 4 July, 2019, at about 12:30 AM, Deepak called up me during the

night and told me to come at Bus Stand. During night, I went at Bus Stand, Jathlana to meet Deepak without informing anyone. Deepak and Bhim were standing at Bus Stand on motorcycle. They took me to Yamunanagar by getting sit me on motorcycle. Truck of Deepak having ten tyres, was standing there. Deepak gave cold drink for drink. After drinking it, I lost my consciousness and when I regain consciousness then clothes were not present on my body and feeling paining in my Private Part. On asking Deepak, he informed that he has established physical relations with me. I stayed with Deepak for two days. Deepak also took me to his house and he had got introduced with his mother in house. His mother said him "leave her to her house". Deepak went away by leaving me at Bus Stand Jathlana. He left me at Bus stand, Jathiana at 4:00 A.M.

Ques: Do you want to say anything else?

Ans: No."

20. Significantly therein incriminatory echoings are made against the principal accused Deepak.

21. Importantly, though therein there is no echoing, that both had stayed at Haridwar for one day, and, resultantly though thereby the learned defence counsel, thus attempted to impeach the credit of the inculpatory testification made by the prosecutrix in her examination-in-chief, that both had stayed together for a night at Haridwar, rather through his confronting the prosecutrix with her previously made statements Ex. P-1 and Ex. D-1, wherein, it was not so recorded. Resultantly thereby, the learned counsel for the appellants has argued, that no confidence inspiring testification in respect of the above fact, when became rendered by the prosecutrix, therefore, he has argued, that the testification of the prosecutrix is bereft of any evidentiary vigour.

22. The omission of the fact (supra) in Ex. P-1, however, becomes overcome by the factum, that the prosecutrix has therein stated, that co-accused Deepak and Bhim took her to Yamuna Nagar on a motor cycle, and, further that Deepak served her a drink with a soporific mixed therein, resulting in hers losing consciousness, and, that on her regaining consciousness, hers finding herself naked, and, feeling pain in her private part, whereupon accused Deepak informed her that he had established physical relations with her. Resultantly, when the prosecutrix in a state of unconsciousness travelled with the convict-appellant Deepak to Haridwar, therefore, the omission of the said fact in Ex. P-1, does not rid, her examination-in-chief, whereby she proved the truthfulness of Ex. P-1, rather of creditworthiness.

23. The further reason for forming the above conclusion emanates from (a) the signed disclosure statement made by the convict-Deepak, to which Ex. P-36 is assigned, contents whereof becomes extracted hereinafter, wherein he confessed his guilt in the crime event, (b) from the making of recovery of the victim Ex. P-2, whereby the prosecution has invincibly established that the minor victim-prosecutrix remained in the custody of convict Deepak from 6.7.2019 to 7.7.2019, (c) from the medical record appertaining to the child victim Ex. P-31, proven by PW-12, wherein occur speakings that bruises, abrasions, bite marks, cuts etc. were noticed to be occurring on the body of the victim. Moreover, therein also occur a speaking, that condom was used by accused-appellant concerned, for subjecting the victim to coitus. Though, therein it is stated that ejaculation did not occur but therein a speaking occurs, that kissing, licking or sucking of breast or other parts of the body of the victim yet did occur. The effect of

the above speakings, as made in the MLR (supra), do suggest, that the child victim was subjected to penetrative sexual assault by convict Deepak, irrespective of no ejaculation of semen occurring in the vagina of the child victim.

“I and Sahil s/o Rattan, r/o Deh, and Bhim @ Shubham, r/o Hamida, are friends with each other. Sahil told me that I have talk with a girl, I get your talk also with her. Sahil got me introduced to Mansi, Jathlana on the phone. I, Sahil and Bhim planned to do wrong act with Mansi by kidnapping her. On 05.07.19, I had made a phone call to Mansi from my phone number 9817489975 to 9729586883. I received phone call of Mansi also during night. I took Bhim from Truck Stand, Yamunanagar on my motorcycle number HR-02AQ-3652, I and Bhim came at Bus stand, Jathlana at 11:30 PM, for kidnapping Mansi for committing rape upon her. Bhim was driving my motorcycle. I was sitting in the back. We had first of all filled petrol in motor-cycle from the petrol Pump at Jathlana, then we had come to the Bus Stand, Jathlana. At 11:30 PM, Mansi was called to Stand and I and Bhim had forcefully brought Mansi to Yamunanagar by getting sit her on motorcycle. Then we took Mansi to the truck stand. I had the keys of my truck with me. I and Bhim made Mansi sit in the truck. Then Bhim went away to get cold drink. I layed with Mansi in the truck after taking out clothes and kissed etc. to her. Then Bhim had brought cold drink. Then I had left Bhim in the truck. I had started for Paonta Sahib with Mansi by getting sit her on my motor cycle. We did not go inside Paonta Sahib, Gurudwara, and came from outside, nothing was eaten. Then, by taking Mansi, I had started from Paonta Sahib to Jagadhri at 8/9 AM. After reaching at Lal Dang of the forest, I had committed wrong act forcibly with Mansi in Forest. Then I had started for Kurukshetra with Mansi by getting sit her on motorcycle. I kept sit in the Park near bridge with Mansi. Then I took her in a

Hotel situated near the bank of river in Kurukshetra, there we took food of Rs. 280/-. I kept roaming in Parks with Mansi. On 07.07.19, at around 2 A.M., in the night, I had left Mansi at Bus Stand, Jathlana. I have done a mistake, by kidnapping minor Mansi with collusion of Sahil and Bhim and by committing rape upon her. I have parked my motor cycle on my truck stand by hiding it. No one knows about it except me. The place, where I had committed rape with Mansi and the place, where I had kissed etc. in the truck, I can get demarcation of that place by accompanying. I had washed those clothes which were worn at the time of crime, and can get recovered from my house. I can get demarcation of that place, from where Mansi was kidnapped.”

24. Consequently, upon assigning credence to Ex. P-1, and, also given the signed disclosure statement made by the principal accused Deepak, wherein there is a confession of guilt made by the convict Deepak especially when the echoings occurring therein rather remained unbelied by him. Resultantly, the effect of the above, is that, the prosecution has been able to prove the charges drawn against the principal accused in respect of his committing the offences punishable under Sections 366, 376AB, 201 IPC and Section 6 of the POCSO Act, 2012.

25. The prosecution has also been able to prove that convict-Deepak, and, the child victim remained in cellular contact with each other through its cogently proving call details Ex. P-20, especially when the certification in terms of Section 65 of the Indian Evidence Act, has been made on the CDR, thus by the service provider. Moreover, also when in consequence to the disclosure statement made by the convict-appellant, he proceeded to identify the scene of crime. Further, since the makings of the said memos remained unchallenged by him, through the makings of any

efficacious cross-examinations, upon, the investigating officer concerned. Resultantly, it appears that both the child victim, and, the principal accused Deepak were in communication with each other, and, resultantly when intimacy developed amongst them, therebys both eloped but without the lawful consent of the parents/guardian of the minor child. Therefore, all the charges drawn against appellant Deepak become cogently established by the prosecution. Consequently, the appeal filed by convict-appellant Deepak i.e. ***CRA-D-804-2022*** is dismissed.

26. Now adverting to the incriminatory role, which has been assigned to co-accused Sahil, and, to co-accused Bhim. Though it is clear from a perusal of the disclosure statement made by co-convict Deepak, that he was aided by co-accused Bhim in kidnapping the child victim, factum whereof is also cogently established by Ex. P-1, exhibit whereof, is the statement made by the child victim, before the Illaqa Magistrate concerned. Therefore, accused-appellant Bhim is liable to be convicted thus as a conspirator along with the principal accused but only in respect of a charge punishable for offences under Sections 366 IPC and 120-B IPC.

27. However, since there is no evidence on record, qua accused Sahil sharing a *mens rea* with the principal accused in the latter's subjecting the child victim to coitus, nor when he accompanied the child victim to Haridwar, where a penetrative sexual assault occurred inter se both, besides, when a reading of the signed disclosure statement of convict Sahil (Ex. P-37) contents whereof becomes extracted hereinafter, does disclose, that he only introduced the victim to the principal accused Deepak.

"I used to supply of Gas Cylinders in Gas Agency situated at Khurdban. I used to go to the house of Mansi at Jathlana for

the purpose supplying of Cylinder and about 3 months ago. there was a marriage in my relation in the neighborhood of Mansi. I had come with my sister's sister in law namely Pooja, to attend the marriage at Jathlana. There, I had given my phone number to Mansi and Mansi had started talking with me on phone. I, Deepak s/o Suresh Kumar, r/o Deh and Bhim @ Shubham r/o Hamida are friends with each other. I had told my friends that I have a talk with a girl in Jathlana, and I can get your talk also with her and then I had introduced Mansi Jathiana to Deepak and started her talk with him. I, Deepak and Bhim had made plan to kidnap this girl for committing wrong act with her. I had also involved in this criminal planning with them. On intervening night of 5/6.7.019 Deepak along with his friend Bhim had brought Mansi by kidnapping her. On receiving ol telephonically information, when police had come at my house then I had informed Deepak that Police is searching you and you should ran away. On 08.07.19, in the morning, Deepak had run away with Truck. I have made a mistake, by involving in crime with Deepak and Bhim, first of all by trapping Mansi in my affair and then trapping her in the affair of Deepak, because I should not talk with any minor girl on phone like this and also should not trap any minor girl in the affair of anyone. I have made a mistake by doing so. Forgive me.”

28. In sequel, it appears that accused-appellant Sahil had no role either in his conspiring with co-convict Deepak or with co-convict Bhim in both kidnapping the minor child. Therefore, he is not liable to be convicted as a conspirator with the principal convict for an offence constituted under Sections 366 IPC and 120-B IPC. Consequently, the appeal filed by convict-appellant Sahil i.e. **CRA-S-1975-2022** is allowed. However, the appeal filed by convict-appellant Bhim @ Shubham i.e. **CRA-S-1683-2022** is dismissed.

29. The State of Haryana has challenged the order dated 15.11.2019, passed by the learned trial Judge concerned, whereby no charge became framed against the accused for the commission of offences punishable under the SC/ST Act. However, when the trial, as became entered upon by the learned trial Judge concerned, was so entered in respect of the above drawn charges, besides when the apposite trial has also concluded. Resultantly, when the impugned order whereby there was an omission on the part of the learned trial Judge concerned, to frame a charge against the accused, thus has merged into the impugned verdict drawn by the learned trial Judge concerned, rather only in respect of the charges (supra). Therefore, the instant revision petition, after conclusion of trial, is not maintainable, and, is dismissed as such.

Final order

30. The result of the above discussion, is that, this Court does not find any merit in the appeals filed by accused-appellants Deepak and Bhim @ Shubham, and, is constrained to dismiss them. Consequently, the appeals bearing Nos. ***CRA-D-804-2022*** and ***CRA-S-1683-2022*** are dismissed. The impugned verdict of conviction, as becomes recorded upon the accused-appellants (supra), by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent therewith order of sentence is also affirmed. If the accused-appellants are on bail, thereupon, the sentence(s) as imposed upon them, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.

31. However, insofar as accused-appellant Sahil is concerned, the appeal preferred by him i.e. ***CRA-S-1975-2022***, is allowed. The impugned judgment convicting, and, sentencing the accused-appellant Sahil, and, as

become recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the said accused-appellant shall stand forthwith cancelled, and, discharged.

- 32. **Criminal Revision No. 878 of 2022** preferred by the State of Haryana is dismissed.
- 33. 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.
- 34. Records be sent down forthwith.
- 35. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

April 18, 2024
Gurpreet

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