

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-1066-2022 (O&M)
Reserved on: 22.11.2024
Date of Decision: 28.11.2024

Deepanshu Appellant

Versus

State of Haryana Respondent

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

Argued by: Ms. Rakhi Sharma, Advocate (Legal Aid Counsel) and
Mr. Shikhar Sarin, Advocate (Legal Aid Counsel)
for the appellant.

Mr. P.P. Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1.

The instant appeal is directed against the impugned verdict, as made on 5.8.2022/10.8.2022, upon Sessions case bearing No.SC/157/2021, by the learned Additional Sessions Judge, Faridabad, wherethrough in respect of a charge drawn against the accused for an offence 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 appellant-convict.
2.

Moreover, through a separate sentencing order of 10.08.2022, the learned trial Judge concerned, sentenced the appellant-convict in the hereinafter extracted manner.

Deepanshu			
Offence U/S	Imprisonment (Rigorous)	Fine imposed	Simple Imprisonment in default of payment of fine
6 of POCSO Act	20 years (Twenty years)	Rs.30,000/-	Two months



3. The minor victim/prosecutrix was directed to be paid Rs.4,00,000/- as compensation to be disbursed by DLSA, Faridabad, in the shape of FDR in the name of victim, with maximum interest bearing fixed deposit scheme in a nationalized bank, till the date of hers attaining majority, as per rules.

4. 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.

5. 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

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.P15 is assigned. As per the prosecution case, around five years ago, when the prosecutrix was 13 years old, she befriended Dipanshu, who called her in his friend's house and committed rape upon her. He also prepared her video and thereafter, committed wrong act upon her many times. On 10.12.2020, he took her in a rented room on the allurement of marriage, where they lived as husband and wife. On 27.12.2020 he did wrong act upon her and on 03.01.2021, he fled away leaving her alone at the room.

Investigation proceedings

7. On the basis of the said complaint, formal FIR was registered.



Investigation was carried out. Statement of the prosecutrix was recorded in the presence of legal aid prosecution counsel. Statement of the prosecutrix was also recorded before the Child Welfare Committee, Faridabad. Statement of the prosecutrix under Section 164 Cr.P.C. was also recorded by the learned Area Magistrate. Accused was arrested who suffered his disclosure statement and also demarcated the place of occurrence. The accused was got medico-legally examined. The scaled siteplan of the place of occurrence was got prepared. Statements of the witnesses as required under Section 161 of Code of Criminal Procedure, 1973 were recorded.

Trial Proceedings

8. 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 offence punishable under Section 6 of the POCSO Act, 2012. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

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

10. 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.

11. 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

12. 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

13. 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)

14. Be that as it may, it has to be adjudged from an incisive and wholesome reading of the testification of the prosecutrix, as comprised both in her examination-in-chief, and, in her cross-examination whether she has rendered a confidence inspiring, besides a truthful version in respect of the crime event.

15. In the said regard, though the victim after being declared to be competent to testify, after her intelligibility to do so, becoming adjudged by the learned trial Judge concerned, upon her putting queries to her, and, wheretos but intelligible answers became purveyed by the prosecutrix, thus the prosecutrix stepped into the witness box as PW-1.

16. The victim, as unfolded by Ex.P10 (admission and withdrawal



register), Ex.P11 (certificate issued by Principal, Holy Child School Faridabad), Ex.P12 (School Leaving Certificate) proven by PW-9, exhibits whereof enclose her date of birth, was born on 20.8.2004. Since PW-9 tendered the documents (supra) during the course of his examination-in-chief, and, as such when during course thereof, the exhibits (supra) became made thereons. Therefore, the above revelations made therein appertaining to the date of birth of the prosecutrix, do prima facie naturally acquire some probative sanctity.

17. Ex facie, at the time of commission of the alleged offence, the prosecutrix was aged about 17 years. Therefore, prima facie on the basis of exhibits (supra), thus she was completely incapacitated to mete her lawful consent to the accused for the latter subjecting her to coitus. Moreover, though there are some suggestions meted by the defence counsel to the prosecutrix during the latter facing a grilling cross-examination, thus devolving upon the alleged sexual intercourse which occurred inter se the accused and the victim, rather being consensual.

18. However, before either accepting the said exculpatory plea(s) or rejecting them, it is absolutely necessary to delve into the evidentiary worth of the exhibits (supra), whereons, disclosures occur about the prosecutrix being aged about 17 years at the time of commission of the alleged offence.

19. Though, in the exhibits (supra) the prosecutrix is stated to be below 18 years, besides as stated (supra), she was thus completely incapacitated to purvey her lawful consent to the accused to subject to her coitus. Nonetheless, ex facie as but imminent from a reading of the cross-examination of PW-9, the speakings (supra) borne in exhibit (P-11) were



grooved, upon the compatible thereto entries occurring in the Aadhar Card of the prosecutrix. Therefore, unless the original of the Aadhar Card became tendered into evidence, besides became further well proven through adduction of the best evidence, comprised in the date of birth of the prosecutrix, as entered with the Registrar of Births and Deaths, thereupon the reflection in Ex. P-11, thus disclosing the prosecutrix to be a minor at the time of the alleged offence, but would hold any evidentiary vigour. However, since neither the original of the Aadhar Card, whereons, became banked the entries (supra) carried in the exhibit (supra), became adduced into evidence, nor became proven, nor when obviously the further factum of the entries in the Aadhar Card, but becoming well banked upon the corresponding entries as made in the register of Births and Deaths maintained by the Registrar of Births and Deaths, rather remained not efficaciously proven. Consequently, the omissions (supra) cast a grave spell of doubt upon the authenticity of the entries in the exhibit (supra), wherein, the prosecutrix has been declared to be a minor at the time of the commission of the alleged offence.

20. The further consequent effect thereof, is that, the benefit of doubt is to be bestowed upon the accused, to the effect that the prosecutrix is deemed to be major at the relevant time, and, as such, she was also well competent to assign her lawful consent to the accused to subject her to the alleged sexual intercourse.

21. Be that as it may, now it is to be adjudged whether the defence has ably proven that the prosecutrix had voluntarily succumbed to the sexual overtures, as became meted to her by the accused. In the above regard,



though the prosecutrix in her examination-in-chief states, that she had developed friendship with the accused, and, as such she visited the house of the friend of the accused. However, since none except the accused was found in the said house, therefore the accused had bolted the door of the room from inside, and, had proceeded to commit forcible sexual intercourse(s) upon her. Moreover, she also states that the accused has also prepared her nude video films, and, subsequently the accused successively perpetrated sexual intercours upon her, upon, his threatening her, that if she does not succumb to his sexual overtures, therebys he would viralize her nude video films. Though, the accused was also identified in Court by the prosecutrix, who then stated that he was the same person who had committed the charged offence upon her. Importantly, the mobile phone of the accused along with the SIM Card, wherefrom the accused had allegedly prepared nude video films of the prosecutrix, were sent to the FSL concerned. The report of the FSL is carried in Ex. P-28. The result of the examinations, as made thereons become extracted hereinafter, wherefrom but naturally the prosecution has established, that the accused had prepared the nude video films of the prosecutrix, besides therebys under threat of his viralizing them, rather the accused had allegedly subjected her to repeated sexual intercourses.

“x	x	x	x
Ex-M1	<i>Mobile phone make Redmi Company.</i>		
	<i>Model: M2006C3L1 Color-Black</i>		
	<i>IMEI No : 867555053407354 & 867555053407362</i>		
Ex-M1(A)	<i>SIM Card of Vodafone.</i>		
	<i>ICCID No: 89911190185372952672</i>		

Result of Date Extraction

The exhibit after proper process has been opened in the



DITAC (Digital Investigation, Training and Analysis Centre). The date available in the Exhibit Ex-M1 and Ex-M1(A) have been extracted through Mobile Forensic Investigation tools “Oxygen” and “XRY” software by Cyber Lab Team, DITAC.

Ex-M1:- *The date from Ex-M1 has been extracted through mobile forensic tool “Oxygen version 14.1.0.45”. Softcopy of the extracted dated (available/deleted) is being provided in PDF format (Page 01 to 1676).*

Ex-M1(A):- *The date from Ex-M1(A) has been extracted through mobile forensic tool “XRY”. Softcopy of the extracted dated (available/deleted) is being provided in PDF format (Page-01 to 27).*

The exhibits received for data extraction have been handed over to ASI Kuldeep Singh 2429/FBD in sealed parcels having seal impression “GD”.

Note:

(i) All the soft copies of extracted data in PDF format are being provided in signed pen-drive storage capacity SanDist 32 DB Total size of date Ex-M1 (2,790,029,413 bytes) and Ex-M1A (473,330 bytes). The pen drive is placed in sealed envelope that contains detailed report.

(ii) Total paging 1-2.

(iii) Certificate u/s 65B of Indian Evidence Act attached herewith.”

22. However, for the reasons to be assigned hereinafter this Court does not find the testification of the prosecutrix to be confidence inspiring, rather this Court concludes that sexual intercourse(s) which occurred amongst the accused and the prosecutrix were entirely consensual.

23. The relevant portion of the examination-in-chief of the prosecutrix which becomes extracted hereinafter obviously reveals, that since on 10.12.2020, the accused took her to Nehar Paar and kept her in a rented room, and, that they remained there as husband and wife, as the



accused had solemnized marriage with her in a temple Kalkaji Delhi.

“x x x x

I had visited the house of friend of accused but no one was found in that house except accused. Accused Deepanshu bolted the door from inside the house and he committed rape upon me without my consent. He had also prepared my video films when I was naked. Thereafter, it had been a routine and the accused used that video for blackmailing me and called me at different places and used to commit rape upon me under threat.

x x x x

On 10.12.2020 accused Deepanshu took me to Nehar Paar and kept me in a rented room and we remained there as husband and wife as he had solemnized marriage with me in a temple of Kalkaji Delhi. Accused Deepanshu also committed rape on 27.12.2020 in that room and on 3.1.2021 he fled away from the rented room by keeping me alone in that room. My statement was got recorded by the police in the presence of a lady Advocate which is Ex. P1, which bears my signatures at point ‘A’. Police also got recorded my second statement”

24. If the above narrative qua both staying together in a rented accommodation on 10.12.2020, as the accused had solemnized marriage with her, is taken to be a truthful account, therebys on the said date, the prosecutrix was a major, and, as such the purported matrimony which both entered into but was a valid contract of marriage between both, besides the then made sexual intercourse(s) was entirely consensual.

25. Now in tune with the finding above, that no grave evidentiary solemnity, is to be assigned to the date of birth of the prosecutrix as carried in Ex. P11, thereupon given the love affair amongst the accused and the prosecutrix, lasting for about four years, and, which ultimately resulted in

both joining in matrimony, besides when purportedly since the inception of



the love affair in 2013 rather she allegedly was led to repeatedly succumb to his sexual overtures, thus in the garb of the accused rather allegedly threatening her about his viralizing her nude video films captured by him in her cell phone. However, the pivotal evidence in respect of the prosecutrix, even when she was a minor, thus repeatedly the succumbing to the sexual overtures of the accused, thus in the latter threatening her about his viralizing her nude films, but would become comprised, in there being recordings of clinching findings by the FSL concerned, that the said nude video films were prepared in the year 2013, and, not subsequently. However, the said echoing does not clinchingly occur in the result of the examinations as made at the FSL concerned over the nude video films.

26. If so, when also the prosecutrix has not candidly stated about the date and time of the preparation of the nude video films, thereby it appears that the nude video films of the prosecutrix, as became prepared by the accused also comes under a cloud of doubt, to the extent whether they were prepared when the prosecutrix was aged 13 years, and/or whether they were prepared when she on acquiring majority, thus had solemnized marriage with the accused. The consequent effect of the above doubt, is that, the benefit thereof is to be assigned to the accused. The further resultant effect thereof, is that, the prosecutrix rendering a non-confidence inspiring statement, that in the year 2020, the accused allegedly committed sexual assaults upon her, besides prepared her nude video films, whereafter in the wake of his threatening to viralize the said prepared video films, his coercing her to succumb to his sexual overtures, but is a pretextually made statement to which no credence can be assigned.



MLR of the victim Ex. P-32

26. Support to the above made inference becomes derived from the MLR of the victim to which Ex. P-32, is assigned. Since the appeal FIR, to which Ex. P-15, is assigned, encapsulates therein a narrative, that a penetrative sexual assault became committed, upon the victim. Therefore, but obviously on the apposite regions, there were enjoined to occur certain injuries. For discerning whether on the apposite regions of the victim, thus the relevant injuries did occur, an allusion is required to be made to Ex. P-32. However, a perusal of Ex. P-32 unfolds, that no injury marks becoming detected by the medical officer, on the body of the victim, thus upon examinations thereof being made. Resultantly therebys, corroboration is acquired qua the inference (supra) that the alleged sexual encounters, if any, were completely consensual.

FSL report Ex. PX

27. The report of the FSL concerned, is embodied in Ex. PX. The said report is extracted hereinafter.

“Description of parcel(s) and condition of seal(s)

Three sealed parcel(s). The seal(s) on the parcel(s) were found intact and tallied with the specimen seal(s) as per forwarding authority’s letter.

Description of article contained in parcel (s)

Parcel	No. of seal	Description of parcel (s)
I.	1-MOBKH	Sealed airtight glass vial bearing Barcode No. 22216-210119-901273 containing exhibit 1 stated to be of victim. <u>Exhibit-1:</u> Two cottonwool swabs on sticks described as vaginal swabs
II.	1-MOBKH	Blood sample bearing Barcode No. 22216-210119-901276 stated to be of accused-Returned as such in original in cold chain.
III.	1-MOBKH	Blood sample bearing Barcode No. 22216-210119-901279 stated to be of accused-



		Returned as such in original in cold chain.
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Laboratory Examination

Laboratory examination was carried out to detect the presence of blood and semen on the exhibit performing chemical tests and microscopy. Based upon these examinations the results obtained are given below:-

- 1. Blood was detected on exhibit-1 (Vaginal Swabs)
- 2. Semen could not be detected on exhibit-1 (Vaginal Swabs)”

28. Though, in the report (supra) of the FSL concerned, it is mentioned that, no human semen, became detected on exhibit-1 (vaginal swabs, nor obviously the biological original thereof is spoken therein to become sourced from the blood group of the accused. Therefore, the omission (supra) does not make the opinion (supra) to be an incriminatory opinion, especially when the blood detected on exhibit-1 also has not been declared to become sourced from the blood group of the accused.

Final order

29. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellant, and, as becomes 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 accused shall stand forthwith cancelled, and, discharged. 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. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared

accordingly.



- 30. Records be sent down forthwith.
- 31. 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.
- 32. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

November 28th, 2024
Ithlesh/Gurpreet

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