

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-1264-DB-2015 (O&M)

Reserved on: 29.11.2022

Date of Decision: 02.12.2022

Anil Kumar @ Leela

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present: Mr. Rahul Vats, Advocate
Amicus Curiae for the appellant.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 9.10.2014, upon Sessions Case No. 47 of 2013, by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 376 of the IPC, and, under Sections 3 (punishable under Section 4) of the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act'), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused. Moreover, through a separate sentencing order, drawn on 16.10.2015, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for a period of twelve years, for an offence punishable under Section 376 of the IPC (punishable under

Section 376(2)(i) IPC), besides also imposed, upon the convict sentence of

fine, comprised in a sum of Rs. 5,000/-, and, in default of payment of fine amount, she sentenced the convict to undergo rigorous imprisonment for a period of six months. Moreover, the learned convicting Court also sentenced the convict to undergo rigorous imprisonment for a period of ten years, for an offence punishable under Section 3 (punishable under Section 4) of the Act, and, also imposed, upon him the sentence of fine, comprised in a sum of Rs. 5,000/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of six months.

2. Both 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.

3. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith 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, before this Court.

Factual Background

4. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PW-15/A is assigned. The narrations carried in Ex. PW-15/A are, that on 16.9.2013, complainant Bala Devi had presented an application in Police Station Radaur, reporting therein that on 15.9.2013, her daughter i.e. victim (name withheld in view of judgment passed by the

Hon'ble Apex Court in case of ***State of Karnataka versus Puttaraja, 2004(1) RCR (Crl.) 113***), aged 14 years had gone outside her house in order to throw garbage, and, when she did not return home for a considerable period, then her elder daughter Anju had asked her cousin brother Anil Kumar to see her. When Anil went to see her, he found that the victim was being subjected to rape by Anil Kumar @ Leela (accused herein) in sugarcane fields, who on seeing Anil Kumar fled from the spot. Anil Kumar tried to catch hold of him but could not succeed. It was reported, that after consultation at home for registration of the case, finally she has reported the matter to the police. On this application/complaint, the instant case was registered, and, the investigation was swung into action.

Investigation proceedings

5. During investigation, spot inspection was made, and, a pair of shoe, and, mobile handset belonging to the accused were recovered from the place of occurrence. Accused was arrested on 16.9.2013. The victim as well as the accused were got medico legally examined, and, the sample parcels were sent to the FSL, and, report was procured. Statement of the victim under Section 164 Cr.P.C. was got recorded. Scaled site plan of the place of occurrence was got prepared. Statements of the witnesses under Section 161 Cr.P.C. were recorded. 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

6. Since the offences under Section 376 of the IPC, and, under Section 4 of the Act, were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on

30.10.2013, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, subsequent to its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for offences punishable under Section 376 IPC, and, under Section 3 (punishable under Section 4) of the 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. 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.

9. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charges (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

10. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, 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.

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 therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does 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.

Birth certificate of the victim

12. A perusal of birth certificate of the victim concerned, to which Ex. MO is assigned, discloses, that she was born on 27.3.2000. Thus, she, at the relevant stage, was a minor. Therefore, she was then under a severe legal disability to mete any valid consent to the accused for his allegedly subjecting her to sexual intercourse.

Deposition of the victim

13. The victim/prosecutrix has stepped into the witness box, as PW-11, and, therein she made bespeakings, which are completely in tandem with her previously made statement, in writing. Though, she was subjected to the ordeal of a grilling cross-examination, especially appertaining to the factum of hers, in her previously made statement, under Section 164 of the Cr.P.C., before the jurisdictionally empowered Magistrate, and, to which Ex. DA is assigned, rather exculpating the accused. However, though she accepted the factum of hers making a statement under Section 164 of the Cr.P.C., before the jurisdictionally empowered Magistrate, but she had also stated, that the said statement was made under fear, despite the fact, that the Magistrate explained to her, that

she is required to be making her statement without any fear, and, pressure. If so, with the above valid explication emanating from the victim concerned, about hers in Ex. DA hence exculpating the accused, thus, no capital can be derived therefrom, by the accused. Contrarily, when she has made a testification, which is otherwise not ridden with any taint of any *intra se* contradiction *intra se* her examination-in-chief, and, her cross-examination. Thus, utmost credence is to be assigned to her testification.

**Statement of the prosecutrix supported by PW-12,
who is an eye witness to the occurrence**

14. The statement of the prosecutrix gathers firmest corroboration from the testification, as made by an ocular witness to the occurrence, who stepped into the witness box as PW-12. He has therein echoed, that at the relevant crime site, he had witnessed the accused, whom he identified in Court, to commit rape, upon the prosecutrix. He further states that on the raising of an alarm, the accused fled away from the site of occurrence. He continues to depose, that the accused had left, at the crime site, his shoes Ex. MO-5, a mobile phone Ex. MO-6, both of which are spoken by him, to be taken into possession through recovery memo Ex. PY. Importantly since preceding therewith, the accused in his disclosure statement, to which Ex. PZ is assigned, after confessing his guilt, also had therein rather admitted that the shoes, and, mobile phone hence belonged to him. Therefore, the ocular account, rendered qua the genesis of the prosecution case, does garner support from the disclosure statement Ex.PZ, as also, from the recovery memo Ex.PY. Thus, credence is to be assigned to his testification, moreso when, the factum of his witnessing the relevant occurrence remained not cogently falsified. Resultantly, on the above score also, the exoneration

become completely frail. The above disclosure statement, as embodied in Ex. PZ, is *ad verbatim* extracted hereinafter.

“In the presence of following witnesses, accused Anil @ Leela, while in police custody, without any fear or inducement made disclosure statement that I am driving Sumo and yesterday I had gone to attend the Rally of C.M.Sahib in town Radaur and at about 4.30 P.M I had come back in the village and after parking the vehicle I had gone out for roaming at government tube well. After some time, Manju daughter of Shambhu Ram was seen coming to whom I had already given inducement of giving suit and money. I called her by giving signal and during talks, by giving inducement of money, took her on the middle Doll of sugarcane fields of Jagpal Rana. On the pretext of talking her, I started teaching her and after opening her Salwar started committing rape upon her despite her refusal. Manju, out of fear, started crying and weeping and in the mean time brothers of Manju namely Anil Kumar and Jai Bhagwan came at the spot and on seeing them, I ran away from the spot. My shoes were left on the spot and my mobile was also fell down on the spot while running. Thereafter, I concealed myself here and there out of fear. I can get the demarcation of that place, where I have committed wrong act with Manju, against her wishes, in the Sugarcane fields of Jagpal Rana. I have committed mistake and I may be given pardon. The disclosure statement of accused was recorded separately. Accused and witnesses put their signatures separately.”

15. Since the above disclosure statement is uncontrovertedly signed by the convict, as such, when he has obviously neither ably denied his signatures, as carried thereons, nor has proven the relevant denial, thus, utmost credence is to be assigned thereto, conspicuously, and, moreso when, the learned defence counsel has not adduced any evidence, suggestive that the above made recoveries, through memo Ex. PY, were of

those items, which did not evidently belong to the accused, nor when any evidence became adduced to suggest, that recoveries (supra), were engineered or contrived, through suggestion(s) being meted, either to PW-12, the marginal witness to the recovery memo Ex. PY, and, or to the investigating officer concerned. Resultantly, utmost evidentiary strength is acquired by the prosecution case.

Inferences

16. In the face of the above, and, more importantly in the face of the above made echoings by PW-12, in his examination-in-chief, rather remaining unshattered, of their efficacy, despite a rigorous cross-examination, being made upon him. Therefore, besides when his statement is also free from any taint of any *intra se* contradictions *intra se* his examination-in-chief, and, his cross-examination, thus, credence is to be assigned thereto. Importantly also, when reiteratedly his above untainted deposition is supported by the signed disclosure statement, as made by the convict, to which Ex. PZ is assigned. Furthermore, when in consequence thereof, the relevant items (supra), as provenly belonging to the accused, became validly recovered through an apposite recovery memo, to which Ex. PY is assigned.

MLR of the victim and FSL report

17. Dr. Shelly, who medico legally examined the victim concerned, has stepped into the witness box as PW-1, and, during the course of her examination-in-chief, she through hers tendering her affidavit, to which Ex. PA is assigned, hence proved the MLR of the victim concerned, to which Ex. PB is assigned. In Ex. PB occurs an opinion, that the possibility of sexual assault cannot be ruled out. The sequel of the above is that, the

prosecution has proven the factum of the prosecutrix, being subjected to sexual intercourse. Since, this Court, for reasons (supra), has assigned the utmost credence to the testification of PW-12, who evidently witnessed the occurrence, thus, when in quick spontaneity thereto, the prosecutrix became subjected to medico legal examination, thus the incriminatory opinion, as embodied in Ex. PB, is to be construed to relate to the assault, as made upon the prosecutrix, by the victim.

FSL Report

18. The report of the forensic expert concerned, is embodied in Ex. PX. The same is *ad verbatim* extracted hereinafter.

“Description of parcels(s) and condition of seal(s)
Six sealed parcel(s). The seals were intact and tallied with the specimen seals as per forwarding authority's letter.

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

<i>Parcel No.</i>	<i>No. and seal impression</i>	<i>Description of parcel(s)</i>
<i>I</i>	<i>1-Dr</i>	<i>Sealed airtight glass vial containing exhibit-1 stated to be of Anil. Exhibit-1. Bunch of small strands of hair described as pubic hair.</i>
<i>II</i>	<i>1-Dr</i>	<i>Sealed airtight glass vial containing exhibit-2 stated to be of Anil. Exhibit-2. One cottonwool swab on stick described as urethral swab.</i>
<i>III</i>	<i>5-Dr</i>	<i>Sealed cloth parcel containing exhibit-3 stated to be of Anil. Exhibit-3. One dirty brown colored underwear.</i>
<i>IV</i>	<i>1-Dr</i>	<i>Sealed airtight glass vial containing exhibit-4 stated to be of Manju. Exhibit-4. Bunch of small strands of hair described as pubic hair.</i>
<i>V</i>	<i>1-Dr</i>	<i>Sealed airtight glass vial containing exhibit-5 stated to be of Manju. Exhibit-5. Two cottonwool swab on stick described as vaginal swab.</i>

VI	5-Dr	Sealed cloth parcel containing exhibit-6a & 6b stated to be of Manju. Exhibit-6a. One dirty torned green colored pyjami. Exhibit-6b. One dirty pink colored lady's shirt.
----	------	---

Laboratory examination

Laboratory examination were carried out to detect the presence of semen on the exhibits performing chemical test and microscopy. Based upon these examination, the results obtained are given below:-

1. Human semen was detected on exhibit-2 (Urethral swab) and exhibit-3 (underwear). However semen could not be detected on rest of the exhibits mentioned above.”

19. A reading of the above extracted results of the examination(s), as made by the forensic expert concerned, upon the items, as sent to him for examination(s) reveals, that human semen was detected on Exhibit-2 (urethral swab), and, Exhibit-3 (underwear).

20. Thus, a conjoined reading of the report of the doctor concerned, who proved the apposite MLR Ex. PB, and, of the report of the FSL concerned, does foster an inference, that therethroughs corroboration, is acquired by the untainted testification of the victim as well as by the untainted testification of the ocular witness to the occurrence, who stepped into the witness box as PW-12. The reason for assigning credence to the report of the FSL concerned, rather containing the hereinabove results of the examination(s), as made upon the relevant items, becomes comprised, in the factum, that the learned defence counsel failed to project, through adduction of cogent evidence, that human semen, as became detected on exhibit-2, and, on exhibit-3, rather not belonging to the accused, nor also when he has not adduced any cogent evidence, that the collection of exhibit-3 (underwear) was inaptly made, and/or, that the said exhibit never belonged

to him.

Final order

21. 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. If the convict 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.

29. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

December 02, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes