

In the High Court of Punjab and Haryana at Chandigarh

CRA-S-1874-SB-2010 (O&M)

Reserved on: 14.10.2022

Date of Decision: 19.10.2022

Sonu

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present: Ms. Gurpal Kaur Dulat, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 20.4.2010, upon Sessions Case No. 7 of 2009, by the learned Sessions Judge, Sangrur, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 342, and, under Section 376(f) of the IPC, he proceeded to record a finding of conviction against the accused. Moreover, through a separate sentencing order, drawn on 20.4.2010, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment extending upto a term of 10 years, for an offence punishable under Section 376(f) of the IPC, besides also imposed, upon the convict, the sentence of fine, comprised in a sum of Rs. 10,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo further rigorous imprisonment for six months. Moreover, the

learned convicting Court also sentenced the convict to undergo rigorous

imprisonment for a period of one year, in respect of an offence punishable under Section 342 of the IPC, and, also imposed, upon him the sentence of fine, comprised in a sum of Rs. 500/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of one month.

2. All the above imposed sentences of imprisonment, were ordered to run consecutively 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. Out of the fine amount, 2/3rd thereof was ordered to be paid to the prosecutrix as compensation.

3. The 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 constitute 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. PA/2 is assigned. The narrations carried in Ex. PA/2 are that Raj Kaur, a Majhbi Sikh by caste, resident of Majhi, Police Station Bhawanigarh made a statement before the police, that she has three daughters, including the prosecutrix, aged about 12 years, and, two sons. The prosecutrix, during the relevant period, was a student of 6th class of Government High School, Majhi. On 10.12.2008, younger son of Raj Kaur, named Jaspreet Singh, aged about 4 years, had gone out to play. He did not

return till 05.30 PM. PW Raj Kaur sent the prosecutrix in search of Jaspreet Singh. After about 20-25 minutes, Jaspreet Singh returned home, but the prosecutrix did not. PW Raj Kaur went out to find out the whereabouts of the prosecutrix. When she reached near the house of Chowkidar of colony, named Charna Singh at about 06.00 PM, she heard shrieks of the prosecutrix. When she reached near the house, door of the house was found to be bolted from inside. She knocked at the door. Sonu Singh, the present accused, opened the door, pushed PW Raj Kaur aside and ran away. The prosecutrix was found lying on a cot, with her "Salwar" off, was crying and told PW Raj Kaur that the accused had caught her from the street, had dragged her inside the room and after bolting the door of the room from inside, had subjected her to forced copulation. PW Raj Kaur brought the prosecutrix home and fearing disrepute of the family did not disclose the episode to anybody. On 11.12.2008, on return of her husband to the house, PW Raj Kaur narrated before him the entire sequence of events and accompanied by her husband and the prosecutrix, she set out for the Police Station to lodge a report. On the way, near new Bus Stand, Bhawanigarh, PW Raj Kaur came across ASI Balbir Singh along with his police party and suffered before him a statement narrating the entire sequence of events. ASI Balbir Singh reduced the statement into writing, read it over to PW Raj Kaur, who, to signify its correctness, put her right thumb impression on the foot of the statement.

Investigation proceedings

5. On the statement of PW Raj Kaur, Investigating Officer made his endorsement and sent the statement along with his endorsement to the Police Station, whereupon a formal first information report (FIR) came to be

recorded by Moharrir Head Constable (MHC) Mehar Singh. Investigating Officer, then, recorded statement of the prosecutrix, summoned Lady Head Constable Sukhwant Kaur, and, asked her to accompany the prosecutrix to Community Health Centre, Bhawanigarh after handing over to her an application for medico-legal examination of the prosecutrix. The prosecutrix was accordingly medico-legally examined, and, after medico-legal examination, Lady Head Constable Sukhwant Kaur produced before the Investigating Officer, sealed parcel of swabs, sealed parcel containing clothes of the prosecutrix, and, a sealed envelope carrying seals of the doctor. Investigating Officer took these parcels in police possession, recorded a memorandum, and recorded statement of Lady Head Constable Sukhwant Kaur and Head Constable Mehma Singh. In the meantime, PHG Jolly Dass returned after getting formal first information report (FIR) recorded along with copy thereof. Investigating Officer recorded his statement, accompanied by the prosecutrix, parents of the prosecutrix, and, a few police officials, went to the spot at village Majhi, inspected the spot, prepared rough site plan of the spot of occurrence with correct marginal notes, as pointed out by the prosecutrix, recorded statement of Bali Singh, father of the prosecutrix, unsuccessfully raided house of the accused, and, on return to the Police Station, deposited the case property, with seals intact thereon, with Moharrir Head Constable (MHC) Tej Parkash. Investigating officer, on 12.12.2008, sent Head Constable Jaspal Singh to get the prosecutrix subjected to ultrasound test at Rajindra Hospital, Patiala, on 13.12.2008, accompanied by Lady Head Constable Sukhwant Kaur, the prosecutrix and her parents, went to Civil Hospital, Sangrur, and moved an application before Senior Medical Officer for ossification test of the

prosecutrix so as to ascertain her age. Having been so deputed, Dr. J.S.Garcha and Dr. Varinder Singh conducted the necessary test and made a report to the effect that age of the prosecutrix was between 12-14 years. On 14.12.2008, Investigating Officer went in search of the accused, accompanied by Bali Singh, father of the prosecutrix, received a telephone call that accused was present at Bus stand of Majhi, on the identification of Bali Singh, arrested the accused, frisked his person, disclosed to the accused grounds of his arrest, sent intimation of arrest of the accused to Sarpanch of village Majhi, named Mahinderpal Singh, on 15.12.2008, went to Community Health Centre, Bhawanigarh, and moved an application for medical examination of the accused-whereupon accused was medically examined and a report, to the effect that the accused was potent and capable of doing the sex act, was handed over to the Investigating Officer. During investigation, the Investigating Officer recorded statements of witnesses, and took into possession school leaving certificate of the prosecutrix showing her date of birth as 07.03.1997. 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 offence under Section 376 IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 10.4.2009, 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, after 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 342, and, under Section 376 of the 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 09 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 thereins, the accused pleaded innocence, and, claimed false implication. He also chose to adduce defence evidence, and, led one 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 vigorously contended before this Court, that since the prosecutrix in her cross-examination has disclosed, that during the course of the alleged sexual intercourse becoming perpetrated, upon her person by the accused, she did not sustain any injury, nor she suffered any scratches on her body. Therefore, he contends, that the sexual intercourse, if any, which became entered into amongst the accused, and, the prosecutrix, was completely consensual.

11. The learned counsel for the convict-appellant has also contended, that the prosecutrix had at the relevant stage also acquired the

age of consent. In the above regard, he submits, that the date of birth of the prosecutrix, as disclosed in her school leaving certificate, to which Ex. PJ is assigned, cannot be relied upon, nor the factum of the date of birth of the prosecutrix, as revealed therein to be of 7.3.1997, is trustworthy, as PW-5, who proved Ex. PJ, has in his cross-examination, made an echoing that Ex. PJ was not drawn on the basis of the birth certificate, issued by the Registrar of Births and Deaths. Consequently, he has argued, that when the birth certificate of the prosecutrix, as emanating from the office of the Registrar of Births and Deaths, is rather the best evidence, to record a clinching finding about the date of birth of the prosecutrix, whereas, its being not adduced into evidence. Resultantly, he has argued, that no reliance can be made upon Ex. PJ. Contrarily, he argues, that the determination of the radiological age of the prosecutrix, as proved by PW-4, to be between 12 to 14 years, hence becomes the best evidence. In making the above submission, he hinges it, upon the benefit of the upper margin of the radiological age of the prosecutrix, inasmuch as of 14 years, being affordable to the accused. Moreover, when the law also declares that the margin of error on either side being upto two years. Therefore, he contends, that when upon adding two years to the upper radiological age limit of the prosecutrix, inasmuch as to 14 years, the prosecutrix at the relevant stage rather is construable to have acquired majority, and, also the capacity to mete a valid consent to the accused. Consequently, he argues, that the lack of resistances by the prosecutrix to the sexual overtures, as made by the accused, suggests that such sexual overture(s) was entirely consensual, and, that the verdict of conviction is liable to be interfered with.

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 therewith sentence(s) (supra), as become imposed upon the convict, is well merited, as it is based upon a sound appreciation of the evidence on record. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Testification of the prosecutrix

13. The prosecutrix stepped into the witness box as PW-1. Since the prosecutrix was a minor, as such the learned trial Judge concerned, for making a declaration, that she is competent to testify, hence proceeded to assess her intelligibility. The assessment(s) of the intelligibility of the prosecutrix for the latter being declared to be a competent witness, rather became rested upon questions, being put to her, but since the relevant questions were meted intelligible answers by the prosecutrix, thus led the learned trial Judge concerned, to conclude that she has sufficiently intelligibility to make a deposition in respect of the prosecution version, thus, the learned trial Judge concerned, permitted her to make her statement. In her examination-in-chief, the prosecutrix has corroborated the genesis of the prosecution case, as became set-forth in the apposite FIR.

14. An analyses of the testification of the prosecution, does reveal, that her testification is both credible, besides trustworthy, and, confidence inspiring. The reason for making the above conclusion emanates, from the factum, that the accused had pushed the prosecutrix inside his house, whereafter he bolted the door of the room from inside, and, subsequently, he after holding the arms of the prosecutrix, loosened the string of her salwar,

and, thereafter subjected her to forcible sexual intercourse. It was on the prosecutrix raising cries, that her mother, who was in the street outside the house of the prosecutrix, started knocking on the door of the house of the accused, and, then she noticed, that the prosecutrix was lying naked on a cot. However, then the accused fled from the crime site.

15. The above trite incriminatory echoing, as carried in the examination-in-chief of the prosecutrix, though was liable to be rid off its efficacy through an exacting cross-examination, being made upon the prosecutrix. However, the defence has not been able to bely the factum of the crime site being the house of the accused, nor has been able to bely the factum of the mother of the prosecutrix, on hearing her shrieks, hence proceeding to knock at the door of the house of the accused, leading the accused to unbolt the door, whereafter on her entering into the room, hers noticing that the prosecutrix was lying in a naked condition on a cot. The effect of lack of emanations of able denials to the above incriminatory factum, is that, the testification of the prosecutrix, being construable to be both trustworthy, besides credible.

Statement of PW-2

16. PW-2 is the mother of the prosecutrix, and, the above alluded trite incriminatory echoings, as made by the prosecutrix, are also spoken by her, in her examination-in-chief. Therefore, PW-2 does corroborate the version qua the genesis of the prosecution case, as becomes propounded by the prosecutrix. Again when the testification of PW-2 has not lost its evidentiary vigour, even during the course of hers being put to the ordeal of a rigorous cross-examination. Thus, her testification acquires evidentiary worth. Resultantly, the inter se corroborative testifications, rendered qua

the charges by the prosecutrix, and, by her mother, do make this Court to conclude, that therethrough the prosecution has ably proven the charges drawn against the accused.

Medical Evidence

17. PW-3, who conducted the medical examinations of the prosecutrix, has proven the apposite MLR, to which Ex. PB is assigned. In her examination-in-chief, she has testified that on hers making an examination of the body of the prosecutrix, hers observing thereons the hereinafter extracted injuries.

“1. 1.5 cm x 0.75 cm. Red abrasion in lower part of neck just to the left of midline.

The hymen was torn. Margins were healthy. Vagina admitted two fingers. There was dark blood present over the introitus. Following investigations were ordered:

1. Urine for pregnancy; 2. X-ray of bones for age determination, ultrasonography of pelvic organs;”

18. She has also deposed that on receipt of the report of the chemical examiner concerned, to which Ex. PD is assigned, she made an opinion, as embodied in Ex. PE/1, that possibility of sexual intercourse with the prosecutrix, cannot be ruled out. Moreover, she has also deposed that since the colour of the abrasion was red, and, also when blood was present in the introitus, therefore, the possibility of sexual intercourse with the prosecutrix within 24 hours, cannot be ruled out. Resultantly, the perpetration of forcible sexual intercourse by the accused, upon the prosecutrix, as consistently deposed by her, and, by her mother, does also therethroughs become cogently established.

19. Moreover, PW-3 has also spoken, that after making an examination of the accused, she opined that the latter was capable of performing sexual act. Therefore, the perpetration of sexual intercourse,

upon the prosecutrix can be attributed to the accused.

Submission of the learned counsel for the convict-appellant.

20. Though, the learned counsel for the convict-appellant has made a prima facie tenable submission, that the school leaving certificate Ex. PJ, wherein the age of the prosecutrix is recorded as 7.3.1997, is not credible proof, nor is the best evidence, in respect of age of the prosecutrix, as PW-5, in his cross-examination has deposed, that the said entry was not made on the basis of the birth certificate, as emanated from Registrar of Births, and, Deaths, which however is the best evidence to secure a firm conclusion about the precise age of the prosecutrix, and, to also make a firm conclusion, that at the relevant stage, she had arrived at the age of consent. If so, and, though the solemn duty to prove the age of the prosecutrix, remains throughout cast, upon the prosecution, but the defence yet could, after securing a denial from PW-5, that the reflection of the date of birth of the prosecutrix, as existing in Ex. PJ, was not on the basis of her birth certificate, as emanated from the Registrar of Births, and, Deaths, to rather thereafter with leave of the Court, seek adduction into evidence of the birth certificate of the prosecutrix, as maintained in the office of the Registrar of Births and Deaths. However, the defence did not choose to do so. Consequently, the non-availment of the above lawful right, estops the learned counsel for the appellant to contend, that irrespective of the date of birth of the prosecutrix, as made in Ex. PJ, rather not becoming anchored, upon her birth certificate, as became issued by the Registrar of Births and Deaths, yet the prosecutrix having acquired the age of majority at the relevant stage.

21. Though, PW-4 did prove that the radiological age of the

prosecutrix ranged between 12 to 14 years. Moreover, though the law declares, that the benefit of the upper margin of the radiological age of the prosecutrix, is affordable to the accused. In addition, though the law also declares, that to the upper margin of the radiological age, two years can be added. Resultantly, though after adding two years to the upper margin of the radiological age of the prosecutrix, as spoken by PW-4, to be 14 years, she may become reckoned to be 16 years, and, may be she did at the relevant stage, acquire the capacity to make a valid consent to the accused. However, the adding of two years to the above said upper margin of the radiological age of the prosecutrix, yet would be impermissible, as PW-4, in his examination in chief, has spoken that the margin of error of only about six months, is available to be added to the upper margin of the radiological age of the prosecutrix. Therefore, upon adding six months to the upper margin of the radiological age of the prosecutrix, she does not become 16 years in age, nor at the relevant age, she is construable to have acquired the capacity to mete any valid consent to the accused, in the latter subjecting her to sexual intercourse. The above inference becomes fortified from the factum, that qua the above spoken fact by PW-4 in his examination-in-chief, no further cross-examination is made, upon him, by the defence.

22. The result of the above is, that the prosecutrix was a minor at the relevant stage, and, but obviously was incompetent to mete any valid consent to the accused to subject her to sexual intercourse. Resultantly, and, also even if there were no marks of resistances, existing on the body of the accused or on the body of the prosecutrix, yet the above lack of resistances, do not connote the consensuality of the prosecutrix to the sexual intercourse, which became entered into by her with the accused, as she was

not legally competent to mete any valid consent to the accused.

23. In summa, this Court finds no gross perversity or absurdity in the appreciation of the relevant evidence, as made by the learned trial Judge concerned.

Final order

24. 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. However, the sentence(s) of imprisonment are ordered to run concurrently than consecutively. 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.

25. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

October 19, 2022
Gurpreet

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