

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-D-867-DB-2018 (O & M)

Reserved on: 07.12.2022

Pronounced on: 09.12.2022

MOHINDER SINGH

.....Appellant

Versus

STATE OF PUNJAB

.....Respondent

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

Argued by: Mr. Arun K. Bakshi, Advocate
for the applicant-appellant (legal aid counsel).

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the convict, against the verdict of conviction made on 07.07.2018 by the learned Additional Sessions Judge (Children's Court under the POCSO Act), Sangrur, upon Sessions Case No. 190 of 28.08.2017, wherethrough, in respect of charges drawn for offences punishable under Sections 342/377 of the IPC, and, under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter for short call 'the Act'), he made a finding of conviction against the accused.

2. Moreover, through a separate sentencing order drawn on 07.07.2018, the learned trial Judge proceeded to impose upon the

convict (supra) both sentence(s) of imprisonment as well as of fine but in the hereinafter extracted manner :-

Offence	Imprisonment	Fine	In default of payment of fine
U/s 6 POCSO Act, 2012	Rigorous Imprisonment for Twelve Years	Rs. 50,000/-	To further undergo Rigorous Imprisonment for six months
U/s 342 IPC	Rigorous Imprisonment for one year	Rs. 1000/-	To further undergo RI for 15 days

3. Both the substantive sentence(s) of imprisonment were ordered to run concurrently, but the period spent in custody by the convict during the pendency of investigation and trial of the case, was, ordered to be set off against the above imposed substantive sentence(s) of imprisonment.

4. The convict becomes aggrieved from the verdict of conviction (supra), besides become aggrieved from the above imposed sentence(s), thus, is led to cast thereagainst the instant appeal before this Court.

Factual background

5. The genesis of the prosecution case becomes encapsulated in the appeal FIR to which Exhibit PA/2 is assigned. The informant Amrik Singh on 31.05.2017, has made narrations therein that he is a labourer, his elder son aged about 16-17 years is mentally retarded, and, who cannot explain anything. On 30.05.2017, he had gone to the brick-kiln to do labour work. He returned home at about 8.00 P.M. His cousin Jasvir Singh disclosed that at about 5.30 P.M., one Mohinder Singh, had committed wrongful act with his son after confining him in a room of

his house. He searched for the victim, but could not locate him. On 31.05.2017, at about 3.00 P.M., the victim was brought by Nirbhai Singh and Jasvir Singh from Gurudwara Ghanaur Sahib. They got him admitted in Civil Hospital, Kohrian for his medical treatment, from where he was referred to Civil Hospital, Sangrur. They were taking the victim there, and on the way the police met them. On the basis of the statement suffered by the complainant, the present case was got registered against the accused.

Investigation proceedings

6. During investigation, ASI Babu Singh collected the MLR of victim. Three parcels duly sealed with the seal of doctor bearing impression KA were taken into police custody. The place of occurrence was inspected and rough site plan was prepared. The accused was arrested, his arrest memo and personal search memo were prepared.

7. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Additional Sessions Judge (Children's Court under the POCSO Act), Sangrur.

Trial Court Proceedings

8. On finding a prima facie case, charges under Sections 4 and 6 of the POCSO Act, 2012, and, under Sections 342 and 377 of the IPC became framed, against the accused, to which he pleaded not guilty, and, claimed trial.

9. In support of the prosecution case, the prosecution examined seventeen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge concerned, drew proceedings, under Section 313 of the

Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence.

10. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned trial Judge concerned, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the present appellant.

Submissions of the learned counsel for the convict-appellant.

11. (1) The learned counsel appearing for the convict-appellant has made a submission before this Court, that since the victim did not step into the witness box, therefore, the narration(s), as carried in the FIR, appertaining to the instant appeal and to which Exhibit PA/2, is assigned, hence cannot be said to be conclusively established.

(2) He has further submitted that the testification(s) rendered by the purported ocular witnesses to the relevant penal act are ridden with gross and open improvements, and, embellishments from their previously recorded statements in writings. Thus, he submits that no reliance can be assigned to the statements of the ocular witnesses to the occurrence.

Submissions of the learned State Counsel

12. On the other hand, the learned State counsel has argued that the appreciation of evidence as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.

Ocular witnesses to the occurrence

13. PW-Amarjit Singh stepped into the witness box as PW-3. During his examination-in-chief, he voiced that about 6/7 months earlier to his stepping into the witness box, he had gone to a shop to

purchase domestic articles. The above said shop is spoken by him to be owned by one Gola Singh. He further echoes that there one small boy came and asked him to go to the house of Mohinder Singh, leading him to also visit the said house, but there he noticed that the house was bolted from inside, whereafter he speaks that he peeped inside the room from the broken door, and saw that the victim, who is a mentally retarded child, was in the company of the accused. He further speaks that he asked the accused to open the door, as there was every possibility of his belaboring the victim child. However, the accused then told him to go away, leading him to bring the chowkidar, to the house of the accused, with an intimation to the chowkidar that the accused was committing a penal act upon the victim, and, that he is required to be stopped. The said Chowkidar is named by him to be one Megha Singh. He further testifies that about 20/35 persons had collected on the spot and yet the accused did not unbolt the door. Thereafter, he speaks that the brother's wife of the accused called the mother of the victim on the spot, and, on the arrival of the mother of the victim, led the accused to leave the victim. He identified the accused in Court. Thereafter, he deposes that the brother of accused thrashed the latter for his committing a penal act upon the victim. He names the brother of the accused as Dhaniya. In his examination-in-chief, he has proven his previously made statement to the police.

14. On a reading of the cross-examination, as made upon PW-3, it appears that neither any suggestions, became meted then to him, nor obviously any answers thereto, emanated from him, rather unveiling, that he has made any rife or open improvements or embellishments vis-à-vis his previously made statement(s) in writing.

Thus, the above submission of the learned counsel for the appellant fails and is rejected. Contrarily, a reading of the cross-examination, as made upon PW-3 makes speakings that the accused was apprehended on the spot, and that he was handed over to the police on the subsequent day. Moreover, he is also spoken therein, that at the relevant time, the accused and the victim both were noticed by him to be without clothes, and, his also noticing that the accused had inserted his penis in the anus of the victim. The existence of the above speakings in the cross examination of PW-3, are significant, as they contain trite incriminatory echoings against the accused. Resultantly the above incriminatory echoings, as exist therein against the accused, do hold credibility, unless subsequently with the leave of the Court, the counsel for the accused had attempted to rip them of their efficacy through his, with the leave of the Court hence making a further cross-examination upon PW-3. However, the learned defence counsel, did not do so, therefore, the above incriminatory echoings as exist in the cross-examination of PW-3 hence are construable to become conceded by the defence.

Corroboration lent to the statement of PW-3 by the deposition of PW-4 and analysis of the testification(s).

15. The statement of PW-3 is fully corroborated by the deposition of PW-4. He too, has spoken therein qua his witnessing the commission of the penal act by the accused upon the victim. Even during the ordeal of a rigorous cross-examination, to which he was subjected to, he remained unscathed.

16. A conjoint analysis of the testification(s), as made by the ocular witnesses (supra), to the relevant occurrence, suggest that their

respectively made statements are not ridden with any taint of theirs making any gross improvements or embellishments vis-a-vis their respectively recorded statements in writing. Furthermore, their respectively made testification(s) are also free from any taint of any intra-se contradictions intra-se the respective examination(s)-in-chief and their respective cross examination(s). Resultantly when they render inter-se corroboration to their respectively rendered ocular accounts qua the penal occurrence. Thus, completest credence is to be meted to their respectively made testification(s). Therefore, on the basis of the respectively made testification(s), by credible ocular witnesses to the occurrence, thus, the charge against the accused stands fully established.

Argument of the learned counsel for the convict-appellant regarding non citing of victim as prosecution witness.

17. The information in respect of the penal occurrence was made to the police by PW-1. PW-1 has proven his making Exhibit PA. The non recording of the statement, if any, of the victim by the police, besides the consequent thereof non citing of the victim as a prosecution witness, does not yet lead to any further inference, that the taint free testification(s) of the ocular witness to the occurrence are to be discarded. Moreover, the encumbrance of a mental disability, upon the victim, to make a statement, did consequently disable, the investigating officer concerned, to record his statement, besides also led the prosecution to not cite him as a prosecution witness. The factum of a severe mental disability encumbering the victim is proven by PW-12, Dr. Balwant Singh. Therefore, reiteratedly the above made submission

of the learned counsel for the convict-appellant pales into insignificance.

Medical Evidence

18. PW-10- Dr. Kamaldeep Singh, Medical Officer, Civil Hospital, Sangrur in his examination-in-chief, has proven that on palpation, the anal tone increased and became tender, resulting in one finger being admitted in the private parts of the victim. Though, he has stated that he cannot make any firm opinion about the child victim being subjected to any carnal intercourse, as he did not draw the MLR in respect of the child victim.

19. Be that as it may, PW-17 Dr. Kashish Aggarwal, Medical Officer, CHC, Kauhrian, who drew the MLR in respect of the child victim, did step into the witness box as PW-17, and, during the course of her examination-in-chief, she proved her medico legal examination of the child victim, to which Ex.PN/1 is assigned. After conducting the medical examination on the relevant portions of the body of the victim child, she gave her opinion, to which Ex. PP/1 is assigned, opinion whereof is extracted hereinafter, a perusal whereof candidly voices, that there was a possibility of the child victim being subjected to carnal intercourse. The said opinion as made by PW-17, does also corroborate the credible ocular account rendered qua the prosecution case by the ocular witnessess to the occurrence.

“The findings of the MLR and chemical examination report suggest the possibility of anal intercourse.”

20. Moreover, in her affidavit which became tendered into evidence during the course of examination-in-chief, she has made an echoing, that she had made collections of anal swab, pubic hair and of

axillary hair besides of the trouser worn. Subsequently, the above collections were sent in sealed cloth parcels, through constable Sukhpal Singh No. 719 to the Chemical Examiner concerned. The above sealed cloth parcels became sent and also became received at the laboratory concerned, in an unspoiled and untampered condition. On an examination being made by PW-17, qua the items enclosed in the sealed cloth parcels, resulted in an opinion qua *spermatozoa* being detected in the contents of Exhibit 1 and II. Therefore, when the above opinion becomes not rebutted, through evidence being adduced by the accused suggestive qua the relevant items not belonging to the concerned, as but a natural corollary, the said opinion renders the fullest corroboration to the credible eye witness account as rendered qua the penal occurrence.

FINAL ORDER

21. In consequence, there is no merit in the appeal, and, the same is dismissed. The impugned verdict(s), and, consequent therewith sentence(s) (supra), as imposed upon the convict, are affirmed and maintained.

22. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

09.12.2022
kavneet singh

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