

**In the High Court of Punjab and Haryana at Chandigarh**

**CRA-AD-658-2019 (O&M)**  
**Reserved on: 1.12.2022**  
**Date of Decision: 06.12.2022**

Poonam Devi

.....Appellant

Versus

State of Haryana and another

.....Respondents

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

Present: Mr. Ashish Grewal, Advocate  
counsel for the appellant.

Mr. Anmol Malik, DAG, Haryana.

Mr. Kulwant Singh Dhanora, Advocate  
for respondent No. 2.

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**SURESHWAR THAKUR, J.**

1. The instant appeal is directed by the aggrieved complainant, against the verdict, as made on 4.6.2019, upon Sessions Case No. 163 of 2018, by the learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women and Children), Yamuna Nagar, at Jagadhri, Through the above said verdict, the learned trial Judge concerned, acquitted the accused-respondent No. 2, in respect of charges drawn against him for offences punishable under Section 366 of the IPC, and, under Section 376 (3) of the IPC, besides under Section 3, and as punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

**Factual Background**

2. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. P-5 is assigned. The narrations carried in Ex. P-5

are that on 5.5.2018, complainant 'P' mother of the victim/prosecutrix, (name of complainant as well as prosecutrix withheld to hide their identities in terms of explanation attached to Section 33(7) of Protection of Children from sexual offences Act, 2012) moved a complaint alleging therein, that she is working in Ashirwad Hospital, Yamuna Nagar, and, has two children, elder son namely Harsh and a younger daughter aged 14 years. On 4.5.2018, her daughter was sleeping alongwith her in the room, but at around 6.00 AM, she found her daughter missing. She searched for her daughter in her relations, but she could not be traced. She alleged that the accused Sunil, their neighbour has enticed her daughter, as he is also missing from his house since that day. On the basis of this complaint, FIR under Section 365 of IPC was registered.

**Investigation proceedings**

3. During investigations, victim/prosecutrix and accused were recovered on 10.5.2018. The accused was arrested. During investigation, victim informed that the accused had a week ago committed wrong act with her. The statement of victim under Section 164 of Cr.P.C. was got recorded, in which she has stated that "she has left the house as per her own wishes for roaming alongwith Sunil. He did not kidnap her." Thereafter, medico-legal examination of victim was got conducted. Later on, section 4 of The POCSO Act, 2012 was also added. The accused suffered a disclosure statement and got the place of occurrence demarcated. Medico legal examination of accused was also got conducted. 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**

4. 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 her. Resultantly, initially, the learned Additional Sessions Judge concerned, vide order dated 7.7.2018, proceeded to draw charges against the accused for commission of offences punishable under Section 366 of the IPC, and, under Section 3, punishable, besides under Section 4 of the Protection of Children from Sexual Offences Act, 2012. However, the charge was amended, and, vide order dated 31.8.2018, the amended charge sheet was served, upon the accused, for offences punishable under Sections 366 IPC, and, under Section 376(3) of the IPC, as also under Section 4 of the Protection of Children from Sexual Offences Act, 2012. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

5. In proof of its case, the prosecution examined 13 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.

6. As above stated, the learned trial Judge concerned, proceeded to acquit the accused for the charges (supra), as became drawn against him.

**Submissions of the learned counsel for the appellant**

7. The learned counsel for the aggrieved convict-appellant, has argued before this Court, that the impugned verdict of acquittal, as made by

the learned trial Judge concerned, requires 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 counsel for the acquitted  
accused/respondent No. 2**

8. On the other hand, the learned counsel for respondent No.2 has argued before this Court, that the verdict of acquittal, as pronounced by the learned trial Judge concerned, is well merited, and, does not require any interference, Therefore, he has argued that the instant appeal, as preferred by the complainant, be dismissed.

**The reasons assigned by the learned trial Judge concerned, for making  
an order of acquittal upon the accused**

9. The prosecutrix, during the course of investigations, had recorded, before the learned Judicial Magistrate concerned, her statement under Section 164 of the Cr.P.C., to which Ex.PW-2/A is assigned. Thereins she did not impute any guilt to the accused, but echoed therein, that she had voluntarily taken to the company of the accused, and, she also further echoed therein, that the accused had not committed any sexual intercourse, upon her. However, when she stepped into the witness box as PW-2, she made allegations against the accused qua his subjecting her to sexual intercourse on 4.5.2018, and, thereafter his forcibly taking her to Sri Anandpur Sahib. The above made testification(s) in Court, by the prosecutrix, is in dire contradiction with her earlier statement, made under Section 164 of the Cr.P.C., before the jurisdictionally empowered Court, and, to which Ex. PW-2/A is assigned, wherein, she did not assign any incriminatory role to the accused. Therefore, it became concluded by the learned trial Judge concerned, that the testification(s), in Court, as made by

the prosecutrix, is neither reliable nor confidence inspiring. The above assigned reason is sound in law and does not require any interference.

10. The further reason, as assigned by the learned trial Judge concerned, to form a verdict of acquittal, in respect of the charges drawn against the accused, becomes grooved in the factum, that the prosecutrix had travelled to various destinations in the company of the accused, yet with the prosecutrix evidently not raising any hue and cry rather for inviting attention of any person. Therefore, a conclusion was ably formed, that the prosecutrix had voluntarily joined the company of the accused. In addition, a perusal of the statement of PW-6, one Sunita, SPO, who had caused the recovery of the prosecutrix, from Sector-20, Panchkula reveals, that she, did openly speak about the prosecutrix, and, the accused rather freely, and, openly roaming on a public road. Therefore, naturally, the learned trial Judge concerned, made a tenable finding that the charge(s), as drawn against the accused becoming not cogently proven.

11. The learned trial Judge concerned, had also referred to the factum, that with the mother of the prosecutrix, upon hers stepping into the witness box as PW-3, rather testifying in her cross-examination, that after the prosecutrix had returned home, she did not disclose to her qua the accused subjecting her to forcible sexual intercourse, and, also referred to the prosecutrix rather even during the course of the medical examination, as became conducted upon her, hers omitting to disclose to the doctor concerned, qua the accused committing any forcible sexual intercourse upon her.

12. The above latter reference in the impugned verdict became founded, upon PW-12 Dr. Suvidha Giri, in her cross-examination stating,

that at the time of hers subjecting the victim/prosecutrix to medical examination, the prosecutrix intimating her, that she had voluntarily joined the company of the accused, and, that he did not perpetrate any sexual intercourse, upon her. However, she thereins echoed, that rather the mother of the victim had disclosed, that the accused had perpetrated sexual intercourse, upon the prosecutrix. Moreover, since she also disclosed, that on an examination of the prosecutrix, she did not observe any internal or external injury marks on her body. Therefore, the learned trial Judge concerned, concluded, that the prosecutrix, as stated by her, in her earlier statement, as made before the learned Magistrate concerned, qua hers voluntarily joining the company of the accused, rather being truthful, whereas the contra therewith echoing, as made before PW-12, by the mother of the victim, hence being ridden with an entrenched vice of falsity. Thus, the learned trial Judge concerned, did make a firm and tenable conclusion that a verdict of acquittal, is to be returned in respect of the charges drawn against the accused.

**FSL report**

13. 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)**  
*Five sealed parcel(s). The seals were intact and tallied with the specimen seals as per forwarding authority's letters.*

**Description of arcticle(s) contained in parcel(s)**

| <b><i>Parcel No.</i></b> | <b><i>No. and seal impression</i></b> | <b><i>Description of parcel(s)</i></b>                                                                                                                                                   |
|--------------------------|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>I</i>                 | <i>1-Dr</i>                           | <i>Sealed airtight glass vial containing exhibit-1 stated to be of Niharika. Exhibit-1. One cottonwool swab on stick alongwith brown fungus like material described as vaginal slab.</i> |

|     |      |                                                                                                                                                                                                            |
|-----|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| II  | 1-Dr | Sealed airtight glass vial containing exhibit-2 stated to be of Niharika.<br>Exhibit-2. One cottonwool swab on stick alongwith black fungus like material described as vaginal slab.                       |
| III | 5-Dr | Sealed cloth parcel containing exhibit-3 & exhibit-3b stated to be of Sunil Kumar.<br>Exhibit-3a. One dirty brown colored underwear.<br>Exhibit-3b- One dirty blue with white red & black striped T-shirt. |
| IV  | 1-Dr | Sealed airtight glass bottle containing exhibit-4 stated to be of Sunill Kumar.<br>Exhibit-4. A Bunch of dark brown strands of hair described as pubic hair..                                              |
| V   | 1-Dr | Sealed airtight glass bottle containing exhibit-5 stated to be of Sunil Kumar.<br>Exhibit-5. Two cottonwool swab on sticks described as swab.                                                              |

#### **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-3a (underwear) and exhibit-5 (swab). However semen could not be detected on rest of the exhibits mentioned above.”

14. On an analysis of the above, as made in the apposite report, comprised in Ex.PX, the learned trial Judge concerned, hence concluded that since it did not make any underlinings qua human semen, being detected on any of the items, as became sent there. Thus, the learned trial Judge did also tenably conclude, that sexual intercourse was never committed, upon the prosecutrix.

#### **The reason for concurring with the judgment as pronounced by the learned trial Judge concerned**

15. The assignment of credence, to the statement made by the prosecutrix, under Section 164 of the Cr.P.C., to which Ex. PW-2/A

becomes assigned, viz-a-viz the testification, made in Court by her, rather by the learned trial Judge concerned, hence is creditworthy. The reason becomes founded, upon the factum, that Ex. PW-2/A naturally is the previous statement, in writing of the prosecutrix, and, when therein, she exculpated the accused, then any subsequent thereto inculpation, if any, as made by the prosecutrix against the accused, is but, an open, and, rife embellishment or improvement from her earlier statement, as became made by her under Section 164 of the Cr.P.C. Therefore, her testification in Court, was ably concluded by the learned trial Judge concerned, to be neither inspiring confidence nor being amenable for becoming meted any credence.

16. Even the statement of the mother of the prosecutrix (PW-3), qua the prosecutrix, after returning home, purportedly making an intimation to her, about the accused subjecting her to forcible sexual intercourse, is completely untruthful, and prevaricated, given in her cross-examination, hers echoing that the said intimation was never directly given to her by the prosecutrix, but was rather purveyed by the prosecutrix to her mausi, who thereafter conveyed the same to her. Therefore, the intimation, if any, as made by the mausi of the prosecutrix, to the mother of the prosecutrix, is but merely hearsay evidence. To hence dispel the lack of its carrying any evidentiary vigour, it became imperative, upon the prosecution to cite the mausi of the prosecutrix, as a prosecution witness. However, the said has not been done. Therefore, the statement of the mother of the prosecutrix, about her sister making an intimation to her, about her daughter conveying to her i.e. the mausi of the prosecutrix qua the prosecutrix, being subjected to forcible sexual intercourse by the accused, becomes frail, as, it obviously remains in the realm of inadmissible hearsay evidence, to which no

credence is to be assigned.

**Relevance of the age of the prosecutrix**

17. Even if the efficacy of the report of the FSL concerned, is scuttled, by the findings, made in the MLR Ex. P8, as proven by PW-12. Moreover, even though, the FSL concerned, has reported that, on the items sent to it for examination(s), no human semen, being detected, but the said fact would not per se lead this Court to make a conclusion, that the accused had not subjected the prosecutrix to sexual intercourse, as the doctor concerned, who in respect of the prosecutrix, prepared MLR Ex. P18, has testified in her examination-in-chief, that there was a possibility of the prosecutrix, being put to sexual assault. Therefore, it has to be determined, whether in the face of the above, the factum of the prosecutrix voluntarily joining the company of the accused, and, also hers being a consensual partner to the sexual intercourse, if any, which became perpetrated, upon her, by the accused, rather at the relevant time, does rather purvey any exculpatory leverage to the defence. The defence can ably capitalise from the above, only if at the relevant time, the prosecutrix was evidently a minor. The necessity for making the above determination arises from the factum, that if she was, at the relevant time, evidently a minor, thereupon, she became completely incapacitated in law to mete any valid consent to the accused.

**Creditworthiness of school leaving certificate vis-a-vis the date of her birth entered by the Registrar of Births and Deaths**

18. For determining the above, it is necessary to bear in mind the school leaving certificate, to which Ex. P1 is assigned, as relates to the prosecutrix, and, which has been proven by PW-1. Thereins, the date of birth of the prosecutrix is mentioned as 1.1.2004. Thus, at the relevant time,

she was prima-facie a minor, and, was obviously under a severe legal disability to mete any valid consent to the accused. However, per se on anvil of Ex. P1, neither any firm conclusion can be drawn that, as a matter of fact, the prosecutrix, at the relevant stage, was a minor, and, nor any firm conclusion can be erected that she then was under a legal disability to mete any valid consent to the accused. The reason for forming the above inference, ensues from the factum, that PW-1 had produced in Court, the admission register, pertaining to the admission of the prosecutrix, wherein, her name was entered at Sr. No. 60, and, therein though, her date of birth is mentioned as 1.1.2004, but in her cross-examination, she has yet stated that the said entry was made on the basis of the certificate, issued by the Head Teacher, Government School Ratanpura, Block Jagadhri (Yamuna Nagar), where the prosecutrix was initially admitted. Moreover, she has also stated that the birth certificate of the prosecutrix, as issued by the Registrar of Births and Deaths, was never furnished before the school concerned, by the parents of the prosecutrix. Moreover, there is a further echoing in her cross-examination, that at the time of admission of the prosecutrix in the school concerned, after hers being released from Government School Ratanpura, Block Jagadhri (Yamuna Nagar), rather no affidavit being furnished by her parents hence relating to the precise date of birth of the child. Therefore, it became incumbent, upon the prosecution to lead cogent evidence, not only through producing the relevant records relating to the admission of the prosecutrix in Government School Ratanpura, Block Jagadhri (Yamuna Nagar), wherefrom she thereafter got admitted in Shivalik Public Senior Secondary School, Sabapur, District Yamuna Nagar, and, wherefrom Ex. P1 became issued, but it also became incumbent upon the prosecution, to also

adduce into evidence the birth certificate of the prosecutrix, as became issued from the Registrar of Births and Deaths. However, the said records were never endeavoured to be summoned, nor the prosecution deemed it fit to place on record the birth certificate of the prosecutrix, as became issued by the Registrar of Births and Deaths. Moreover, reiteratedly the prosecution also failed to place on record any affidavit, as became appended with the apposite application by the parents of the prosecutrix, at the time of theirs getting their ward admitted at the initial stage in Government School Ratanpura, Block Jagadhri (Yamuna Nagar). Moreover, the prosecution omitted to place on record any affidavit, in respect thereof, as may have become furnished by the parents of the prosecutrix, on theirs subsequently getting her admitted in Shivalik Public Senior Secondary School, Sabapur, District Yamuna Nagar. The effect of the afore wants, are that, on the basis of Ex. P1, which is but only a school leaving certificate, and, though records therein the date of birth of the prosecutrix, as 1.1.2004, rather no firm conclusion can be made, that it does constitute, the exact, and, precise date of birth of the prosecutrix. Rather the best admissible evidence, in respect of the precise, and, credible age of the prosecutrix, and to which a rebuttable presumption of truth is attached, is comprised in the birth certificate of the prosecutrix, as became issued by the Registrar of Births and Deaths, as, obviously the act of its issuance, makes it an act, rather performed in the discharge of public duties by a public official, and, whereto a statutory presumption of truth is fastened, hence through the mandate cast under Section 25 of the Indian Evidence Act. Since the above evidence is completely amiss, nor also when the relevant affidavit is placed on record, therefore, the absence of the above best admissible evidence, reiteratedly

rather render the echoing in Ex. P1, about the prosecutrix being born on 1.1.2004, to be neither credible nor the apposite best evidence. Thus, it cannot be, on the basis of Ex. P1, as ably concluded by the learned trial Judge concerned, also concluded by this Court that the prosecutrix, at the relevant stage, was a minor, and/or, she was then not legally capacitated to mete any valid consent to the accused, for the latter perpetrating any sexual intercourse, upon her. Since the sexual overtures concerned, were conspicuously consensual, thus the charge drawn against the accused ought to fail.

**Final order**

19. 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 impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

20. Records be sent down forthwith.

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

**(SURESHWAR THAKUR)**  
**JUDGE**

**(KULDEEP TIWARI)**  
**JUDGE**

**December 6<sup>th</sup>, 2022**  
**Gurpreet**

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