

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1190-2022 (O&M)
Reserved on: 13.09.2023
Date of decision: 19.09.2023

RAJESH KUMAR ALIAS RAKESH

...Appellant

Versus

STATE OF PUNJAB

...Respondent

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

Present: Ms. Vashundara Dalal Anand, Legal Aid Counsel with
Mr. T.P.S. Bawa, Advocate for the appellant.

Ms. Lavanya Paul, DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 31.08.2022, upon Sessions Case No.RT-27/2020, by the learned Sessions Judge, (Exclusive Court for Heinous Crimes against Women), Rupnagar, wherethrough, in respect of charges drawn for offences punishable under Sections 363, 366, 376-2(1) of IPC, besides under Section 6 (substantive Section 5(I) of Protection of Children from Sexual Offences Act, 2012, he recorded a verdict of conviction against the convict. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner.

Under Section	Sentence
Under Section 363 IPC	To undergo rigorous imprisonment for Two years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

Under Section	Sentence
Under Section 366 IPC	To undergo rigorous imprisonment for Three years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.
Under Section 6 read with section 5(I) of POCSO Act, 2012	To undergo rigorous imprisonment for Twenty years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

2. All the substantive sentences were ordered to run concurrently. The period spent in prison by the convict, thus during investigation or trial, was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. The convict becomes aggrieved from the above drawn verdict of conviction besides also becomes aggrieved from the above drawn order of sentence, thus, he is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

4. The genesis of the prosecution is that, complainant Santosh Kumar son of Ganga Parshad was running a tea shop in Grain Market, Kiratpur Sahib. He has four children i.e. two daughters and two sons. His eldest daughter is about 15 years of age. She was a student of 10th class. Accused Rajesh Kumar alias Lallu had been working in the tea shop of the complainant for the last 7-8 months. On 9.1.2020, the eldest daughter of the complainant (hereinafter referred as "the victim") went in the hut after having meals and slept. In the morning, the complainant found that the victim was not present in the hut. The complainant searched for his daughter. He also observed that the accused Rajesh Kumar had not come to the shop. He continued searching for his daughter at his own level, but he could not find out any clue and ultimately, he came to know that the

accused had enticed away her daughter on the pretext of getting married to her and he had taken away her daughter to some unknown place.

INVESTIGATION

5. On 25.1.2020, the complainant reported the matter to the police and his statement Ex.PW1/A was recorded by SI Navdeep Kaur when she was present at Patalpuri Chowk, Kiratpur Sahib. After recording the statement of complainant Santosh Kumar, SI Navdeep Kaur carried out police proceedings and sent ruqa to the police station, on which basis formal FIR was registered against the accused. The investigation was conducted by SI Navdeep Kaur. On 18.2.2020, complainant Santosh Kumar produced birth certificate of the victim and the same was taken into possession vide separate memo.

6. On 19.2.2020, accused Rajesh Kumar and victim were traced from Bhuntar, District Kullu, Himachal Pradesh. The victim was identified by the complainant and recovery memo of the victim was prepared. ASI Balbir Chand arrested accused Rajesh Kumar. Arrest-cum-information memo and personal search memo of accused were prepared. Site plan of place of recovery of victim was prepared. On 20.2.2020, medical examination of the victim was got conducted from Civil Hospital, Sri Anandpur Sahib and the victim was found pregnant. The medical examination of the accused was also got conducted from Civil Hospital, Sri Anandpur Sahib and the doctor gave opinion that there was nothing to suggest that the accused was incapable to do sexual intercourse. The victim was produced before the learned Ilqa Magistrate and her statement under Section 164 Cr.P.C. was recorded. The victim was handed over to her guardians and a memo in this respect was prepared. The parcels containing medical samples of the victim were sent to DCFSL Sector 36-A, Chandigarh for chemical examination. Statements of the witnesses under Section 161 Cr.P.C. were recorded. Ultimately, on completion of investigation, challan was presented in

the trial Court against the accused under Section 363, 366, 376 IPC and 6 of Protection of Children from Sexual Offences Act, 2012.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 10 witnesses and, subsequently, the public prosecutor closed prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

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

9. The learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is merit worthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

ANALYSIS OF THE STATEMENT OF PW-2 (VICTIM)

10. The prosecutrix stepped into the witness box as PW-2, and, therein made speakings which are in alignment with her previously made statement, to the police officer, to which Ex.PW-2/A is assigned. Moreover, she also corroborated her statement, as became made by her before the learned Magistrate concerned, in proceedings drawn under Section 164 Cr.P.C. At the fag end of her

examination-in-chief, she has deposed that her 3 months' pregnancy, under the orders made by the learned Court concerned, thus was ordered to be aborted at the Civil Hospital, Rupnagar.

11. Consequently, thereby she has rendered a confidence inspiring besides her truthful version vis-a-vis the genesis of the prosecution case.

12. Though, she attributes to the present appellant the incriminatory role of his committing a forcible sexual intercourse with her. Nonetheless in her cross-examination she has admitted that, in her statement mark D2, she omitted to specifically attribute to the appellant, the incriminatory role of his forcibly subjecting her to any penetrative sexual assault. She has also in her cross-examination accepted the truthfulness of Ex.D4, exhibit whereof, is the marriage affidavit, thus portraying qua hers solemnizing marriage with the appellant. The said marriage certificate became attested at Bhuntar in Himachal Pradesh. Though, on the plank of the above made acquiescence by the victim, thus in her cross-examination, the learned counsel for the appellant argues, that the sexual relations as became developed *inter-se* the victim, and, the appellant rather being entirely consensual. However, the above comes negated from the factum, that the prosecution was able to adduce best evidence comprised in the birth certificate of the victim, as kept, and, as did emanate from the Registrar of Births and Deaths. To the said certificate becomes assigned Ex.PW-4/A, wherein, her date of birth is entered as 03.07.2004, thereby the victim was a minor at the relevant stage. Consequently, she was completely disabled to make any valid or lawful consent to the present appellant, thus for his perpetrating any penetrative sexual assault upon her.

13. Though suggestions became meted to PW-4 rather devolving, upon corrects recital occurring in PW-4/A vis-a-vis the date of birth of the victim.

However, unless the apposite application made before the Registrar of Births and

Deaths, thus by the parents of the victim, rather became adduced into evidence, and, therein occurred recitals but contrary to the one(s), as made in Ex.PW-4/A, thereby the date of birth of the prosecutrix entered in Ex.PW-4/A, would continue to enjoy an aura of credibility.

14. However, the said application remained unadduced into evidence nor when the father of the prosecutrix who stepped into the witness box, as PW-1 became confronted with Ex.PW-4/A, for thereby the recitals made in Ex.PW-4/A, thus being attempted to become overcome. Resultantly, in the wake of the above omissions, the entry made in PW-4/A, qua the date of birth of the prosecutrix, is to be construed to be made not only in terms of corresponding thereto recitals, as carried in the relevant application, thus submitted by her parents, before the Registrar of Births and Deaths, besides the said entry is also construable to be made in terms of the enclosed hospital intimation.

15. The effect of the above discussion, is that, the exculpatory plea projected by the learned counsel for the appellant, thus premised on the above admission made by the prosecutrix in her cross-examination, thereby purportedly making the sexual intercourse entered into by the present appellant with the victim, thus consensual, rather does not inspire the confidence of this Court. The reason being that, at the relevant stage for reasons (supra), the victim was but a minor, and, thereby became completely disabled to purvey any lawful consent to the present appellant to subject her to any penetrative sexual assault.

CFSL (DNA) report Ex. PW3-A

16. The report of the DNA specialist at the FSL concerned, is embodied in Ex. P-24. The said report is extracted hereinafter.

“Table 1: Detailed description of Parcels/Exhibits received:

Sr. No.	Parcel No.	Seal No. of seals	impression/Description	Laboratory Exhibit No.
1	P-1	APS (01 SEAL)	One sealed cloth parcel containing following Exhibits said to be of Ms. Anchal 1. One green color dupatta 2. One green color shirt. 3. One green colour salwar. 4. One red color bra.	Exhibit 1A Exhibit 1B Exhibit 1C Exhibit 1D
2	P-2	APS (05 SEALS)	One sealed cloth parcel having one small box containing following Exhibits said to be of Ms. Anchal. 1. Five plastic tubes containing vaginal swabs 2. Two slides. 3. Three blotting paper having reddish brown stains said to be blood sample of Ms. Anchal. 4. One plastic box containing few pubic hair strands.	Exhibit 2A Exhibit 2B Exhibit 2C Exhibit 2D
3	P-3	APS (7 SEALS)	One sealed cloth parcel containing plastic box having an EDTA vial said to be Blood sample of Ms. Anchal.	Exhibit 3

Xxx

OBSERVATION:

1. Human semen could be detected on Exhibit 2D (Pubic hair of Ms. Anchal). However, Human semen could not be detected on Exhibits 1A, 1B, 1C, 2A and 2B.
2. Y Chromosomal DNA profile recovered from the source of Exhibit 2D (Pubic hair of Ms. Anchal) is **matching** with Y Chromosomal DNA Profile obtained from source of Exhibit 4 (Blood sample of Mr. Rajesh Kumar) at all amplified loci. However, No Y chromosomal DNA profile was recovered from Exhibit 1A, 1B, 1C, 1D, 2A, 2B.
3. Mixed Autosomal DNA profile was recovered from the source of Exhibit 2D (Pubic hair of Ms. Anchal) and is **matching** with the autosomal DNA profile obtained from the source of Exhibit 4 (Blood sample of Mr. Rajesh Kumar) at 21 out of 22 amplified loci.
4. Autosomal DNA profile of a female individual was recovered from the source of Exhibit 2A & 2B (Vaginal swabs & slides of Ms. Anchal) and is matching with autosomal DNA Profile obtained from the source of Exhibit 3 (Blood sample of Ms. Anchal).

CONCLUSION:

Based on the above observations, it is concluded that the DNA profile of Mr. Rajesh Kumar (Source of Exhibit 4) is accounted being present in the mixed DNA profile obtained from the pubic hair of Ms. Anchal (Source of Exhibit 2D). ”

17. A reading of the above conclusions made by the DNA Specialist, on making the relevant inter-se comparison, thus bring forth an inevitable

conclusion, that DNA profile obtained from the pubic hair of the victim completely matching with the DNA profile of the victim. Consequently, with the above conclusions becoming recorded in the report of the DNA Specialist, and, to which a presumption of truth is attached, whereas, the said presumption of truth remaining uncontested nor rebutted through adduction of cogent repelling thereto evidence. Therefore, the above best scientific evidence, thus of a forensic expert, is creditworthy, and, thereby the prosecution has been able to conclusively establish the guilt of the accused in vis-a-vis the charged offences.

MEDICO-LEGAL REPORT

18. The MLR of the victim conducted by PW-3 is embodied in Ex.PW-3/C. The said report is extracted hereinafter.

“Xxx

<i>Location of Injury</i>	<i>Injury Details</i>	<i>Marked</i>	<i>Injury No.</i>
<i>Others</i>	<i>No marks of external injury visible on body</i>	<i>No</i>	<i>1</i>
<i>Details regarding penetration (as narrated by the female victim/accused/ guardian);</i>			
<i>a)</i>	<i>Was penetration attempted by penis, fingers or other object?</i>	<i>Yes”</i>	

19. The above conclusions completely support the findings recorded by the PW-3C in his report Ex.PW-3/C.

ULTRASONOGRAPHY REPORT

20. The ultrasonography of the victim conducted by PW-10 is embodied in Ex.PW-10/A. The said report is extracted hereinafter.

“ULTRASONOGRAPHY REPORT

Date 26/2/20

xxx

FETAL ULTRASOUND

Single Live Fetus is seen with 44 stable

BPDE: 14.4 mm (12 weeks)

xxx

FL: 6.5 mm (12 weeks)

Placenta is seen along the

**Fetal Limb and body movements are normal*

** Fetal cardiac activity is normal*

** Liquor is adequate*

No Gross congenital malformation seen

IMPRESSION: Single live fetus of 12 weeks gestation."

21. The result of the ultrasonography test made, upon the victim of the offence, is not only supportive, but also corroborative thus in proving the charged offences against the convict.

FINAL ORDER

22. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thus thereupon, he is ordered to be forthwith taken into custody, through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. 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.

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

(SURESHWAR THAKUR)
JUDGE

19.09.2023

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(KULDEEP TIWARI)
JUDGE