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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-32-2021 (O & M)
Reserved on: 06.09.2024
Pronounced on: 20.09.2024

Honey SinghAppellant
Versus
State of PunjabRespondent

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

Argued by: Mr. Harpreet Singh Multani, Advocate (legal aid counsel)
for the applicant-appellant.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the convict-appellant, against the verdict of conviction, as made on 19.11.2020, by the learned Additional Sessions Judge/Fast Track Special Court under POCSO Act, Ludhiana, upon, Session Case No. 950 of 2018, wherethrough, in respect of charges drawn for offences punishable under Section 376, 506 of the IPC, and, Sections 3 & 6 of the POCSO Act, he made a finding of conviction against the accused.
2. Moreover, through a separate sentencing order drawn on 19.11.2020, the learned trial Judge concerned, proceeded to impose upon the convict (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

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Name of convict	Sentenced U/s	Sentenced to R.I.	Fine of Rs.	In default of payment of fine.
Honey Singh	376 (3) of IPC	20 years	Rs. 50,000/-	1 month RI
-do-	6 of the POCSO Act, 2012	20 years	Rs. 50,000/-	1 month RI

3. The convict-appellant becomes aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences 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 appeal before this Court.

Factual background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PA is assigned.

5. The complainant one Ranjit Kaur, mother of the prosecutrix has made narrations therein that she alongwith her husband and children was residing at Village Latala for the last twenty years and they used to do work of labour in the houses of the Villagers. She has two daughters and four sons. Among them elder daughter Kirna Kaur is married. Younger to her are four sons and then her daughter (victim/prosecutrix) who is younger to all and aged about 13 years. They all used to do labour work. She further submitted that she alongwith her husband and the younger daughter/victim/prosecutrix used to reside in a room. Earlier her husband Karam Singh was residing

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with Jasvir Kaur D/o Inder Singh, resident of Village Jathwalan as husband & wife and they are having two sons namely Sunny Singh and Honey Singh. About 22 years back, Jasvir Kaur left Karam Singh and solemnized court marriage with Satpal Singh S/o Dhanna Singh, resident of Village Kartarpur, District Sangrur. Jasvir Kaur alongwith his both sons Honey Singh and Sunny Singh started residing with the said Satpal Singh (Dhanna Singh) and now Jasvir Kaur alongwith her above said sons started residing at Ram Nagar, Sivian, District Sangrur.

6. She further stated that few years back, Sunny & Honey started visiting her house at Village Latala. Thereafter, Honey Singh stayed with them for two months and then went back to his village Ram Nagar Sivian. On 5.7.2018, her minor daughter/prosecutrix told her (complainant) that Honey Singh has committed rape repeatedly upon her (prosecutrix) forcibly against her wishes during the months of March & April when he stayed with them at Village Latala and the said Honey Singh threatened to kill the family of complainant if she (i.e.the victim prosecutrix) disclosed anything about the same to anyone and due to this reason her minor daughter/prosecutrix did not disclose this thing earlier to anyone. Thereafter, complainant and her husband met Panch- Jagmail Singh and explained the whole story to him. Then the matter was reported to the police. Complainant thumb marked her statement which was made by her with the investigating officer, who made endorsement on it. Offences under Sections 376, 506 IPC and Sections 3 & 4 of the POCSO Act were made out. Ruqa was sent to

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police station through HC Avtar Singh No.753, for registration of case. On 06.07.2018, the victim/prosecutrix was got medico-legally examined from Civil Hospital, Pakhowal and on the same very day accused was arrested in this case.

Investigation proceedings

7. Investigating officer prepared the site plan of the place of occurrence at the instance of the complainant. Statements of witnesses were recorded. The vaginal swabs of victim/prosecutrix were sent to the Chemical Examiner, Kharar on 12.07.2018. 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 Committal Judge concerned.

Committal proceedings.

8. Finding the offences punishable under Section 376 of the IPC and Sections 3 and 6 of POCSO Act, to be exclusively triable by the Court of Session, thus the learned committal Court vide order dated 26.10.2018, committed the case for trial to the Court of the learned Sessions Judge, Ludhiana.

Trial Court Proceedings

9. On finding a *prima facie* case, charge under Section 376 (3) IPC and Section 6 of the POCSO Act, became framed against the accused concerned, to which he pleaded not guilty, and, claimed trial.

10. In support of the prosecution case, the prosecution examined eleven witnesses. After completion of recording of the

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depositions of the prosecution witnesses, the learned Additional Sessions Judge Ludhiana, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused examined one witness in his defence

11. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge/Fast Track Special Court under POCSO Act, Ludhiana, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellant.

Submissions of the learned counsel for the convict-appellant.

12. The learned counsel for the aggrieved convict-appellant herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as imposed, upon the convict-appellant, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the evidence, existing on record. Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

Submissions of the learned State Counsel

13. 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.

Case based on the testimony of prosecutrix

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14. For proving the charges (supra) drawn against the convict, the prosecution made reliance upon the deposition of the prosecutrix, who stepped into the witness box, as PW-6. The contents of the examination-in-chief, as rendered by PW-6 are ad verbatim extracted hereinafter.

I have one sister and four brothers. We all are doing labour work. I am residing with my parents in a room of our residential house. Earlier my father was living with Jasbir Kaur as husband and wife and out of that relationship, two sons Sunny Singh and Honey Singh were born. Before my birth, Jasbir Kaur left my father and started residing with Satpal Singh in District Sangrur. Her sons Sunny Singh and Honey Singh are also left with her and started residing there. Thereafter, my father started living with my mother Ranjit Kaur. About 1-1/2 years ago, Honey Singh came to my father and started working with him. During winter season of last year, in the month of January/February, 2018, accused Honey Singh asked me to take keys of main gate. On that day, no other family member were present. I went inside the room to take keys, then accused Honey Singh came there and forcibly committed sexual intercourse with me. He threatened me not to disclose this incident to my mother and father, otherwise he would kill them and me. After that, accused used to forcibly commit sexual intercourse with me by threatening me. One day, I felt pain in my abdomen and my mother took me for medical examination and doctor told me that I was pregnant for six months. I disclosed to my parents that Honey Singh has made physical relations with me forcibly. My parents then informed Panchayat and police. My statement was recorded by the police in the month of July, 2018. My medical examination was also got conducted. My statement was also got recorded from Judge Sahib. (At this stage, Special PP for the State requested for opening of sealed envelope received from the court of

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victim..... Request considered and allowed. Sealed envelope opened in court and it was found containing statement of victim)

I have seen my statement recorded under Section 164 Cr.P.C. recorded by Judge Sahib on 03.08.2018 and it bears my signatures. My statement is Ex. PW6/A and my signature on the same is Ex.PW6/B. I have seen accused present today in court, who had committed sexual intercourse with me repeatedly. Later on, I gave birth to a male child.

15. The statement made by the prosecutrix under Section 164 Cr.P.C. is also ad verbatim extracted hereinafter. A reading of the hereafter extracted statement reveals, that the prosecutrix thus pointedly attributed an incriminatory role to the accused. Since the said statement remains unrebutted through adduction of cogent evidence, therebys implicit reliance is to be placed thereons. In sequel, therebys, enhanced vigor becomes acquired by the confidence inspiring testification rendered by the prosecutrix vis-a-vis the crime event.

“When my parents went to Maler Kotla, then Honey came to our house and asked me to take keys of main gate. I got the keys and I went inside the room to take keys which was opened, then Honey came there and he started doing wrong act with me and he threatened me not to disclose this incident to my mother and father, otherwise he would kill them and me. Honey asked me that we get married after running away from home and we will up bring two children. After that, one day Honey again came to our home and my father asked him to lie down with him on the cot. Honey lay down with my father on the cot. Then he came on my cot and stated doing the wrong act with me. Then my mother wake up. My mother asked him that what was your mother doing. Then he replied that she was doing work in a factory. Then I disclosed my mother that Honey got done wrong act with me. After that

when I felt pain in my abdomen and my mother took me for medical

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examination then we came to know that I was pregnant for six months. My parents got upset after hearing and started weeping. And they got out Honey from their house, he used to stay in our home who was got out from the home after quarrel. One time Honey tried to hit my mother with brick. Then my father said that we would inform the police and we informed the police.”

16. PW-6 also suffered the ordeal of an exacting cross examination, and, when yet during the course thereof, the defence counsel failed to elicit from her, any echoing qua the deposition (supra), as, comprised in her examination-in-chief rather being engineered, false, or, contrived. Therefore, completest credence is to be assigned to the deposition of PW-6.

Date of Birth of the Prosecutrix.

17. Moreover, the prosecution examined PW-7 Arvind Kaur, ETT teacher, who proved the various documents relating to the prosecutrix becoming born on 10.10.2008. The said documents are respectively, the copy of the admission and withdrawal Register of the Govt. Primary School, Latala, letter from the Sarpanch of village regarding date of birth of victim, verification report given to the police. On the said documents, Exhibit PW7/A, Ex. PW7/B and Ex. PW7/C became respectively assigned. A reading of the said documents discloses that the prosecutrix at the relevant time, thus was a minor, whereupon, she was completely incapacitated to render a lawful consent to the accused to subject her to coitus.

18. Predominantly also when after the above documents becoming tendered into evidence by the witness (supra), besides when

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then un-protested exhibit marks became made thereons, whereafter the said witness became subjected to grilling cross examination. However, when during her cross examination, she denied suggestion(s) that the exhibits (supra) are false and fabricated, therebys when no further evidence became adduced at the instance of the defence, to prove, that the recording therein of the date of birth of the prosecutrix rather was not a sequel of the parents making an application before the school authorities, thus with reflections therein qua her date of birth rather being contrary to the one as recited in the Exhibits (supra). Resultantly the omission of adduction of the evidence (supra), rather for eroding the worthwhile effect of the Exhibits (supra), thus disclosing that the prosecutrix was a minor at the relevant time, but naturally begets a firm conclusion, that the prosecutrix was a minor at the stage of commission of the offence and as such, was ill capacitated to render a lawful consent to the accused to subject her to coitus.

19. In sequel, any defence raised by the accused that the sexual assault, which became committed upon the prosecutrix was a sequel of the latter purveying consent to the accused rather becomes completely insignificant.

Medical Evidence

20. Dr. Jasmine Chhina, Medical Officer, CHC, Pakhowal, who drew the MLR in respect of the child victim, did step into the witness box as PW-11, and, during the course of her examination-in-chief, she proved her medico legal examination of the child victim, to

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which Ex.PW 11/A is assigned. The relevant observations, as become narrated in Exhibit (supra) are extracted hereinafter.

“On examination, I found following :-

- 1. Sexual characters well developed.*
- 2. Axillary hair well developed.*
- 3. Pubic hair shaved.*

No external injury was seen over the chest, abdomen or any part of the body.

On inspection, blood stained discharge was present per vaginum.

No external injury was found on genitalia.

Urine Pregnancy test positive. Hymen ruptured, tags of hymen present. *An ultrasound abdomen was advised for the assault. Patient referred to Civil Hospital, Ludhiana, for ascertaining the age of the patient and ultrasound abdomen.*

Swabs were taken and sent for chemical examiner, Kharar for the detection of spermatozoa.

Today I have brought original MLR Register today in the Court and computerized copy of MLR of Victim is Ex. PW11/A, which bears my signature, I have also seen chemical examiner report on the judicial file, in which spermatozoa was detected in the contents of Exhibit I. The Chemical Examiner Report is Ex. PW11/B. I have also seen original referral slip and same is Ex. PW11/C, vide which I referred the patient to Civil Hospital, Ludhiana for ultrasound abdomen. ”

21. Moreover, PW-9 Dr. Meenakshi Gupta, in his examination-in-chief, has deposed that she on 13.07.2018, conducted ultrasound (sonography) upon prosecutrix minor daughter of Karam Singh and she was found to be pregnant of 23 weeks and 2 days.

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22. In addition, PW-3 Dr. Gurcharan Singh, Medical Officer, Civil Hospital, Ludhiana, who conducted the medical examination of accused Honey Singh, in his examination-in-chief, thus has made echoings that '*there was nothing to suggest in my opinion that he was incapable of doing sexual intercourse*'.

23. Importantly, a perusal of the above exhibits (supra), does corroborate the version as made by the prosecutrix, especially when the hereinabove underlined portions disclose that hymen of the prosecutrix was ruptured besides also reveal that a fetus was carried in the womb of the prosecutrix, thereby the charge against the accused is concluded to be efficaciously proven.

24. Be that as it may, though report of the Chemical Examiner comprised in Exhibit PW11/B, reveals that spermatozoa was detected in the contents of Exhibit I, but yet therein there is no opinion about the the spermatozoa (supra), thus belonging to the accused. However, yet the lack of the above opinion does not entitle the accused to an acquittal. The reason for making the above conclusion becomes mobilized from the factum that the prosecutrix, rather has rendered a taint free confidence inspiring testification, in respect of the crime event.

Final Order of this Court.

25. In consequence, there is no merit in the appeal, and, the same is dismissed. The impugned verdict, and, consequent therewith

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sentence(s) (supra), as imposed upon the convict by the learned Convicting Court, is affirmed and maintained.

26. If the convict (supra) is on bail, thereupon, the sentences(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants.

27. 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 sent down forthwith.

28. Since the main case itself has been decided, therefore, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

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kavneet singh

Whether speaking/reasoned
Whether reportable

(KULDEEP TIWARI)
JUDGE

: Yes/No
: Yes/No