

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-1114-DB-2018 (O&M)

Reserved on: 04.04.2024

Date of decision: 27.05.2024

VIJAY MASTER

...Appellant

Versus

STATE OF HARYANA

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Ramnish Puri, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Pradeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 30.05.2018, upon Sessions Case CIS Registration No.206/2017, by the learned Additional Sessions Judge-cum-Special Court for the cases of heinous crime against women, Faridabad, wherethrough, in respect of charges drawn for offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, (hereinafter referred to as 'the Act of 2012') besides for offence punishable under Sections 342, 506 of the IPC, he recorded a verdict of conviction against the convict. Moreover, through a separate sentencing order of 31.05.2018, 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.

<i>Offence under which convict has been sentenced</i>	<i>Period of imprisonment</i>	<i>Amount of fine imposed</i>	<i>Imprisonment in default of payment of fine</i>
342 IPC	Rigorous imprisonment for one year	₹1000/-	Rigorous imprisonment for 7 days
506 IPC	Rigorous imprisonment for one year	₹1000/-	Rigorous imprisonment for 7 days
6 POCSO Act	Rigorous imprisonment for 20 years	₹25,000/-	Rigorous imprisonment for six months

2. 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. Out of the fine, if so realized/deposited, the victim child be paid a sum of Rs.20,000/- as compensation on account of trauma suffered by her.

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 on the basis of statement given by complainant Lal Bahadur, father of the victim, before the police, on 14.2.2017 with the allegations that he is doing job in a private company. He has five children. At about 5 p.m., when he was on his job, his son Rahul came and informed him that the prosecutrix did not come home. He and his son made search for the prosecutrix. The prosecutrix was found in an unconscious condition in a vacant land in front of Atmadpur bridge. He saw that after

committing wrong act with the prosecutrix by someone, she was left there. He arranged an Auto and took the prosecutrix to B.K. Hospital, Faridabad.

INVESTIGATION

5. On the basis of aforesaid complaint, formal FIR was registered. Investigation was conducted. Statements of witnesses under Section 161 Cr.P.C were also recorded. Police visited the spot and prepared site plan. Accused was arrested. The prosecutrix and the accused were got medico legally examined. All other necessary formalities of investigation were completed and challan under Section 173 Cr.P.C., was prepared and was presented in the trial Court for facing trial.

6. On finding *prima facie* case against accused, he was charge sheeted for offences punishable under Sections 342, 506 of the IPC and under Section 6 of the Act of 2012 by the trial Court vide order dated 18.5.2016, to which he pleaded not guilty and claimed trial.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 16 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 lead any defence witness.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

8. The learned counsel for the appellant has argued before this Court, that the verdict of conviction, as became rendered against the present appellant is flawed, and, is required to be set aside. Moreover, it is also contended that the order of sentence as made upon the appellant is also liable to be quashed, and, set aside.

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.

FOR THE REASONS TO BE ASSIGNED HEREINAFTER THE ABOVE MADE SUBMISSIONS ADDRESSED BEFORE THIS COURT BY THE LEARNED COUNSEL FOR THE APPELLANT IS NOT AMENABLE FOR ACCEPTANCE, AND, IS LIABLE TO BE REJECTED

10. The victim, as unfolded by Ex.PH and Ex.PH/1, proven by PW-5, exhibit whereof encloses her date of birth, was born on 11.5.2004. Since PW-5 tendered the document (supra) during the course of her examination-in-chief, and, as such during course thereof, the exhibit (supra) became made thereons. Therefore, the above revelation made thereins appertaining to the date of birth of the prosecutrix, does naturally acquire probative sanctity, as no cross-examination became conducted, upon the said witness, by the learned defence counsel, so as to bely the disclosures (supra), as made therein.

11. Even otherwise since no other further evidence also became adduced by the defence, so as to bely the correctness of the disclosures (supra), as made in the exhibit (supra) thereby, grave evidentiary sanctity is to be assigned to exhibit (supra). Resultantly, since at the time of commission of the crime event, thus the prosecutrix was a minor, therefore, she became completely incapacitated to make any lawful consent to the accused to subject her to coitus, or any exculpatory plea erected upon any consent being purveyed by the victim to the accused but becomes completely inconsequential.

12. In the above endeavour, it is but imperative to make a wholesome appraisal of the testification of the prosecutrix, and, of her father. The prosecutrix stepped into the witness box as PW-2, only after the learned trial Judge concerned, assessing/declaring her competence to depose as a witness, through hers rendering able answers to certain queries as became put to her. Moreover, when the statement, as made by the victim/prosecutrix, before the learned trial Judge concerned, is confidence inspiring, and/or is not tainted with any vices of hers grossly improving or embellishing, upon her previously made statement in writing, thereby utmost credence is to be assigned to the statement of the prosecutrix. The victim stepped into the witness box as PW-2. In her examination-in-chief, she rendered a version, which is in alignment with her previously made statement to the police officer concerned, and, to the Magistrate concerned.

MEDICAL REPORT

13. During the course of the investigation, the prosecutrix was medically examined at B.K. Hospital, Faridabad. The apposite MLR (Ex.PJ), as became proven by PW-7 also assumes importance. The relevant incriminatory contents of the MLR become extracted hereinafter.

“xxx

Medical Examination Report for Victims/Accused of Sexual Abuse

Miss Ms. ‘K’

xxx

Evidence of Intercourse:

SUGGESTIVE

Evidence of Child sexual abuse:

NIL

Investigation (Lab and Radiological):

AS DESCRIBED

Laboratory test reports (if any):

NIL

Opinion:

IN MY OPINION POSSIBILITY OF SEXUAL INTER COURSE CANNOT BE RULED OUT

14. The above extracted contents of the MLR, do personify, that thereins an opinions occur vis-a-vis possibility of sexual intercourse thus taking place. The above extracted opinion occurring in the MLR prepared and proven by its author (PW-7) rather does also remain unbelied, thereby the said opinion(s) acquires conclusivity.

15. In sequel, the result of the examinations, as made on the items enclosed in the sealed cloth parcels, result whereof becomes extracted hereinafter, when is but completely suggestive that thereby the prosecution has been able to prove the charge drawn against the appellant. Resultantly, therebys the results of the hereinafter extracted examinations, as made at the FSL concerned, do support and corroborate the unblemished testification of the prosecutrix, as became rendered vis-a-vis the crime event, besides also lend support to the incriminatory disclosure, as are carried in the MLR concerned.

“Laboratory Examination:

Laboratory examination was carried out to detect the presence of semen and blood on the exhibits performing chemical tests and microscopy. Based upon these examinations, the results obtained are given below:-

1. Human semen was detected on exhibit-4 (Underwear). However, semen could not be detected on exhibit-1(Swabs), exhibit-3a (Underwear), exhibit-3b(Pyjami) and exhibit-5 (Swab from glans penis).

2. Blood was detected on exhibit-1 (Swabs), exhibit-3a (Underwear) and exhibit-3b (Pyjami). However, blood could not be detected exhibit-4(Underwear) and exhibit-5(Swab from glans penis).

Note:- 1. After examinations, the exhibit(s) along with its/their original wrapper(s) has/have been sealed with the seal of RM, BHONDSI, GURGAON.

2. The result relates only to the items tested above.

3. Parcel No.II, was forwarded to Toxicology Division as such in original for poisonous substance detection.
4. Parcel No.III (Exhibit-3a and 3b) were forwarded for Serological Examination.

Sd/- 10.07.17
Richa Mehta
Assistant Director (Biology)

xxx
Regional Forensic Science Laboratory, Bhondsi, Gurgaon
xxx

Results of serological analysis of blood

Sr. No.	Name of exhibit	Origin
3a.	Underwear	Human
3b.	Pyjama	Human

Sd/- Anju 31/7/2017
Senior Scientific Officer (Serology)
Regional Forensic Science Laboratory
Bhondsi, Gurgaon (Haryana)”

16. Be that as it may, though, a reading of the above extracted results as made after making examinations of the items sent to the FSL concerned, thus discloses, that the DNA expert concerned, could not from the relevant material, as became sent to him, draw any incriminatory compatible matchings rather *inter se* the DNA profiling of the victim, and, the DNA profiling of the accused. Moreover, though on the anvil of the report of the DNA expert, the learned counsel for the appellant has argued before this Court, that thereby the testification of the prosecutrix rather loses its credence. However, the above argument loses its sheen, as the above alluded clinching incriminatory evidence adduced by the prosecution, especially the confidence inspiring testification of the prosecutrix, thus overcomes the purported lack of incriminatory echoings in the result (supra) made over the relevant examined items, rather by the DNA expert.

17. Importantly also, when in the event of penetrative sexual assault becoming committed, upon a minor victim, thus does not require ejaculation of semen into the vagina of the minor victim. Resultantly, thereby the absence of

any inculpatory semen in the vaginal swab of the minor victim also does not overrule the evidentiary efficacy of the creditworthy testification of the prosecutrix.

DISCLOSURE STATEMENT OF THE APPELLANT AND CONSEQUENT THEREWITH DEMARCATION OF PLACE OF OCCURRENCE

18. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accused to police remand. During the course of the appellant, being put to police remand, he made a signed disclosure statement, to which Ex.PP is assigned. The contents of the Ex.PP are *ad verbatim* extracted hereinafter.

“Disclosure statement of Accused Vijay

In the presence of the following witness, abovesaid accused Vijay disclosed with fear and pressure that on 14.2.17 I was taking tuition class of ‘K’ upstairs at my house, my intention got worse and on finding her alone, I called in a room downstairs and committed rape upon her. I can demarcate the place where in my house I raped ‘K’ without her wishes. Disclosure statement got recorded. Signatures of accused and witnesses were obtained on memo.

Sd/- in Hindi Vijay Accused

*Witness sd/- C Ram Mehar,
PS Women/Fbd.*

*Sd/- Maya Rani
PS omen/Fbd, dt. 17.2.17”*

19. A reading of the above extracted signed disclosure statement, as made by appellant, reveals that he had therein not only confessed his guilt, but had also disclosed, that he can ensure the demarcation of place of occurrence Ex.PQ, to the investigating officer concerned. Since in pursuance thereof, through demarcation memo Ex.PQ, he demarcated the place of occurrence. Significantly, also since the appellant did not either ably deny his signatures as occur on Ex.PP and on Ex.PQ, nor when he ably proved the apposite denial.

Moreover, since he has also not been able to bring forth tangible evidence but

suggestive, that the demarcated place of occurrence is either contrived or invented. Therefore, both the memos are concluded to be holding the utmost evidentiary tenacity. In sequel, therebys the prosecution has been able to unflinchingly establish the guilt of the appellant vis-a-vis the charges framed against him.

FINAL ORDER

20. 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.

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

(SURESHWAR THAKUR)
JUDGE

27.05.2024

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(LALIT BATRA)
JUDGE