

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-196-2019 (O&M)

Reserved on: 27.9.2024

Date of Decision: 14.10.2024

Vikram

.....Appellant

Versus

State of Haryana

.....Respondent

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

Argued by: Mr. Harshit Jain, Advocate for
Mr. Bijender Dhankar, Advocate
for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Karan Jindal, AAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 6.2.2019, upon Sessions case bearing No. 03-SC of 2018, by the learned Additional Sessions Judge-cum-Special Court for Heinous Crime against Women, Hisar wherethrough in respect of charges respectively drawn against the accused qua offences punishable under Sections 363, 366, 376, 506 IPC and under Section 4 of the Prevention of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act, 2012), besides under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC and ST Act), thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellant-convict.

2. Moreover, through a separate sentencing order of even date, the

learned trial Judge concerned, sentenced the appellant-convict in the

hereinafter extracted manner.

<i>Name of the convict</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine</i>
Vikram	363 IPC	03 years RI	Rs. 2,000/-	One month
	366 IPC	05 years RI	Rs. 2,000/-	One month
	376 IPC	10 years RI	Rs. 5,000/-	Two months
	506 IPC	2 years	Rs. 2,000/-	One month
	4 of POCSO Act	10 Years RI	Rs. 5,000/-	Two months
	3 of SC and ST Act	Life imprisonment (RI)	Rs. 5,000/-	Two months

3. All the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the appellant-convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

4. The case of the victim was also recommended for compensation and sent to District Legal Services Authority, Hisar, in view of the provisions contained under Section 357-A Cr.P.C.

5. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent thereto sentence(s) 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 criminal appeal.

Factual Background

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P-10 is assigned. As per the prosecution case, on 22.11.2017, prosecutrix alongwith her parents came to police station Sadar

Hisar and verbally disclosed about the incident before Sub Inspector Santosh. Sub Inspector Santosh called Ms. Meenu Raheja, Legal Aid Counsel, and, in her presence statement of the prosecutrix was recorded wherein she deposed that she is studying in 10+1 in Government Senior Secondary School, Nalwa. On that night at about 10.30 p.m. she went for urination in the bathroom situated outside their house. When she came out of the bathroom, accused Vikram son of Gugan, Caste Ahir, was present there, and, he gagged her mouth and took her in a vacant house situated after one house from her house. Thereupon, accused Vikram threatened her and committed rape upon her against her will. She came back to their house and awakened her parents, and, disclosed them about the incident. While accused Vikram was fleeing away after leaving her in that vacant house, he struck with a bull-cart which was standing in the street, in front of that vacant house, and, received injuries. She prayed for taking legal action against the accused Vikram. Upon the statement of prosecutrix, the appeal FIR became registered.

Investigation proceedings

7. During the course of investigations, offence under section 3 SC & ST Act was also added. The prosecutrix was got medico legally examined from General Hospital, Hisar. After that she was produced before Area Magistrate and her statement under section 164 Cr.P.C. was recorded. During investigation site plan of the place of occurrence was prepared. Statements of witnesses under section 161 Cr.P.C were recorded. 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

8. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused-appellant, for the offences punishable under Sections 363, 366, 376, 506 IPC and under Section 4 of the POCSO Act, 2012, and, under Section 3(2)(v) of the SC and ST Act. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

10. 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.

11. As above stated, the learned trial Judge concerned, proceeded to convict the convict-appellant for the charge(s) (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonments, as well as of fine, upon the convict-appellant.

Submissions of the learned counsel for the appellant

12. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

13. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict-appellant be dismissed.

Analysis of the submissions (supra)

14. The victim, as unfolded by Ex. P3, proven by PW-2, exhibit whereof encloses her date of birth, was born on 20.8.2000. Since PW-2 tendered the document (supra) during the course of his examination-in-chief, and, as such when during course thereof, the exhibit (supra) became made thereons. Therefore, the above revelation made therein appertaining to the date of birth of the prosecutrix, does naturally acquire probative sanctity.

15. 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, nor any exculpatory plea erected upon any consent being purveyed by the victim to the accused, but naturally becomes completely inconsequential.

16. 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.

17. The victim stepped into the witness box as PW-4. In her examination-in-chief, she rendered a version, which is in alignment with her previously made statement to the police officer concerned. Moreover, during the course of her cross-examination, a sealed parcel enclosing therein, a statement made by her under Section 164 of the Cr.P.C., before the jurisdictional Magistrate concerned, became retrieved therefrom, and, was shown to the victim, who, admitted that her signatures exist thereons at Point-A of Ex.P5. Moreover, she also testified, that the accused had also threatened her.

18. Since the statement (supra), made by the prosecutrix under Section 164 Cr.P.C., enjoys immense evidentiary worth, thereupon the same also corroborates the previously made statement by the prosecutrix before the police officer concerned, statement whereof, for reasons is free, from any taint or blemish, thereupon the combined effect of (supra), is but that, both (supra) when become rendered with complete *inter se* corroboration. Resultantly, therebys the prosecution has succeeded in proving the charge to the hilt.

19. Significantly and reiteatedly, the prosecutrix-victim, as borne out from her birth certificate Ex. P3, thus was a minor at the time of the commission of the alleged offences, thereby she was completely incapacitated to mete any lawful consent to the accused concerned, to subject her to coitus, nor when any exculpatory plea founded upon the sexual intercourse(s), if any, which occurred inter se the accused concerned, and, the victim, thus being completely consensual, rather is also completely

inconsequential. Therefore too, the charge against the accused becomes proven to the hilt.

MLR of the victim Ex. P-12

20. PW-7 Dr. Poonam Dahiya proved the MLR Ex. P12, wherein, echoings occur thus suggestive, that possibility of a sexual assault being made upon the victim, cannot be ruled out. Relevant portion of the MLR becomes extracted hereinafter.

“Xxx

Internal examination:- No mark of fresh injury seen on external genitalia. Hymen torn. No bleeding. Xxx Vaginal swabs taken and handed over to police.

Impression:- Possibility of sexual assault cannot be ruled out.”

FSL report Ex. P-26

21. The report of the FSL concerned, is embodied in Ex. P-26. The said report is extracted hereinafter.

Description of parcel(s) and condition of seal(s)

Six sealed parcel(s). The seals were intact and tallied with the specimen seal as per Forwarding Authority’s letter.

Description of article contained in parcel (s)

<i>Parcel No.</i>	<i>No. & seal impression</i>	<i>Description of parcel (s)</i>
<i>I.</i>	<i>5-PD</i>	<i>Sealed cloth parcel containing exhibit-1a & 1b stated to be of Pooja. Exhibit-1a. One dirty yellow colored underwear. Exhibit-1b. One dirty green salwar.</i>
<i>II.</i>	<i>1-PD</i>	<i>Sealed airtight glass vial containing exhibit-2 stated to be of Pooja. Exhibit-2. Two damp cottonwool swabs on sticks described as vaginal swab.</i>
<i>III.</i>	<i>1-PD</i>	<i>Sealed airtight glass vial containing exhibit-3 stated to be of Pooja. Exhibit-3. Two damp cottonwool swabs on</i>

		<i>sticks described as vaginal swab.</i>
<i>IV.</i>	<i>5-GH</i>	<i>Sealed cloth parcel containing exhibit-4 stated to be of Vikram. Exhibit-4. One dirty green colored underwear.</i>
<i>V.</i>	<i>1-GH</i>	<i>Sealed airtight glass vial containing exhibit-5 stated to be of Vikram. Exhibit-5. A bunch of dark brown strands of hair described as pubic hair.</i>
<i>VI</i>		<i>Blood sample of Vikram-Forwarded to DNA Division as such.</i>

Laboratory Examination

Laboratory examinations were carried out to detect the presence of semen on the exhibits by performing chemical test and Microscopy. Based upon these examinations, the results obtained are given below:-

1. Human semen was detected on exhibit-1a (Underwear), exhibit-2 (Vaginal swab), exhibit-3 (Vaginal swab) and exhibit-4 (Underwear). However, semen could not be detected on exhibit-1b (Salwar) & exhibit-5 (Pubic hair).

- Note: 1. After examination, the exhibit(s) along with its/their original wrapper(s) has/have been sealed with the seal of AD/BIO. FSL(H) MBN.*
- 2. The result relates only to the items tested above.*
- 3. Exhibit-1a, Parcel No. II, III & V were forwarded to DNA Division.”*

DNA report Ex. P-27

22. The report of the DNA specialist at the FSL concerned, is embodied in Ex. P-27. The said report is extracted hereinafter.

Description of parcel(s) and condition of seal(s)

Received four sealed parcel, seals were intact and tallied with the specimen seal.

Description of article contained in parcel (s)

Parcel	No. of seal	Description of parcel (s)
1A	3-A AD BIO FSL (H) MBN	One sealed yellow envelope labelled as 17/B-7992, Exh-1A, FIR-1153/17. P.S. Sadar Hisar, containing:- 1) One cut & dirty mustard underwear marked as item No. 1A.
2	3-A AD BIO FSL (H) MBN	One sealed yellow envelope labelled as 17/B-7992, P-2, FIR-1153/17. P.S. Sadar Hisar, containing:- 2) Two cut cotton wool swabs on a stick kept in a glass vial marked as item No. 2.
3	3-A AD BIO FSL (H) MBN	One sealed yellow envelope labelled as 17/B-7992, P-3, FIR-1153/17. P.S. Sadar Hisar, containing:- 3) Two cut cotton wool vaginal swabs on stick kept in a glass vial marked as item No. 3.
6	I-GH	One sealed vacutainer vial labelled as MLR No. RK/55/2017 Vikram, containing:- 6) Blood sample stated to be of Vikram marked as item No. 6.

Result of Examination

DNA was extracted from item No. 1A, 2, 3 and 6 and subjected to Autosomal STR analysis by using identifiler plus kit. DNA profile obtained from item No. 1A, 2 and 3 is compared with DNA profile of item No. 6.

The allelic pattern of item No. 1A, 2 and 3 matches with allelic pattern of item No. 6.

Conclusion

The Autosomal STR analysis indicates that DNA profile of seminal stains on the source of item No. 1A (underwear), item No. 2 (Swabs) & item No. 3 (Swabs) is matching with the DNA profile of Vikram (Source of item No. 6).”

23. The conclusion (supra), as made by the DNA Specialist, upon his making the relevant *inter se* DNA profilings, thus provides conclusive and cogent evidence vis-a-vis the inculpatory participation of the accused-convict in the crime event.

24. 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.

25. 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.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

October 14th, 2024
Gurpreet/Ithlesh

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