

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRA-D-649-2023 (O&M)  
Reserved on: 08.04.2024  
Date of decision: 18.04.2024

ANIL

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mrs. Kiran Bala Jain, Advocate and  
Mr. Pushp Gupta, Advocate  
for the appellant.

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

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SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 08.02.2023, upon Sessions Case CIS No.11 SC 2020, by the learned Additional Sessions Judge, Fast Track Court under POCSO Act, Ambala, wherethrough, in respect of charges drawn for offence punishable under Section 4(2) of the Protection of Children from Sexual Offences Act, 2012, she recorded a verdict of conviction against the convict, and acquitted the accused in respect of charges drawn for offences punishable under Sections 323, 354B, 452 and 506 of the IPC. Moreover, through a separate sentencing order of 09.02.2023, 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.

| Sections                   | Sentence                                                   | Fine            | Sentence in default of payment of fine default           |
|----------------------------|------------------------------------------------------------|-----------------|----------------------------------------------------------|
| Section 4 (2) of POCSO Act | Rigorous imprisonment for a period of <b>twenty years.</b> | Rupees 10,000/- | Simple imprisonment for a period of <b>three months.</b> |

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.
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 08.12.2019, child victim ‘S’ came with her family members in the police station. Her statement was recorded to the effect that she is 14 years old and has passed class 8<sup>th</sup>. Her parents are labourers. Accused Anil used to come to their house in jagran. On 07.12.2019, at 4.00 p.m, he came to their house. At that time, her parents were not at home. Said Anil @ Neel was drunk. She told him that none was present in the house and asked him to come when her parents would return. However, accused caught hold of her arm and took her in the room. He laid her on the cot, removed her clothes and developed physical relations with her forcibly. Her father returned back. Accused ran away from there. Her father gave her a cover sheet. Meanwhile, her mother also came back. She along with her mother and aunt (Mammi) went to the house of accused Anil. Anil and his parents gave them beatings. Her mother sustained injuries on her hand. She had been threatened to be killed in case anything regarding incident was disclosed to anyone. She prayed for initiating legal action against accused.

**INVESTIGATION**

5. As per the statement, offences under Sections 323, 506 IPC and Section 4 of POCSO was found to be made out and accordingly the case was registered. Site was inspected and statements of witnesses were recorded. Prosecutrix 'S' was medically examined. Section 452 of the IPC was added. Counselling was provided to her. On 10.12.2019, accused Anil @ Neel @ Neetu was arrested. Disclosure statement was made by him. Accused was medically examined at Civil Hospital, Ambala City. Birth certificate of child victim 'S' was got verified from Municipal Corporation, Ambala City. Samples of child victim and accused were sent to CFSL for examination. Scaled site plan was prepared by draftsman on 14.12.2019. During investigation, parents of accused were not found to be involved.

6. Ultimately, on completion of investigation, challan was presented in the trial Court against the accused under Sections 323, 354B, 452, 506 of the IPC and under Section 4 of Protection of Children from Sexual Offences Act, 2012.

**TRIAL PROCEEDINGS**

7. The prosecution examined as many as 15 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 choose to lead only one defence evidence.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT**

8. The learned counsel for the appellant has argued before this Court, that even though the report of DNA Expert, as embodied in Ex.PX makes revelations about the incriminatory role of the present appellant in the crime event. However, she argues that the incriminatory effect, if any, of the exhibit

(supra), becomes blunted, from both the prosecutrix and her mother, while respectively stepping into the witness box thus respectively, as PW-2 and PW-3, rather completely resiling from their previously made statements in writing.

9. Therefore, it is forcefully contended 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**

10. 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**

11. Though, initially the prosecutrix-child victim, as revealed by her birth certificate embodied in Ex.P-15, proven by PW-7, was a minor, at the relevant stage, thus thereby was disabled to make a valid consent to the accused, thus to subject her to coitus. Resultantly, any exculpatory plea founded upon the sexual intercourse, if any, which occurred *inter se* the appellant and the prosecutrix rather being consensual, but does not hold any significance.

12. Be that as it may, it has to be yet adjudicated whether the testifications rendered vis-a-vis, the crime event, thus respectively by the prosecutrix, who stepped into the witness box as PW-2, and, by her mother who stepped into the witness box as PW-3, rather are confidence inspiring or not.

13. It is trite law that the confidence inspiring and unblemished version rendered qua the crime event by the prosecutrix does hold immense evidentiary worth and solitarily on the said premise, this Court is required to uphold the verdict of conviction.

14. Nonetheless, in the instant case the prosecutrix as well as her mother both reneged from their previously recorded previous statements in writing, thereby their testifications as rendered vis-a-vis the crime event do becomes engulfed in an aura of doubt. Though, therebys *prima facie* this Court may not be led to uphold the verdict of conviction, and, the consequent thereto sentence of imprisonment imposed upon the appellant by the learned trial Judge concerned.

15. However, it is also trite law that even if the prosecutrix and her mother do renege from their previously recorded statements in writing, yet their respectively made testifications are thus not in their entirety rather to become construed to be bereft of any vigor. Contrarily, if during the course of cross-examinations being made, upon them, by the learned public prosecutor concerned, rather they acquiesce to those suggestions wherefrom an inference may become mobilized, that they are colluding with the appellant. Resultantly, this Court may from certain acquiescings made by them to the apposite suggestions meted to them by the public prosecutor, rather conclude, that therebys the prosecution but irrespective, of the victim reneging from her previously recorded statements in writing, thus has ably proven the charge drawn against the appellant.

16. In the above endeavour, it is but imperative to make a wholesome appraisal of the testification of the prosecutrix, and, of her mother. 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.

17. Though in her examination-in-chief, she completely resiled from her previously made statement before the investigation officer concerned. However, after hers becoming declared hostile by the learned trial Judge concerned, the learned public prosecutor confronted her with her statement, as made under Section 164 Cr.P.C., before the learned Magistrate concerned. To the said statement Ex.P-3 is assigned. Though, she admitted that she made her signatures thereons, but yet she stated that the said statement was made upon pressure becoming exerted upon her by the police. The credibility of the prosecutrix admitting her signatures on Ex.P-3, but yet hers denying the fact that it was voluntarily made, thus is to be gauged from the testification made by PW-5, who is the learned Magistrate concerned, wherebefore whom, Ex.P-3 became recorded.

18. For lending proof vis-a-vis the authenticity, and/or qua the voluntariness of the making of Ex.P-3 by the prosecutrix, thus the learned Magistrate concerned, stepped into the witness box as PW-5, and, in her examination-in-chief she deposed that the victim had put her signatures on Ex.P-3, and, she also deposed that subsequently she had made a certificate Ex.P-10 at the foot of Ex.P-3. The contents of the said exhibit, are extracted hereinafter.

“xxx

*Statement of Suman D/o Mangu Ram resident of Kola Gaon near Jandli age 14 years.*

*Q: Do you want to give statement?*

*Ans. Yes*

*Q: Are you giving the statement of your own will?*

*Ans: yes*

*I am satisfied that deponent is deposing of her own will without any pressure.*

*Q: What do you want to say?*

*Ans. Stated that I was alone at home on the day before yesterday at 4:00 Pm Chacha Ji Anil Kumar came and I said you to then he started asking where is mummy so I said that mother has gone to Chandigarh for some work. He twisted my arm and threw me on the bed, pressed my mouth and took off my clothes and forced himself on me and after that he did wrong act with me and did not move from me, then my father came and he put a cover sheet on me. Meanwhile he ran away and he also kissed me. Then at night when we went to his house, he and his family members started scolding us. They gave beatings to mummy. His parents beaten my mummy, my maami and me.*

*RO&AC*

*Sd/- In Hindi*

*Suman*

*Sd/- in English  
(Yachna)  
JMIC/Ambala  
9.12.19*

***Ex.P-10***

*I certified that the above recorded statement is recorded by me in my handwriting and contains true and full accent of the statement made by the deponent.*

*Sd/- in English  
(Yachna)  
JMIC/Ambala  
9.12.19  
Ex.P-10”*

19. Moreover, she also stated that subsequently she passed an order Ex.P11, order whereof becomes extracted hereinafter, regarding the making of Annexure P-3 before her by the learned Magistrate concerned. A reading of Exs.P-10 and P-11, do vividly discloses, that the statement Ex.P-3 was made voluntarily by the prosecutrix. Since no evidence to challenge the authenticity of the making of the said certificate becomes adduced, thereby solemn evidentiary

worth but is mobilized by Ex. P-10, and, also by the consequent thereto order (Ex. P-11). Resultantly, thereby the statement made by the prosecutrix in her cross-examination whereby she denied that Ex.P-3, rather was made voluntarily does becomes completely eclipsed, besides the evidentiary tenacity of the said stated fact also becomes belied.

“xxx

*On 09.12.2019, I was posted as such. On that day, the police had moved an application **Ex.P9** for recording the statement of child victim u/s 164 Cr.P.C. I had recorded statement under Section 164 Cr.P.C., of the child victim **Ex.P3** and victim had put her signature on it. I had issued certificate **Ex.P10**. I had passed an order **Ex.P11** regarding recording of said statement. Copy of said statement was given to IO, pursuant to application **Ex.P12**.*

xxx”

20. In consequence, the factum of the prosecutrix reneging from her previously made statement in writing, becomes eclipsed from the factum of the learned Magistrate concerned, proving Ex.P-10, as, made at the foot of Ex.P-3. Moreover, the exculpation made therein by the victim also does not appeal to the judicial conscience of this Court, to be a validly made exculpatory reneging by her rather it appears that the prosecutrix in order to save the appellant from inculcation, thus colluded with him whereby she was led to exculpate the guilt of the appellant.

21. Though, the mother of the prosecutrix stepped into the witness box as PW-3, and, though in her examination-in-chief she also completely reneged from her previously made statement in writing, besides when on a scathing cross-examination made upon her by the learned public prosecutor, after hers becoming declared hostile, she did not mete any answers to those suggestions, wherebys, this Court may become led to conclude that the renegings, as made by

PW-3 in her examination-in-chief from her previously made statement in writing rather are false or contrived. However, irrespective of the above, when this Court has assigned credence to Exs.P-10, and, to P-11, thereupon, when *dehors* the prosecutrix reneging from her previously made statement in writing, rather therebys this Court has assigned creditworthiness to her statement Ex.P-3, as became made by her before the learned Magistrate concerned. In sequel, when therebys evidentiary paramountcy is to be assigned to Ex.P-3, than to the renegings made by her mother, rather from her previously made statement in writing.

22. In consequence, the renegings made by PW-3 from her previously made statement in writing becomes inconsequential, and/or, does not hold any apposite exculpatory effect.

### **MEDICAL REPORT**

23. During the course of the cross-examination being conducted upon the prosecutrix by the learned public prosecutor, after hers becoming declared hostile, she admitted the fact that she was medically examined at Civil Hospital, Ambala. If so, the MLR (Ex.P-4), as became proven by PW-14 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. ‘S’

xxx

f) *Did ejaculation occur outside body orifice” (Yes/No/Don’t Know/Don’t Remember/Don’t Understand) (if yes, describe Location) **Yes (Just outside)***

g) *Kissing, Licking or sucking of breast or other parts of body? (Yes/No/Don’t Know/Don’t Remember/Don’t Understand) (if yes, describe Location) **Yes (face and breast)”***

24. The above extracted contents of the MLR, do personify that thereins speakings occur vis-a-vis ejaculation occurring outside the body orifice, besides thereins echoings occur qua the appellant kissing, licking or sucking the breast or other parts of the body of the child victim.

25. The above extracted observations occurring in the MLR prepared and proven by its author rather do also remain unbelied, thereby the said observation(s) acquire conclusivity. The effect thereof, is that, the renegings made by the prosecutrix in her examination-in-chief also thereby become falsified. More so, when the prosecutrix in her cross-examination admitted that she was subjected to medical examination, whereafter MLR become prepared, MLR whereof is proven by PW-14.

26. PW-15 drew sample parcels with seal impressions Ex.MO/8 and Ex.MO/9, and, thereafter the sample parcels were sent to Assistant Director (S), DNA Division, Forensic Building, Madhuban, Karnal, who drew the DNA report Ex.PX, and, also stepped into the witness box as PW-11, thus to prove the same. Moreover, the parcels (supra), evidently travelled in an untampered and unspoiled condition to the CFSL concerned. Since no evidence became adduced on record rather suggestive that no apposite DNA comparisons were made on the stuff or upon the incriminatory items enclosed in the sample sealed parcels, as became respectively drawn by PW-12, and PW-14, nor when any evidence has been adduced that the said sample sealed parcels became delivered in a tampered and spoiled condition at the CFSL concerned.

27. 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

also the renegings (supra), as made by the prosecutrix from her previously made statement in writing rather does become completely eclipsed.

**“RESULT OF EXAMINATION**

*DNA was extracted from item No.6, 7, 8A, 8B & 12 and subjected to Autosomal STR analysis by using Identifiler plus kit. DNA profile obtained from item No.8A & 8B matches with the allelic pattern of item No.6, 7 & 12.*

**CONCLUSION**

*The Autosomal STR analysis indicates that*

*1. DNA profile of seminal stains on source of item No.8A (Lady's Salwar) & item No.8B (Lady's Shirt) is matching with the DNA profile of blood sample of accused (Source of item No.12).*

*2. DNA profile of female fraction on source of item No.8A (Lady's Salwar) & item No.8B (Lady's Shirt) is matching with the DNA profile of Suman (Source of item No.6 & 7).*

*Sd/- 20.01.2020  
SIDDHARTH KAUSHIK  
Assistant Director (S)  
DNA Division  
Forensic Science Building  
Madhuban, Karnal”*

28. Since preponderance is to be assigned to the best scientific evidence than to the exculpatory statement of the prosecutrix, as such, irrespective of the prosecutrix digressing from her previously made statement in writing, digression whereof, is a result of hers apparently colluding with the appellant. As such, thereby the prosecution has been able to unflinchingly establish the charge drawn against the appellant.

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

29. 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.PW-19 is assigned. The contents of the Ex.PW-19 are *ad verbatim* extracted hereinafter.

**“Disclosure statement of Accused**

*In the presence of following witnesses in the aforesaid case accused Anil Kumar @ Neel @ Neetu son of Shri Krishan Pal resident of Village Kanwla P.S. Baldev Nagar District Ambala in police custody has himself without any fear confessed that he is the resident of the aforesaid address and does the labour work. I have a son whose age is 11 years. On dated 7.12.19 at about 04:00 Pm I had consumed alcohol and came to the house of Suman daughter of Mangu resident of Village Kaula P.S. Baldev Nagar Ambala City under the influence of alcohol and I did wrong act forcibly with Suman without her consent meanwhile her father came at home, I ran away from the place of occurrence. I can demarcate Suman's house. Where I committed wrong act forcibly with Suman without her consent. Disclosure statement of the accused Anil Kumar @ Neel @ Neetu written and Disclosure statement was signed by the accused and the witnesses.*

*Accused Anil Kumar @ Neel @*

*Neetu*

*Sd/- in English*

*Sd/- in English*

*Witnesses: HC Jasbir Singh no.13*

*PS Women, Ambala*

*Sd/- in English*

*Witness: HC Sonia 1064*

*PS Women, Ambala*

*Sd/- in English*

*PS Women, Ambala*

*Dated: 10.12.2019”*

30. 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.20, to the investigating officer concerned. Since in pursuance thereof, through demarcation memo Ex.P-20, he demarcated the place of occurrence.

Significantly, also since the appellant did not either ably deny his signatures as occur on Ex.P19 and on Ex.P-20, 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.

31. Though, the appellant was previously not known to the prosecutrix, but since in her previously made statement to the Magistrate concerned, she described the key physical attributes of the accused, which led the investigating officer concerned, to hold a test identification parade, wherein, through identification memo (Ex.P-7), thus the prosecutrix identified the accused. Therefore, with the prosecutrix identifying the accused, thus also in Court, rather is not a legally unworthy identification, as during the course of investigations, the prosecutrix through apposite identification memo, did proceed to then identify the appellant.

### **FINAL ORDER**

32. 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.

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

(SURESHWAR THAKUR)  
JUDGE

18.04.2024

(DEEPAK MANCHANDA)  
JUDGE

Ithlesh

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