

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

CRA-D-985-2022 (O&M)
Reserved on: 19.03.2024
Date of decision: 27.05.2024

SURAJ

...Appellant

Versus

STATE OF HARYANA

...Respondent

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

Present: Mr. Ketan Antil, Advocate
for the appellant.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Pradeep Prakash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 03.08.2022, upon Sessions Case No.SC/280/2020, by the learned Additional District and Sessions Judge, Fast Track Court at Sonapat, 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'), in alternate Section 376 (3), 506, 363 and 366-A of the IPC, she recorded a verdict of conviction against the convict under Section 4 of the Act of 2012, besides under Section 363 of the IPC. Moreover, through a separate sentencing order of 06.08.2022, 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.

Sr. No.	Under Section	Sentence
1.	4 of POC SO Act	Rigorous imprisonment for a period of 20 Years (Twenty Years) and to pay a fine of Rs.50,000/- (Fifty thousand only) . In default of payment of fine, or a part thereof further rigorous imprisonment for a period of 1 year (One year) .
2.	363 of IPC	Rigorous imprisonment for a period of 5 year (Five years) and to pay a fine of Rs.10,000/- (Ten thousand) . In default of payment of fine, or a part thereof further rigorous imprisonment for a period of 3 month (Three 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 total fine of Rs.60,000/- an amount of Rs.50,000/- under Section 4 of POC SO Act to be given to the victim for physical as well as mental agony suffered by her on account of the incident which has taken place with 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 23.10.2020 a complaint was given by father of victim averring therein, that he has four children. On 22.10.2020 at around 10.00 a.m. his daughter / prosecutrix aged about 14 years went to the house of her friend to give notebook, but she failed to return home. They searched for the prosecutrix at her own level but could not succeed. He raised doubt that some unknown person has kidnapped his daughter/prosecutrix. Therefore, he prayed that his daughter be traced and legal action be taken against the culprit.

INVESTIGATION

5. On the basis of the said complaint, FIR No.362 (Ex.P-6/PW-14) dated 23.10.2020, under Section 365 of IPC was registered, at Police Station Rai, District Sonapat. Investigation was conducted by ASI Prem Parkash (PW11). During investigation, on 28.10.2020 the counseling of the prosecutrix was got conducted, besides statement of the prosecutrix under Section 164 Cr.P.C. was got recorded before Ld. Magistrate, and counseling of the prosecutrix was also got conducted from CWC, further the prosecutrix was medico legally examined from Government Hospital, Sonapat. Thereafter, Section 376 (3) and 506 of the IPC, besides Section 4 of POCSO Act were incorporated in the present case. The prosecutrix was handed over to her parents vide separate memo. Further investigation was carried by L/SI Babli (PW15). On 28.10.2020 accused was formally arrested in the present case. In custody accused suffered his disclosure statement. Pursuant to his disclosure statement he got demarcated the place of occurrence. On 29.10.2020 accused was medico legally examined and case property was obtained from the doctor. Case property was got deposited in FSL Madhuban.

6. Ultimately, on completion of investigation, final report under Section 173 Cr.P.C. was submitted in the Court concerned. From the perusal of challan, Sections 363 and 366A of IPC were incorporated in the present case.

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.PY 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 father, while respectively stepping into the witness box thus respectively, as PW-5 and PW-6, 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 school leaving certificate embodied in Ex.PW-10/B, proven by PW-10, 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-5, and, by her father who stepped into the witness box as PW-6, 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 father both reneged from their previously recorded previous statements in writing, thereby their testifications as rendered vis-a-vis the crime event, do become 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 father 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 father. The prosecutrix stepped into the witness box as PW-5, 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.PW-5/B 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.PW-5/B, but yet hers denying the fact that it was voluntarily made, thus is to be gauged from the testification made by PW-2, who is the learned Magistrate concerned, wherebefore whom, Ex.PW-5/B became recorded.

18. For lending proof vis-a-vis the authenticity, and/or *qua* the voluntariness of the making of Ex.PW-5/B by the prosecutrix, thus the learned Magistrate concerned, stepped into the witness box as PW-2, and, in her examination-in-chief she deposed that the victim had put her signatures on Ex.PW-5/B, and, she also deposed that subsequently she had made a certificate Ex.PW-2/C at the foot of Ex.PW-5/B. The contents of the said exhibit, are extracted hereinafter.

“Statement U/s 164 Cr.P.C.

xxx

*Statement of Preeti D/o Kanhaiyalal R/o at present village
Badmalik, Sonipat*

Question: What is your Name? How old are you?

Answer: Sir, Preeti and I am 14 years old.

Question: What I your father’s name?

Answer: Kanhaiya Lal

*Question: Are you giving this statement with your own will and
without any fear, afraid, greed and pressure?*

Answer: Yes.

Question: What do you want to say?

*Answer: On Dt. 22.10.20 I went to Biswamill from my house for
taking notebook, where a boy namely Suraj caught me
and said to go to his village. I refused but he took me to
his village Sitapur, UT. Then we stayed there. Then
when police came to now they brought us at home.*

Question: Do you want to say anything else?

Answer: Now, I want to live with my mother and father

*RO&AC
Sd/- ‘P’ Point C
Identified by
Prem Parkash ASI
PS Rai, 28.10.20*

*Sd/-
Harsha Sharma
JMIC, Sonipat
Dt. 28.10.20*

Ex.PW-2/C**Certificate**

*It is certified that ‘P’ has made the statement Voluntarily and the
same has been read over to her. It contains a true and exact version
as stated by her to me.*

*Sd/-
Harsha Sharma
JMIC, Sonipat
28.10.20”*

19. Moreover, she also stated that subsequently she passed an order
Ex.PW-2/D, order whereof becomes extracted hereinafter, regarding the
voluntary making of Annexure PW-5/B before her by the learned Magistrate

concerned. A reading of Exs.PW-2/C and PW-2/D, does vividly disclose, that the statement Ex.PW-5/B was voluntarily made by the prosecutrix. Since no evidence to challenge the authenticity of the making of the said certificate rather becomes adduced, thereby solemn evidentiary worth but is mobilized by Ex.PW-2/C, and, also by the consequent thereto order (Ex. PW-2/D). Resultantly, thereby the statement made by the prosecutrix in her cross-examination whereby she denied that Ex.PW-5/B, rather was made voluntarily does becomes completely eclipsed, besides the evidentiary tenacity of the said stated fact also becomes belied.

“xxx

‘P’ has been produced before me and an application has been moved before me by ASI Prem Parkash, PS Rai, Sonapat for recording the statement of ‘P’ in FIR No.362/2020, under section 365 IPC, PS Rai, Sonapat. She is identified by ASI Prem Parkash. She was further questioned as to whether she wants to make any statement. She replied in affirmative. She was further questioned whether she I making the statement voluntarily and without any threat, inducement or coercing. I believe she is willing to give the statement. I hereby proceed to record her statement under section 164 Cr.P.C.

*(Harsha Sharma)
JMIC, Sonapat
UID No.HR-0504*

xxx

Statement of ‘P’ u/s 164 Cr.P.C. recorded. An appliction moved by ASI Prem Parksh for supplying copy of statement under Se tion 164 Cr.P.C. Appliction is allowed as per rule. Criminal Ahlmad is directed to seal the same after supplying copy to the ASI Prem Parkash as per rules. The statement be tagged with FIR papers.

*(Harsha Sharma)
JMIC, Sonapat
UID No.HR-0504*

Date of Order: 28.10.2020”

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.PW-2/C, as, made at the foot of Ex.PW-5/B. 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 inculpation, thus colluded with him whereby she was led to exculpate the guilt of the appellant.

21. Though, the father of the prosecutrix stepped into the witness box as PW-6, and, though in his examination-in-chief he also completely reneged from his previously made statement in writing, besides when on a scathing cross-examination made upon him by the learned public prosecutor, after his becoming declared hostile, he did not mete any answers to those suggestions, wherebys, this Court may become led to conclude that the renegings, as made by PW-6 in his examination-in-chief from his previously made statement in writing rather are false or contrived. However, irrespective of the above, when this Court has assigned credence to Exs.PW-2/C, and, to PW-2/D, thereupon, when *dehors* the prosecutrix reneging from her previously made statement in writing, rather therebys this Court has assigned creditworthiness to her statement Ex.PW-5/B, as became made by her before the learned Magistrate concerned. In sequel, when therebys evidentiary paramountcy is to be assigned to Ex.PW-5/B, than to the renegings made by her father, rather from his previously made statement in writing.

22. In consequence, the renegings made by PW-6 from his 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 Government Hospital, Sonapat. If so, the MLR (Ex.PW-3/B), as became proven by PW-3 also assumes importance. The relevant incriminatory contents carried in the said MLR become extracted hereinafter.

“xxx

No injury marks (fresh or old) seen on any body part of patient.

P/A soft, non tender, no organomegaly palpated.

L/E Labia majora and labia minora appears normal

No any injury seen over and around perimal or rectal region.

Hymen broken (non any fresh injury seen)

Foul smelling discharge coming out of vagina.

Two low vaginal swabs (sample) and pubic hair taken for examination purpose.

One finger and be intruded into vagina.

Xxx

Alleged history of run away from School at Biswani (Govt. Senior Sec. School) on 22-10-20 at around 10-11 AM with Suraj/20 yrs/male. H took her to village Sitapur, U.P. at his house. Stayed there for 5 days. Preeti giving history of taking some medicine for headache on 25-10-20 given by Suraj, after which she slept and don't remember anything. She is giving history of rape on 25-10-20 by Suraj. She was arrested (brought) by police on 28-10-20.”

24. The above extracted contents of the MLR, do personify that thereins speakings occur vis-a-vis possibility of sexual assault cannot be ruled out as the hymen was broken.

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 do 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-3.

26. PW-3 drew sample parcels with seal impressions Ex.MO1/PW3, Ex.MO2/PW3, Ex.MO3/PW3, Ex.MO4/PW3, and Ex.MO5/PW3, and, thereafter the sample parcels were sent to Assistant Director (DNA), Forensic Science Laboratory (H), Madhuban, Karnal, who drew the DNA report Ex.PY. The said DNA report was tendered into evidence by the learned public prosecutor concerned, and, the contents of the DNA report remained unrebutted. Significantly, the parcels (supra), evidently travelled in an untampered and unspoiled condition to the CFSL concerned. In addition, when 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-3, 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 inculpatory result of the examinations, as revealed in the DNA report (Ex.PY), results whereof becomes extracted hereinafter, when are but completely suggestive that thereby the prosecution has been able to prove the charge drawn against the appellant. Resultantly thereby also the renegings (supra), as made by the prosecutrix from her previously made statement in writing rather do become completely eclipsed.

“RESULT OF EXAMINATION

DNA was extracted from item No.1A 1B, 1D, 3 and subjected to Autosomal STR analysis by using Identifiler plus kit. Amplicons

were than analyzed in ABI 3500 Genetic Analyzer and the electropherogram thus obtained indicated as below:

1. Item No.1A did not yielded consistent amplification of DNA.
2. Item No.1B, 1D & 3 yielded amplification of DNA.
3. The allelic pattern of item No.1B & 1D matches with the allelic pattern of item No.3.

CONCLUSION

The Autosomal-STR analysis indicates that the DNA profile of seminal stains on the source of item No.1B (Lower) and item No.1D (Undershirt) is matching with the DNA profile of item No.3 (Blood sample) and conclusively groves that they are of same biological origin.

Note: 1. After examination the exhibits have been sealed with seal of SSD/RKW/FSL (H) MBN.

2. The result relates to items tested above only.

*Sd/- 30-9-22
Dr. RAJEEV KAWATRA
Assistant Director (DNA)
Forensic Science Laboratory (H)
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, therebys 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.P3/PW13 is assigned. The contents of the Ex.P3/PW13 are *ad verbatim* extracted hereinafter.

“Disclosure statement of Accused Suraj Kumar

In presence of witnesses during the investigation accused Suraj Kumar above in police custody gave his disclosure statement without any fear, afraid; greed and with his own will that I am resident of above address. I am working in painting line company at Rai. I am unmarried and lives in village Badhmalik on rent. There I have acquaintance with a girl Preeti D/o Kanhiya Lal tenant at Badhmalik. I had bad eye on ‘P’ since beginning. One day I called ‘P’ at my rented house and there I committed rape upon her forcibly and threatened her if you disclose this thing to anyone I will kill you. Then on dt. 22.10.20 I saw ‘P’ in the morning at about 10:00 AM. I caught ‘P’ at that time no one in the street and said her to go my village with me and we wandered here and there. Money also exhausted. I left ‘P’ at Bahalgarh Chowk and said her to go to her house. I can demarcate the place where I forcibly committed rape upon ‘P’ Disclosure statement of accused recorded. On which accused and witnesses gave their signatures.

Sd/- HC Ravi No.147

Sd/- Accused Suraj

PS Rai

Sd/- Babli SI

PS Rai Dt. 28.10.2020”

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.P4/PW13, to the investigating officer concerned. Since in pursuance thereof, through demarcation memo Ex.P4/PW13, he demarcated the place of occurrence. Significantly, also since the appellant did not either ably deny his signatures as occur on Ex.P3/PW13 and on Ex.P4/PW13, 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, thereby the prosecution has

been able to unflinchingly establish the guilt of the appellant vis-a-vis the charges framed against him.

FINAL ORDER

31. 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.

32. 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