

2024:PHHC:125167-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-1028-2022 (O & M)
Reserved on: 06.09.2024
Pronounced on: 20.09.2024

Pritpal Singh @ KaluAppellant

Versus

State of PunjabRespondent

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

Argued by: Mr. Rajan Singh Dadwal, Advocate
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 08.09.2022, by the learned Additional Sessions Judge (Fast Track Specical Court) Ludhiana, upon, Session Case No. 854 of 2019, wherethrough, in respect of charges drawn for offences punishable under Sections 363/366-A/376 of the IPC, and, Section 6 of the Protection of Children from Sexual Offences Act, 2012, he made a finding of conviction against the accused.

2. Moreover, through a separate sentencing order drawn on 08.09.2022, the learned trial Judge concerned, proceeded to impose upon the convict (supra) both sentence(s) of imprisonment as well as of

2024:PHHC:125167-DB



Name of the convict	Convicted under Section	Sentence imposed	In default of payment of fine
Pritpal Singh @ Kalu	363 IPC	R.I. for three years and fine of Rs. 5000/-	Further RI for one month.
	366 IPC	R.I. for three years and fine of Rs. 5000/-	Further RI for one month.
	376(3) IPC	R.I. for twenty years and to pay fine of Rs. 30,000/-	R.I. for three months

3. The convict-appellant becomes aggrieved from the above drawn verdict of conviction, besides also, becomes 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.P6 is assigned.

5. Thereins the complainant, who is the mother of the victim-prosecutrix has made narrations therein that on 22.06.2019, her daughter i.e. prosecutrix was talking to someone over phone at mobile No.85570-43647. She inquired about this from the prosecutrix, but she did not give any satisfactory reply. On that day at about 07:00 PM, her daughter i.e. prosecutrix went from home after packing two suits in the school bag and a sum of Rs.1000/-. They searched for her daughter and later on came to know that Pritpal Singh @ Kalu son of Shri Rajwinder Singh had eloped away her daughter by enticing to marry her. On the

2024:PHHC:125167-DB

**Investigation proceedings**

6. The investigation was set into motion. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C. against the accused, before the learned Committal Judge concerned.

Trial Court Proceedings

7. On finding a *prima facie* case, charges under Sections 363/366/376(3) of the IPC and Section 6 of the POCSO Act became framed, against the accused concerned, to which he pleaded not guilty, and, claimed trial.

8. In support of the prosecution case, the prosecution examined ten witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge (Fast Track Special Court) Ludhiana, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused did not examine any witness in his defence.

9. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, (Fast Track Special Court) 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.

2024:PHHC:125167-DB



10. 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

11. 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.

ANALYSIS OF THE SUBMISSIONS (SUPRA)

Date of birth of the prosecutrix.

12. The prosecution examined PW-9 Arihand Jain, ETT teacher, who proved the various documents relating to the prosecutrix becoming born on 08.08.2004. The said documents are respectively, the School certificate and copy of the admission and withdrawal Register of the Public Senior Secondary School, Jagraon, Ludhiana. On the said documents, Exhibit PW9/A and Ex. PW9/B 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

2024:PHHC:125167-DB



incapacitated to render a lawful consent to the accused to subject her to coitus.

13. Predominantly also when after the above documents becoming tendered into evidence by the witness (supra), besides when then un-protested exhibit marks became made thereons, whereafters the said witness became subjected to grilling cross examination. However, when during his cross examination, he denied suggestion(s) that the exhibits (supra) are false and fabricated, thereby 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.

14. 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.

2024:PHHC:125167-DB



Testimony of the prosecutrix.

15. 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-7. The prosecutrix deposed that at the time of incident she was 15 years old and was studying in 10th Class. Her date of birth is 08.08.2004. She knew Pritpal Singh, who is present in the Court, from the last two months prior to the date of incident. The prosecutrix deposed that whenever she used to return back from the school, the accused used to chase her. The accused insisted upon her friends, to make her agree for friendship. Thereafter, the accused started talking to her, on the mobile phone of her mother.

16. PW-7 testified that on 09.06.2019, accused Pritpal Singh told her that there is no one present at his house and he called her at his house. She refused him by saying that she cannot come. Thereupon, the accused kept her insisting to come to his house, on the pretext that he will marry her. Thereafter, the accused took her to his house on motorcycle. When they reached there, the prosecutrix noticed that there was no one else present at his house. The accused asked her to sit on the bed in the room. The accused pushed her and despite her resistance, the accused made physical relations with her without her consent.

17. PW-7 further testified that on 22.06.2019, during noon time, when she was talking to accused Pritpal Singh on mobile phone, then her mother came there and snatched the mobile phone. Her mother inquired from her the reason for not answering her queries whereupon

2024:PHHC:125167-DB



she called the father of the prosecutrix and narrated to him the entire incident. PW-7 deposed that on the same day, she packed three suits in a bag and took Rs. 500/- with her and went to the Railway Station Ludhiana. She had a word with the accused Pritpal Singh on her mobile phone, who told him that she may not come to his house as her father is very angry and further intimated that he would come to Railway Station, Ludhiana on 23.06.2019 at about 9.00 A.M. The prosecutrix further stated that she had spend the whole night at Railway Station, Ludhiana.

18. PW-7 further deposed that on 23.06.2019, at about 9.00 A.M., accused Pritpal Singh came to her and told her that now her father is feeling fine and she asked him to drop her home but the accused Pritpal Singh told her to visit Chintpuri Temple alongwith him. After the accused made repeated insistences upon her, thereupon, she agreed to accompany him to Chintpurni Temple and on reaching that temple, she testified that the accused took one room on rent. PW-7 further testifies that in the said room, the accused consumed liquor and during night time, despite her resistance, he forcibly made physical relations with her. Thereafter, on 24.06.2019, the accused took her to Dharamshala City, where they took one room on rent and there also the accused Pritpal Singh after consuming liquor, forcibly established physical relations with her. As the accused was left with no cash with him, thereupon, he caller her mother and asked her to pick them up. On 25.06.2019, during morning time, the parents of accused Pritpal Singh

2024:PHHC:125167-DB



came and took her to the police station. Her mother had already got registered the present case with the police after recording her statement. She was handed over to her parents vide memo Ex.P10.

19. Moreover, during the course of her cross-examination, a sealed parcel enclosing therein, a statement made by the prosecutrix under Section 164 of the Cr.P.C., before the jurisdictional Magistrate concerned, became retrieved therefrom, and, was shown to the victim, who, however admitted her signatures on the said statement, to which Ex.PW7/B to Ex.PW7/C became assigned. Moreover, she then proceeded to also identify the accused in Court.

20. PW-7 also suffered the ordeal of an exacting cross examination, and, wherein, she improved from her previous statement made in writing to the extent that she made echoings therein, that she had meted her consent to the accused rather for the latter subjecting her to coitus. However, though therebys the prosecutrix exculpates the guilt of the accused but the said exculpation of the guilt of the accused, is, bereft of vigor, especially when she was incapacitated to make a lawful consent to the accused for his subjecting her to sexual intercourses.

21. The reason for forming the above conclusion ensues from the factum of this Court concluding (supra) that the accused was a minor at the time of commission of the alleged offence, wherebys, she became interdicted from purveying any lawful consent to the accused, thus for the latter subjecting her to sexual intercourse. As such,

2024:PHHC:125167-DB



consent, if any, purveyed by her to the accused, rather has no exculpatory effect.

22. An added momentum to the above is garnered from the factum about the accused retaining the custody of the minor prosecutrix, factum whereof, becomes evidently revealed from readings of the respective testification(s) of PW-1 ASI Baljinder Kumar and of PW-2 SI Kirandeep Kaur, who in their respective examinations-in-chief, unrebutedly deposed that the victim was recovered from the custody of accused, especially when during the ordeal of their respective cross-examinations, to which they were subjected to, they remained unscathed. Conspicuously the above unrebuted testifications, thus lead to a firm conclusion, that the minor prosecutrix not only became unlawfully detained by the accused but also during period thereof, she became subjected to a penetrative sexual assault.

Medical evidence

23. Dr. Jasmine Chhina, Medical Officer, Civil Hospital, Jagraon, who drew the MLR in respect of the child victim, did step into the witness box as PW-4, and, during the course of her examination-in-chief, she proved the apposite medico legal examination report appertaining to the child victim, to which Ex.PW 4/1 is assigned. The relevant observations, as become narrated in Exhibit (supra) are extracted hereinafter.

“ On examination, it was found that no external injury was seen on any body part. No external injury was seen on private parts also.”

2024:PHHC:125167-DB



24. Ex. PW-4/3 encloses therein the results of the apposite profilings, as became made by the DNA expert. The said results become extracted hereinafter.

“ no spermatozoa were detected in the contents of exhibit-I and II i.e. from two glass tubes with swab sticks and two glass slide smeared with secretion from posterior fornix of vagina.”

25. Though, a reading of the above extracted result 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. Though on the anvil of the report of the DNA expert, as embodied in Ex. PW-4/3, the learned counsel for the appellant has argued before this Court, that thereby the testification of the prosecutrix rather loses its credence.

26. 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 naturally overcomes the purported lack of incriminatory echoings rather occurring in the results (supra), as made over the relevant material, thus by the DNA expert.

27. 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

2024:PHHC:125167-DB



vaginal swab of the minor victim also does not over-rule the evidentiary efficacy of the testification of the prosecutrix.

Final Order of this Court.

28. In consequence, there is no merit in the appeal, and, the same is dismissed. The impugned verdict, and, consequent therewith sentence(s) (supra), as imposed upon the convict by the learned Convicting Court, is affirmed and maintained.

29. 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.

30. 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.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

20.09.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

: **Yes/No**
: **Yes/No**