

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-726-2022 (O&M)
Reserved on: 22.11.2024
Date of Decision: 28.11.2024

Simranjit Singh @ Simar

.....Appellant

Versus

State of Punjab

.....Respondent

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

Argued by: Mr. Rajiv Joshi, Advocate and
Mr. Viren Sibal, Advocate (Legal Aid Counsel)

Mr. Harshit Singla, Advocate and
Mr. Nikhil Chopra, Advocate for the appellant.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 5.8.2022, upon Sessions case bearing No.185-2017, by the learned Additional Sessions Judge-cum-Fast Track Court (POCSO), Jalandhar wherethrough in respect of charges respectively drawn against the accused qua offences punishable under Sections 363, 366-A, 376, 506 IPC and under Sections 4, 6 and 8 of the Prevention of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act, 2012'), 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>Under Section</i>	<i>Rigorous Imprisonment</i>	<i>Fine</i>	<i>In default</i>
Simranjit Singh @ Simar	363 of IPC	7 years	Rs. 10,000/-	3 months
	366 of IPC	10 years	Rs. 20,000/-	3 months
	6 of POCSO Act	20 years	Rs. 1 Lac	1 year

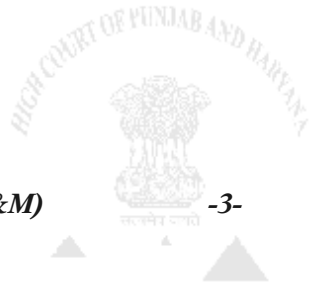
3. In addition, under Section 357-A, the victim/prosecutrix became granted Rs.4 Lacs, under the compensation scheme, to be paid by the DLSA, Jalandhar.

4. The same was directed to be disbursed after deducting any other compensation or interim relief already, received by her, under the apposite Scheme. 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.

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

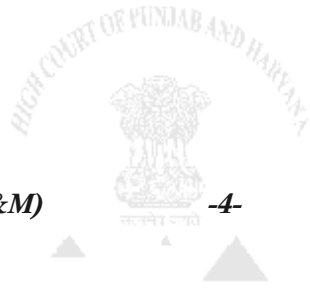
6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PW4/B is assigned. As per the prosecution case, on 19.01.2017, L/SI Rashpal Kaur was present at Women Cell, Phillaur, where



she received a wireless message to reach at Chowki Dhuleta, P.S. Goraya. At this, L/SI Rashpal Kaur reached at Chowki Dhuleta, in civil dress and she along with ASI Harjit Singh No. 494 and PHG Harjinder Singh No. 27024 reached at the house of K son of J. Singh, resident of Village Johal and took the girl T (name is withheld, hereinafter referred to as 'prosecutrix/victim') for recording her statement.

7. The victim got recorded her statement to the effect that she is the student of B.Com. 1st Year, studying in GNA University, Hoshiarpur Road, Phagwara. A boy namely, Simranjit Singh @ Simar son of Jaswant Singh used to visit her village often so, she started meeting him. She also used to meet him, on her way to college. He used to say to her that after consulting his parents, he would marry her. On 10.01.2017, at about 9:30 A.M. when she was on her way to college, she met said Simranjit Singh @ Simar, who asked her that he will marry her on that day, as he has already consulted his parents. He asked her that if she loves him, she has to go with him, on that day and they will perform marriage. Then, she went with him, on his allurements. He took her to his house, at village Phalpota. There was no body at home, at that time and he then took her in a room and bolted it from inside. He forced her to make physical relations with him but she told her that before marriage, she will not do so. Despite her resistance, he forcibly made physical relation with her. She started weeping, at that time. Then, he dropped her out side her village, on his bicycle.

8. The victim further alleges, that the accused also threatened him by saying if, she disclosed anything about the incident, he will kill her along with her family. She being under stress, could not tell to her parents about the incident. But, thereafter she realized that if the accused could do wrong

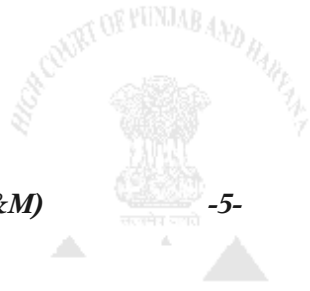


with her, then he can also do wrong with others too, so she disclosed the incident to her mother 'S' and father K. Singh. Their parents asked her to inform the police regarding the incident so, that punishment be awarded to him. As such, her father informed the police about this and her statement was recorded by the police, in her home. Her statement was read over and explained to her by L/SI Rashpal Kaur, who after admitting the contents of the same to be correct, signed the same to which, her parents also witnessed the same and L/SI Rachpal Kaur attested the same.

9. On the basis of statement of the prosecutrix, a case against the accused under sections 363, 366-A, 376, 506 Indian Penal Code and Sections 4, 6 & 8 of POCSO Act, 2012 was registered. A ruqa was sent through PHG Harjinder Singh No. 27024 to police station for registration of case in this regard. During interrogation, L/SI Rashpal Kaur joined the other persons for interrogation. The parents of prosecutrix produced her birth certificate. Statements of witnesses under sections 161 Cr.P.C. were recorded. Site was inspected and rough site plan was also prepared. Medical examination of the prosecutrix was got conducted from Civil Hospital, Barra Pind. On return to the police station, a sealed envelope containing MLR/JK/BP/02-17 duly sealed with seal impression of doctor of Civil Hospital was handed over to MHC Jaswant Lal, for depositing the same, in the malkhana.

Investigation proceedings

10. During investigation, on 20.01.2017, accused after interrogation was arrested. Separate arrest memos were got prepared. Statements of witnesses under sections 161 Cr.P.C., were recorded. On demarcation by the accused, police party reached at the place of occurrence and site plan of the



same was also got prepared. On return to the police station, the accused was put behind the bars. On the same day, the statement of the prosecutrix under section 164 Cr.P.C., was got recorded, in the Court of Sh. Ravipal Singh, Judicial Magistrate Ist Class, Phillaur. Copy of statement of prosecutrix was also obtained. Judicial remand of the accused was obtained and thereafter, he was sent to Modern Jail, Kapurthala. On 15.02.2017, MHC Jaswant Lal sent the sealed envelope containing MLR/JK/BP/02-17 of prosecutrix vide Road No. 45/21 dated 15.02.2017 through HC Kulwinder Singh No. 494/Jalandhar to Chemical Examiner, Kharar for analysis of the contents thereof. On completion of investigation, challan under Section 173 Cr.P.C. was presented against the accused in the Court for trial.

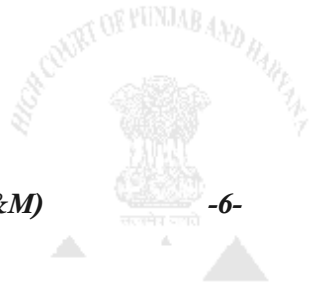
Trial Proceedings

11. 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-A, 376, 506 IPC and under Sections 6 and 8 of the POCSO Act, 2012. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

12. In proof of its case, the prosecution examined 10 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

13. 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.

14. 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

15. 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.

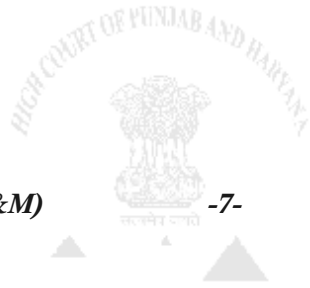
Submissions of the learned State counsel

16. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, the 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)

17. Initially it is to be determined from Ex. PW7/A, whether therebys the prosecution has cogently proven that at the relevant time, the prosecutrix was a minor, and, as such became disabled to purvey a valid consent to the accused for the latter allegedly subjecting her to sexual intercourse(s).

18. Though, it becomes unfolded by Ex. PW7/A, proven by PW-7, exhibit whereof encloses her date of birth, qua the prosecutrix being born on 18.8.1999. Consequently, though in the wake of the supra echoings carried



in Ex. PW7/A, thus the prosecutrix, at the time of commission of the alleged offence, was a minor, whereby she became disabled to purvey a valid consent to the accused to subject her to coitus. Moreover, though therebys any exculpatory plea erected by the defence founded, upon, the alleged sexual intercourse being a sequel of consent being purveyed by the prosecutrix to the accused, but obviously would loose its evidentiary worth.

19. Emphasizingly, yet an incisive scrutiny is required to be made vis-a-vis the factum probandum whether Ex. PW7/A, thus cogently establishes the narration therein, that at the time of the commission of the offence, the prosecutrix was a minor, and, as such she was completely disabled to purvey any valid consent to the accused to subject her to coitus.

20. Ex.PW7/A became proven by PW-7 Kamaljit, Principal, Government Senior Secondary School, Chak Des Raj, Jalandhar. The said exhibit is the admission and withdrawal register appertaining to the prosecutrix. In the said exhibit, the prosecutrix is spoken to be born on 18.8.1999. In proof of supra exhibit, PW-7 stepped into the witness box. Though, in her examination-in-chief, she made echoings which are in alignment with the supra speaking(s) occurring in the admission and withdrawal certificate issued by her to the prosecutrix. However, though the said certificate is issued during the course of performance of her duties, as the Principal of a Government institution, whereby theretos, thus in consonance with the provisions engrafted in Section 35 of the Indian Evident Act, provisions whereof become extracted hereinafter, but a presumption of truth is attached. Importantly when the said presumption of truth is attachable to the preparation of records by a public servant during the



performance of official duties.

35. Relevancy of entry in public [record of an electronic record

An entry in any public or other official book, register or [record or an electronic record] stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or [record or an electronic record] is kept, is itself a relevant fact.

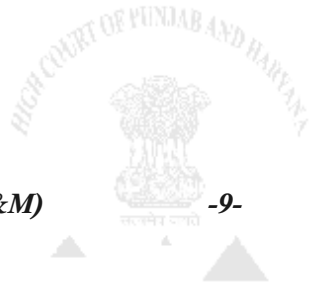
21. However, the said presumption is rebuttable. Therefore, it has to be adjudged, thus on the makings of a closest scrutiny vis-a-vis the testification occurring in the cross-examination of PW-7, whether thereins thus occurs any speaking whereby the supra presumption assigned to Ex.PW7/A, rather becomes eroded or becomes rebutted.

22. On this Court making an incisive scrutiny of the cross-examination of PW-7, relevant portion whereof becomes extracted hereinafter, the facts which surge therefroms, are that, qua PW-7 speaking that the apposite entries carried in Ex. PW7/A rather are not in her handwriting. Contrarily, she states that the relevant entries are banked upon report of the Chowkidar of village Johal. Furthermore, she also states in her cross-examination that she has not seen the original report of the Chowkidar of village Johal.

“The said entries are not in my handwriting. The said entry was made on the basis of report of Chowkidar of village Johal. I had not seen the original report of Chowkidar of village Johal.

x x x x”

23. Since the relevant entries carried in Ex. PW7/A are banked upon the report of the Chowkidar of village Johal, who but is the author of the apposite report. Consequently, unless the Chowkidar, who made the



relevant report which became the basis of the entries in Ex. PW7/A, rather became both cited as a prosecution witness, and, also became examined, especially with respect to his report becoming well banked, upon the apposite communications being made by him, thus by the parents of the prosecutrix, whereafter there was but a necessity of the Chowkidar concerned becoming effectively cross-examined by the defence, thereupon alone implicit reliance could be placed upon the entries which became grooved in the unproven report of the Chowkidar.

24 Conspicuously since the report of the Chowkidar rather for the reasons (supra) became unproven thereby the basis of the entries in Ex. PW7/A, do obviously become collapsed. Resultantly thereby the effect of the report of the Chowkidar rather remaining unproven, whereas, the said unproven report becoming taken into account by the Principal (PW-7) in issuing PW7/A, thus thereby creates cogent evidence, to rebut the presumption of truth, as foisted upon Ex. PW7/A, rather in terms of Section 35 of the Indian Evidence Act.

25. A closest reading of the supra extracted provisions though does make the apposite entry(ies) in any public or other official book, record or register maintained by a public servant, in the discharge of his official duty, thus to becoming the relevant fact. However, when the supra entries are grooved in the unproven report of the Chowkidar, who irrefutably was the author of the apposite report, thereby the relevant entries carried in the record maintained by the public servant i.e. PW-7, neither becomes a relevant fact nor acquires any conclusivity. Contrarily, the presumption of truth attached thereto becomes completely shattered.

26. The further effect of the above inference, is that, implicit



reliance but cannot be placed on Ex. PW7/A rather for adjudging whether at the relevant time, the prosecutrix was a minor, and, as such she was completely disabled to purvey her valid consent to the accused to subject her to coitus. Therefore, it has to be concluded that benefit of doubt is to be assigned to the accused, with a consequent effect that this Court, is led to conclude that the prosecutrix at the relevant time was a major, and, as such, she was well capacitated to mete a lawful consent to the accused to subject her to coitus.

27. Though, this Court has made the above inference but yet it is to be gauged from the evidence on record, whether the sexual assault, if any, as made upon the prosecutrix by the accused, rather was consensual or was forcible.

28. In the above regard, it is necessary to refer to the relevant portion of the cross-examination, as became made upon the prosecutrix by the defence counsel. The said relevant portion becomes extracted hereinafter.

“x x x x

I have not received any external or internal injury at the time of alleged incident. I did not raise any alarm on the way when the accused forcibly took me to his house. I accompanied the accused from the bus stand of our village Johal, Tehsil Phillaur. I accompanied the accused on a motorcycle. No talk regarding the marriage with the accused took place. From the date of alleged occurrence till my medical examination I have cleaned myself and has also attended the call of nature.

x x x x”

29. A reading of the above relevant portion of the cross-examination of the prosecution, but is openly suggestive, that the prosecutrix voluntarily accompanied the accused to the crime site, especially when she



has stated that she did not suffer any internal or external injury marks thus on any part of her body rather during the course of her being allegedly subjected to coitus by the accused. Moreover, since she had occupied the pillion of the motorcycle driven at the relevant time by the accused, thereupon when the motorcycle traversed through crowded places, yet even if she was purportedly coerced to occupy the pillion of the motorcycle, rather with the prosecutrix omitting to through raising shrieks and cries, thus invite the attention of the passerbys. Resultantly, the inference therefrom, is that, the prosecutrix had voluntarily joined the company of the accused, besides reiteratedly when there are no internal or external injury marks on any part of the body of the prosecutrix, thereby the incident, if any, which occurred amongst the victim and the accused, thus was entirely consensual.

30. Moreover though she has also stated in her examination-in-chief that the sexual intercourse, which occurred inter se her and the accused was under a pretext of marriage but the supra testification comes under a cloud of doubt, as in the supra extracted portion of her cross-examination, she has candidly spoken, that there was no talk inter se her and the accused, with respect to the latter making a proposal of marriage to her. Therefore, the sexual intercourse, if any, which occurred inter se the accused and the prosecutrix, was not a sequel of any allurements of marriage being purveyed by the accused to the prosecutrix.

MLR of the victim Ex. PW5/A

31. PW-5 Dr. Jaswinder Kaur proved the MLR Ex. PW5/A. The MLR (Ex. PW5/A) supports the statement made by the prosecutrix in her examination-in-chief, qua hers not suffering any external or internal injury, thereby it has to be declared that the sexual intercourse, which occurred



amongst the accused and the prosecutrix but was completely consensual.

FSL report Ex. PW5/B

32. The report of the FSL concerned, is embodied in Ex. PW5/B. The said report is extracted hereinafter.

“Xxx

I) 3 vaginal swabs (a) Anterior (b) posterior (c) Cervix.

II) Pubic hair.

3. The above seals were opened in my presence and the contents of the packet were duly examined by me and remained under my immediate custody until examination was completed.

The result was as follows:-

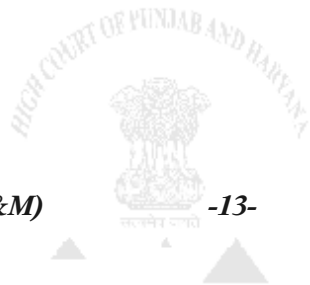
Spermatozoa were detected in the contents of exhibit 1(a), (b) & (c).

No Spermatozoa were detected in the contents of exhibit II

Xxx”

33. Though the prosecutrix has relied upon the report of the chemical examiner concerned, whereto the incriminatory items enclosed in sealed cloth parcels, thus became sent for examinations, but the results of the examination are not incriminatory in nature, inasmuch as, it has been declared therein, that though spermatozoa was detected on exhibit 1(a), (b) and (c), but the FSL concerned, yet omitted to declare therein, that the biological origin of the said detected spermatozoa became sourced from the blood group of the accused.

34. Even if assuming that there was no open declaration in the results of the examinations made over the contents inside the sealed cloth parcels, thus to the fullest extent, that the spermatozoa detected inside the sealed cloth parcels became sourced from the accused, yet though thereons no convincing exculpatory plea can become erected by the accused. However, even if assumingly there, is on the premise (supra), any

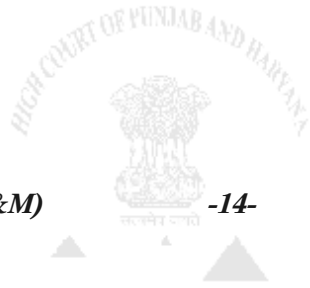


permissibility to yet make an inculpatory finding against the accused, but even the said inculpatory premise, but cannot be erected against the accused, as PW-5 in her cross-examination admitted that the victim was used to sexual intercourse, and, has also admitted that spermatozoa can be detected in the alive form upto 72 hours, besides has also admitted that if the victim had cleaned herself and had also attended the call of nature, thereupon the possibility of detection of spermatozoa from 12 to 36 rather further diminishing.

35. Now since the prosecutrix has stated that she had urinated after the alleged commission of sexual assault upon her, therebys when PW-5 in her cross-examination also declares that therebys, thus no live spermatozoa is amenable for detection inside the vagina of the prosecutrix, wherefrom the vaginal swabs became drawn, besides when in her cross-examination PW-5, has stated that the victim was used to sexual intercourse. Therefore, the inference(s) therefrom, is/are that, even if spermatozoa was enclosed inside the apposite vaginal swabs, which became sent for examinations, thus inside the sealed cloth parcels, to the FSL concerned, and, though therebys even for want of the biological source thereof becoming not openly declared in the results of the apposite examinations, to originate from the blood group of the accused, thereupon though no incrimination can be drawn against the accused.

36. Be that as it may, though if some iota of incrimination may be yet drawable against the accused, but the said incrimination is absolutely undrawable against the accused, thus on the following accounts-

(a) The victim stating that she had urinated after commission of the alleged sexual intercourse.



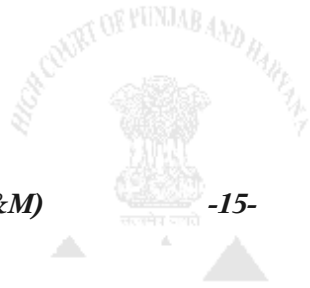
(b) The doctor opining that the victim was used to sexual intercourse.

(c) That reduction of possibility of detection of live spermatozoa from 12 to 36 hours.

37. Resultantly, therebys irrespective of clear and cogent exculpatory pronouncements being made vis-a-vis the accused, by the FSL concerned, yet the spermatozoa, as became found inside the vaginal swabs, which became sent for examination to the FSL concerned, thus cannot be said to be originating from the blood group of the accused. Contrarily, the source of the spermatozoa found inside the vaginal swab rather is prima facie to be declared to originate from the blood group of some other person, as PW-5 in her cross-examination admitted, that the victim was used to sexual intercourse. In aftermath, benefit of doubt is assigned to the accused, and, as such he is required to be acquitted.

Final order

38. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellant, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared



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accordingly.

39. Records be sent down forthwith.
40. The miscellaneous application(s), if any, is/are also disposed of
41. 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.
42. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

November 28, 2024
Ithlesh/Gurpreet

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

