In the High Court of Punjab and Haryana at Chandigarh

CRA-D-963-2022 (O&M)
Reserved on: 09.8.2023
Date of Decision: 17.8.2023

Goldy .....Appellant

Versus

State of Haryana .....Respondent

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

Present: Mr. Mitul Singh Rana, Advocate with
Ms. Nisha Rana, Advocate
for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

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SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 22.9.2022, upon Sessions Case No. 126 of 2022, by the learned Additional Sessions Judge (Fast Track Special Court to try the offences of rape and under POCSO Act), Kurukshetra, wherethrough in respect of charges drawn against the accused qua offences punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act), and, under Section 506 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellant-convict. Moreover, through a separate sentencing order, drawn on 26.9.2022, the learned trial Judge concerned, sentenced the appellant-convict to undergo rigorous imprisonment for a period of twenty years, thus for an offence punishable under Section 4(2) of the POCSO Act, besides also imposed, upon the appellant-convict sentence of fine, as comprised in a sum of Rs. 25,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment for a period of nine months.

2. 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, before this Court.

Factual Background

3. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. P-11 is assigned. The narrations carried in Ex. P-11 are, that on 11.9.2020, the complainant 'N' elder brother of victim (names of complainant as well as victim withheld to hide their identities in terms of explanation attached to Section 33 (7) of POCSO Act, 2012) moved a complaint alleging that they are three brothers. He is the eldest one. His younger brother 'V' is 14 years old. Today at around 9:00 P.M., his brother/victim 'V' returned home crying and he inquired the reason from him qua the same. Then he told him. that at around 7:30 P.M., he was playing outside their house near the Government school. At around 8:00 PM. Goldy son of Raghbir Singh, resident of Majri Mohalla, Shahabad came to him and enticed him away. And. took him in the bathroom of the said school. There, he sodomized/committed wrong act with him. He also threatened that if he discloses about the same to anybody, he will kill him. Previously also, on many occasions the accused has committed wrong acts with him, but due to fear he did not disclose about the same to anybody. On the basis of this complaint, the appeal FIR was registered.

Investigation proceedings

4. During investigation, rough site plan of place of occurrence was prepared. The complainant produced the birth certificate of victim, which was taken into police possession. The medical-examination of the victim

was got conducted and his samples were taken into police possession. The statement of victim under Section 164 Cr.P.C was got recorded. The samples of the victim as well as accused were sent to FSL Madhuban. The birth certificate of the victim was got verified from the concerned authority. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned Court concerned.

Trial Proceedings

5. 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 a charge against accused, for the offences punishable under Section 6 of the POCSO Act, and, under Section 506 of the IPC. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

6. In proof of its case, the prosecution examined 14 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. He also chose to adduce defence evidence, but did not lead any witness into the witness box.

7. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charges (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

8. The learned counsel for the aggrieved convict-appellant has

argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

9. 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, be dismissed.

Analysis of the deposition of the victim, who stepped into the witness box as PW-3.

10. The victim stepped into the witness box as PW-3, and, during the course of his examination-in-chief, he openly resiled from his previously made statement in writing to the investigating officer concerned, and to which Ex. P-6 is assigned. Moreover, he also openly resiled from the statement, as became made by him before the learned Magistrate concerned, in proceedings drawn under Section 164 of the Cr.P.C, and, to which Ex.P-5, is assigned.

11. Therefore, on the asking of the learned Public Prosecutor to declare PW-3 as hostile, for thus his being cross-examined, hence the learned trial Judge concerned, rather declared PW-3 hostile, and, also permitted the Public Prosecutor concerned, to make cross-examination upon PW-3.

12. During the course of cross-examination being conducted, upon the victim by the Public Prosecutor concerned, though the statement made

by the victim under Section 164 of the Cr.P.C., before the learned JMIC concerned, was produced before the learned trial Judge concerned, in a sealed envelope, and, thus therefrom Ex. P-5 became retrieved. However, though the victim did not deny his making the said statement, but stated that the said statement was not made voluntarily. Contrarily, he stated that it was unvoluntarily made by him, and, was made on the basis of incorrect, and, untruthful narrations in respect of the crime event. Though, the said denial may have been attempted to be ripped apart of its efficacy, given their existing on Ex. P-5, a statutory certification made by the learned Magistrate concerned, thus declaring that the statement of the victim, as became made before him, was thus made voluntarily by him, and, also without any coercion or pressure becoming exerted, upon him. However, in the above endeavour, it became imperative upon the learned Public Prosecutor concerned, to on his application cast, under Section 311 Cr.P.C., thus seek the leave of learned trial Judge concerned, to thereby ensure the stepping into the witness box of the learned Judicial Magistrate concerned, so that he becomes confronted with the statement, as, made by the victim in his cross-examination, whereby, he belied the said statutory certification as became made, on Ex. P-5, by the Magistrate concerned. Significantly, the learned Public Prosecutor concerned, did not choose to recourse the above endeavour. Resultantly, when only on the Judicial Magistrate concerned, rather stepping into the witness box, especially when before him Ex. P-5 was recorded, and, when on foot thereof, the statutory certification exists, but with recitals thereins, that the victim has voluntarily made the said statement before him, and, that too without any coercion or threat becoming exerted upon him, that thereby the facts spoken (supra) by the victim in his cross-examination, qua Ex.P-5 being unvolunatrily recorded, and/or, being

recorded under duress, and, pressure, rather would have been belied. However, since evidently the above recourse remained unadopted by the learned Public Prosecutor concerned, thereupon a conclusion becomes galvanized, that the said certification made on Ex. P-5, thus becomes enveloped in a shroud of doubt. The further consequence thereof, is that, the denial by the victim during his cross-examination, that the statement Ex. P-5 was voluntarily recorded, and, did not narrate the true facts, and, events in respect of the crime event, thus enjoys an aura of credibility. As but a natural corollary, since the victim has also completely resiled from his previously made statement, before the police officer concerned, thereby the inference to be marshalled therefrom, but obviously is that, the charges drawn against the appellant-convict, rather becoming fully capsized.

MLR of the victim as embodied in Ex.P-1

13. Support to the above made inference becomes derived from the MLR of the victim to which Ex. P-1, is assigned. Since the appeal FIR, to which Ex. P-11, is assigned, encapsulates thereins a narrative, that a penetrative sexual assault became committed, upon the victim. Therefore, but obviously on the apposite region, there were enjoined to occur certain injuries. For discerning whether on the apposite region of the victim the relevant injuries did occur, an allusion is required to be made to Ex. P-1. However, a perusal of Ex. P-1 unfolds, that thereins no injury becoming detected by the medical officer, thus upon examinations thereof being made. Resultantly, the effect of the victim completely resiling from his previously made statement in writing Ex. P-6, and, also his completely resiling from his statement Ex P-5, thus acquires utmost evidentiary vigour, thus hence from the absence of injuries on the relevant region(s) of his body, as but portrayed by Ex. P-1.

DNA report Ex. P-24

14. The report of the DNA specialist at the FSL concerned, is embodied in Ex. P-24. The said report is extracted hereinafter.

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

Received two 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)*
4.	*1-RK*	*One sealed vacutainer vial labelled as Goldi. Barcode : 17432-211008-1360303. containing:-* *4) Blood sample marked as item No. 4.*
5.	*1-PK*	*One sealed cloth parcel labelled as 2020/B-7269. Barcode: 17432-211008-1360316 containing:-* *5) One cut and dirty brown underwear marked as item No. 5.*

Result of Examination

DNA was extracted from above items and subjected to Autosomal & Y-STR analysis by using Global Filer plus & Y-Filer kit. Aplicons were than analyzed in ABI 3500 Genetiv Analyzer and the electropherogram thus obtained indicated as below:-

1. *Item No. 5 and 5 yielded amplification of DNA whose genotype is estimated to be of male i.e. XY.*
2. *The allelic pattern of item No. 5 matches with the allelic pattern of item No. 4.*

Conclusion

The Autosomal & Y-STR analysis indicates that the DNA profile of seminal stains on the source of item No. 5 (underwear) is matching with the DNA profile of item No. 4 (Blood sample) and conclusively proves that they are of same biological origin."

15. A reading of the conclusion as embodied thereins, does invincibly declare, that on the DNA expert making the DNA profiling of the

seminal stains, as found on the underwear of the victim, thus with the DNA profile of the accused, his thus forming a conclusive opinion, that both belonged to the same biological origin.

16. When the above incriminatory best forensic evidence, rather becomes juxtaposed against the statement of the victim, besides with his MLR, as enclosed in Ex. P-1, thereupon preponderant evidentiary vigour is prima facie thus acquired by Ex.P-24. Resultantly, though thereby this Court would lean towards affirming the verdict of conviction, as became handed by the learned trial Judge concerned, besides also would become coaxed to affirm the order of sentence, as became imposed upon him.

17. Nonetheless, for the reasons to be assigned hereinafter, this Court refrains from assigning any evidentiary vigour to the above made conclusion, as occurs in Ex. P-24. The primary reason for declining to assign evidentiary vigour to the conclusion, as made in Ex. P-24, stems from the factum, that the accused became charged for committing the offence of sodomy. Thereupon but obviously seminal stains were to occur even on the underwear of the victim, with which comparison was made with the blood sample of the accused, and, which resulted in an affirmative incriminatory opinion being recorded against the accused. It is but the charged offence relating to commission of the penal event of sodomy, that as stated (supra), the existence of semen stains on the underwear of the victim, were but rather natural existences thereons. The existence of semen stains on the underwear of the victim, who is also a boy, and, also when the accused is a boy, thus did require that the blood group of the victim, also being collected by the investigating officer concerned, so that thereby the semen stains, as found on the underwear of the victim, rather become matched therewith, besides became matched along with the blood group of the accused. Resultantly, in

the event of apposite similarity of blood group of the accused, and, of the victim, thus may be a conclusion would become sparked from the DNA specialist, that those semen stains, as found on the underwear of the victim, being also of a biological origin, thus akin to the blood of the victim, besides of the accused. Resultantly, the opinion (supra) would beget thereto an exculpatory effect. Moreover, in case, there was dissimilarity of biological origin of the blood group of the victim hence with the semen found on his underwear, thereupon a conclusion as made in Ex. P-24, rather would gather immutable evidentiary vigour. However, as stated (supra), since the investigating officer concerned, did not collect the blood sample of the victim, nor when obviously the DNA specialist, made its profiling along with the semen stains, as found on the underwear of the victim, nor when he made comparisons thereof with the blood group of the accused, nor when he made an opinion with respect to inter se similarity or dissimilarity existing inter se the biological origin of the blood collected of the victim rather with the semen stains, as were existing on his underwear. Conspicuously since all the above happened for non-collection of the blood group of the victim, thus for non-collection of the blood group of the victim, rather the DNA specialist concerned, became forstalled to embark, upon, the apposite profilings. The consequence of the above non-collection, and, the further telling sequel of no apposite DNA profilings being made, thus leaves immense scope for an inference, that the semen, as found on the underwear of the victim, may be of the same biological original, as that of his blood. Resultantly, in the wake of the above, the benefit of doubt is to be accorded to the appellant-convict. Moreover, as a further corollary thereof, this Court does not assign the apposite evidentiary tenacity to Ex. P-24.

18. In summa, since the best forensic evidence, as enclosed in

Ex. P-24, thus looses for reasons (supra), its evidentiary tenacity. Therefore, the effect(s) of the victim completely resiling from his statements Ex. P-5, and, Ex. P-6, besides the effects of the MLR of the victim, as enclosed in Ex. P-1 also blunting the genesis of the prosecution version, that the victim was not subjected to any penetrative sexual assault by the accused, thus thereby the charges become completely staggered.

Final order

19. 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, also the order sentencing the appellant, and, as recorded by the learned trial Judge concerned, are quashed, and, set aside. The appellant is acquitted of the charges 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.

20. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 17, 2023
Gurpreet

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