
(2016) 03 SHI CK 0113
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 20 of 2014

Kishori Lal

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2016) 2 SimLC 687

Hon'ble Judges : Mr. Rajiv Sharma and Mr. Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : Mr. N.K Thakur, Sr. Advocate with Mr. Surender Kumar, Advocate, for the Appellant; Mr. Ramesh Thakur, Deputy Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—The instant appeal is directed against the impugned judgment rendered on 24.1.2014/27.1.2014, by the learned Special Judge, Hamirpur, Himachal Pradesh in Sessions trial No. 11 of 2013 RBT No. 19 of 2013, whereby the learned trial Court convicted and sentenced the appellant (hereinafter referred to as "accused") as follows:-

Section 376 of IPC:

to undergo rigorous imprisonment for ten years and a fine of Rs. 20,000/- and in default of payment of fine he shall undergo simple imprisonment for six months.

Section 4 of the Prevention of Children from Sexual offences Act:-

to undergo rigorous imprisonment for ten (10) years and to pay a fine of Rs. 20,000/- and in default of payment of fine he shall further undergo simple imprisonment for six months.

2. Brief facts of the case are that on 29.1.2013 Smt. Leela Devi (PW-15) wife of accused along with her daughter/prosecutrix (PW-18) and mother Smt. Soma Devi (PW-16) came to the police Station, Hamirpur and lodged a report to the

effect that she was married to accused about 18 years back as per Hindu rites and rituals and out of the said wedlock one son and one daughter were born. Her daughter/prosecutrix is mentally retarded since childhood owing to which she could not study. She was having strained relations with her husband and for such reason she has filed a case for maintenance. She has been living separately in a quarter at Hamirpur for the last one year. Her daughter (prosecutrix) has also been residing with her for the last 11 months and her son is residing with his father at village Gajoh. Her husband used to take her daughter with him for 2-3 days by giving allurements and after that he used to drop her at her residence at Hamirpur. On 25.12.2012 accused had taken the prosecutrix to his house and dropped her back. The prosecutrix was under fear and was not keeping well. On inquiry by her mother, the prosecutrix told her that she is having mild pain in stomach. On the next day when the prosecutrix changed her clothes she was wearing girl's underwear and on inquiry she told that it was given to her by her father, the same was kept by her mother. On 27.1.2013 her daughter disclosed Neha (PW-3) and Rajni (PW-4) that about one month back her father gagged her mouth and forcibly untied the string of her salwar and perpetrated sexual intercourse upon her. Both Neha and Rajni told the incident to Leela Devi. Then Leela Devi inquired from her daughter, who disclosed her that accused had committed sexual intercourse 2-3 times with her and he also threatened that in case she disclosed about the incident to her mother or anyone else, she would be killed by him. The prosecutrix had menstrual period on 23rd day of the last month but she did not have the menstrual period this month. FIR Ex. PW-15/A was registered. The prosecutrix was medically examined. As per the report of the Doctor the possibility of sexual activity cannot be ruled out. On conclusion of the investigation into the offence allegedly committed by the accused a challan was prepared and filed in the Court.

3. The accused was charged by the learned trial Court for his committing offences punishable under Sections 376, 506 IPC and Section 4 of POCSO Act to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 20 witnesses. On closure of prosecution evidence, the statement of the accused, under Section 313 of the Code of Criminal Procedure, was recorded in which he pleaded innocence and claimed false implication. He did not choose to lead evidence in defence.

5. On an appraisal of the evidence on record, the learned trial Court returned findings of conviction against the accused for his committing offence punishable under Sections 376 of IPC and Section 4 of POCSO Act.

6. The learned counsel appearing for the appellant/accused has concertedly and vigorously contended that the findings of conviction recorded by the learned trial Court standing not based on a proper appreciation of evidence on record, rather, theirs standing sequelled by gross mis-appreciation of material on record. Hence, he contends that the findings of conviction being reversed by this Court in the exercise of its appellate jurisdiction and theirs being replaced by findings of

acquittal.

7. The learned Deputy Advocate General has with considerable force and vigour contended qua the findings of conviction, recorded by the Court below standing based on a mature and balanced appreciation of evidence on record and theirs not necessitating interference, rather meriting vindication.

8. This Court with the able assistance of the learned counsel on either side has with studied care and incision, evaluated the entire evidence on record.

9. The prosecutrix, as unfolded by Ex.PW-13/A and PW-13/C which constitute respectively the birth certificate and the relevant abstract of the Pariwar Register of the prosecutrix, was a minor at the time contemporaneous to the occurrence. However, even if the prosecutrix was a minor at the stage contemporaneous to the occurrence as such constituting her legally handicapped to mete consent to the sexual overtures of the accused for his alleged act of perpetrating sexual intercourse upon her on the ill-fated day. Nonetheless the mere factum of hers standing legally interdicted to mete consent to the accused would not ipso facto clinch any conclusion qua the inculcation of the accused rather it stands enjoined upon this Court to on an incisive appraisal of her testimony unveils therefrom the preeminent factum of her deposition besides the corroborative depositions thereto of her relatives standing imbued with credibility besides inspiring. Moreover, the depositions of the prosecution witnesses are to imperatively secure corroboration from the medical evidence on record. In the event of this Court discerning on an incisive reading of her testimony besides of testimonies of her relatives in purported corroboration thereto of theirs being credible besides trust worthy would constrain this court to return with aplomb findings of conviction against the accused. In an endeavour to gauge weather the testimonies of the prosecution witnesses standing ingrained with candour and forthrightness for hence credibility being imputable to them, a prompt advertence to the testimony of the prosecutrix (PW-18) is imperative.

10. PW-18 is the deposition on oath of the prosecutrix whose intelligibility on standing adjudged by the learned trial Court on hers meeting apt answers to the queries put to her by the learned trial Court hence coaxed it to declare her to be a competent witness. She had in her recorded deposition on oath unveiled therein with forthrightness and candor a vivid portrayal of the accused perpetrating forcible sexual intercourse upon her person at his house whereat she had been led to by him. She has disclosed therein of hers making a disclosure qua the occurrence to both Neha (PW-3) and Rajni (PW- 4). She has also unveiled therein of hers thereafter unveiling the penal misdemeanours perpetrated upon her person by the accused to her mother. The deposition of the prosecutrix is bereft of any vice of tutoring standing meted to her by her mother for hence rendering it to be uninspiring besides incredible. She has with utmost naturalness and candor rendered a deposition qua the occurrence with a vivid communication therein of hers standing subjected to forcible sexual intercourse by the accused. Given the factum of her testimony qua the occurrence comprised

in her examination-in-chief being bereft of any inter-se contradictions vis-a-vis her testimony in her cross-examination besides when there is no unfoldment therein of hers rendering a version qua the ill-fated occurrence under any spell of tutoring standing meted to her by her mother constrains this Court to conclude with aplomb of her testimony being sufficient to found thereupon findings of conviction against the accused. Moreover what gives impetus to the inference aforesaid is the factum of her version standing corroborated by PW-15 (Leela Devi) as well as by PW-4 Rajni. The medical evidence constituted in MLC Ex. PW-8/A underscoring therein the factum of her hymen being torn and its admitting one finger easily is exemplificatory of the prosecutrix standing subjected to forcible sexual intercourse. In sequel with medical evidence, too corroborating the version qua the ill-fated occurrence rendered on oath by the prosecutrix constrains a conclusion of the prosecution succeeding in proving the charge against the accused.

11. Even though, there is some delay in the reporting of the ill-fated occurrence to the Police Station concerned, nonetheless the effect of delay, if any, is not fatal to the prosecution case given the imminent fact of the prosecutrix suffering from a mental disability. Further more the accused being her father hence given the sensitivity of her relation with him may also have hence deterred her to promptly disclose the incident to her mother as such it acquires ample as well as potent dissuasive force for constraining her to omit to promptly report the incident.

12. The summum bonum of the above discussion is that the prosecution has been able to adduce cogent and emphatic evidence in proving the guilt of the accused. The appreciation of the evidence as done by the learned trial Court does not suffer from any infirmity as well as perversity. Consequently reinforcing, it can be formidably concluded, that, the findings of the learned trial Court do not merit any interference.

13. In view of the above discussion, the appeal is dismissed and the impugned judgment of 24.1.2014/27.1.2014 rendered by the learned Special Judge, Hamirpur is maintained and affirmed. Records be sent back.