

(2020) 10 SHI CK 0244

In the High Court Of Himachal Pradesh

Case No : Criminal Appeals No. 49, 355 Of 2019

Madan Kumar And Others

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 30-10-2020

Acts Referred:

Indian Penal Code, 1860 — Section 354A
Protection Of Children From Sexual Offences Act, 2012 — Section 8, 10, 17, 21
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2020) 10 SHI CK 0244

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Sheetal Vyas, Hemant Vaid, Hemanshu Mishra, Hemant Vaid

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. The appellant Madan Kumar, upon becoming aggrieved, from his being convicted, for, charge(s) drawn under Section 354-A IPC, and, under Sections 8, 10, 17, 21 of the Protection of Children from Sexual Offences Act, 2012, hence by the learned Special Judge, Chamba, District Chamba (H.P.), through a verdict rendered, on 6.3.2019 upon, session trial No. 365 of 2017, has instituted thereagainst, the, instant appeal, before this Court.

2. In pursuance to his becoming convicted, for, the afore charges, the accused became sentenced, to, undergo rigorous imprisonment for three years, and also a sentence, of, fine in the sum of Rs. 10,000, became imposed upon him, vis-à-vis, charge(s), framed under Section 354-A of the Indian Penal Code, and, he was also sentenced, to, undergo rigorous imprisonment, for five years, and, also became sentenced, to, pay a fine of Rs. 25,000/-, for, the offence punishable, under, Section 10 of the POCSO Act. In default(s) of payment(s) of fine, he is further sentenced to undergo simple imprisonment, for six months. Both the sentences were ordered to run concurrently.

3. Furthermore, the State of H.P., is, also aggrieved from the verdict, of, acquittal, pronounced on 6.3.2019, by the learned Special Judge, upon Session trial No. 365 of 2017, and, wherethrough one Shreshtha Devi, became acquitted and, hence thereagainst Criminal Appeal No. 355 of 2019, becomes instituted before the Court.

4. Since both the appeals, arise, from the afore common verdict, recorded upon Sessions trial No. 365, of, 2017, hence both the appeals are amenable, for, a common verdict becoming pronounced thereon(s).

5. In pursuance to the previous statement, recorded in writing, of, the victim, statement whereof becomes borne in Ext. PW7/A, a formal FIR, Ext.PW7/B became registered with the Police station concerned, (a) wherein narration(s) occur(s), vis-à-vis, after disappearance, of, the victim's father, the latters' mother, solemnizing marriage hence with one Kisso. Furthermore, an echoing becomes borne therein, that, both the victim, and, the latters' brother, staying with their mother, since the year 2015. However, qua the year 2015, an echoing becomes borne in Ext. PW7/A, hence thereat the victim's mother, severing her marital ties with one Kisso, and, thereafter, both the victim and her younger brother, staying with their aunt, one Shreshtha Devi. She also narrates, that, as and when the afore Shreshtha Devi, was not available, at home, thereat(s), accused Madan Kumar, taking to press her breasts, and, also his touching her private parts. The accused is stated to be the husband, of the afore aunt, namely one Shreshtha Devi, of, the victim. The last incident, is, echoed therein to occur six days prior, vis-à-vis, to the making, of, Exhibit PW7/A. During the course, of, investigation(s), the prosecutrix also made a statement, under Section 164 Cr. P.C., before the learned Magistrate concerned, statement whereof, is, borne in Ext. PW10/B, wherein also she makes penally inculpable echoing hence against the accused.

6. The prosecution for proving the age, of, the prosecutrix has placed, on record the best evidence, qua therewith, inasmuch as, the birth certificate, of, the prosecutrix, birth certificate whereof becomes, borne in Ext. PW3/B. A perusal thereof underscores, vis-à-vis, the prosecutrix, at the relevant time, being a minor, and, hence being fully incapacitated, to mete any valid consent, to the accused, to hold her to coitus. Consequently, the significance, of, consent, if any, meted by the victim, to the purported sexual acts, committed upon her, hence by the convict, become(s) wholly in-consequential.

7. The statement, of, the prosecutrix, if free from any taint, of, any improvement(s) or embellishment(s), made upon her previous statement(s), recorded in writing, and, also if free from any taint, of, any contradiction(s), occurring intrase her examination-in-chief, and, her cross-examination rather would thereupon(s) obviously constrain this Court, to, impute the optimal probative sanctity thereto. However, upon any of the afore taint(s), becoming borne in the testification, rendered on oath, by the prosecutrix, (a) thereupon, this Court would construe her testification, to be incredible, and, also obviously,

untrustworthy, (b) and, would rather lean towards recording an order, of, acquittal upon the accused. Necessarily, in the afore endeavor, a circumspect reading, of, the testification, of, the prosecutrix, as, rendered before the learned trial Court, is, imperative. The prosecutrix stepped into the witness box, as PW-10, and, in her examination-in-chief, has attributed to the accused, the penally prohibited acts, of, his touching her private parts, and, also his touching her breasts. However, perse thereupon(s), the afore drawn charge(s), would not become sustained, as, thereafter, on a reading, of, her cross-examination, no echoing(s), are to occur therein, rather visibly displaying, vis-à-vis, hers' either improving or embellishing, upon her previous statement, recorded in writing, as become(s) borne in Ext. PW7/A, (c) and, also no interse contradictions, are, rather to occur, interse the narration(s), made in Ext. PW7/A, and, vis-à-vis, the apposite statement made under Section 164, of, the Cr. P.C. Besides, obviously, the statement, of, the prosecutrix, as, borne in Ext. PW10/A, is, to contain narration(s), bearing the completest compatibility, vis-à-vis, both the afore made statement(s), hence by the prosecutrix. Though, the prosecutrix deposed in tandem, with, the previous statement, as, embodied in Ext. PW7/A, (d) however, she, in her statement made before the learned Magistrate concerned, and, as embodied, in Ext. PW10/B, does, visibly improve(s) and embellishes therefroms, (e) inasmuch as, in Ext. PW10/B, she in supplement, to, the version spelt, in, Ext. PW7/A, rather ascribes to the accused/convict, the prohibited sexual misdemeanor, of, his chasing her, and, his thereafter, nabbing her from the back, and, also planting kisses upon her, besides, his hugging her. Moreover, therein she recites, vis-à-vis, upon her, intimating him qua hers making a awakening(s), qua therewith, to her aunt, hence, leading him to tell her that he is not scared, of, the victim's aunt, given the latter being his wife. She also narrates therein that upon hers' intimating the incident, to one Shreshtha Devi, the wife, of, the accused, and, her aunt, rather not yielding appropriate result(s), inasmuch as, her aunt disbelieving her. The statement, of, the prosecutrix, embodied in Ext. PW10/B, was recorded subsequent, to the making of her statement as, embodied in Ext. PW7/A, and, in the latter exhibit, all the afore made narration(s), rather borne in Ext. PW10/B, do not exist therein. Sequel thereof, is, qua the afore made embellishment(s), and, improvement(s), in Ext. PW10/B, from, the narration(s), made by the prosecutrix, in Ext. PW7/A, hence rendering her deposition in Court, as made only in consonance, with the narration(s), made in Ext. PW7/A, hence to be both incredible and untrustworthy.

8. Be that as it may, even in Ext. PW10/A, in pursuance whereof, the prosecutrix made a statement, comprised in Ext. PW7/A, she ascribes, to, the convict/accused, penal mis -demeanor(s), rather completely contra-distinct, and, starkingly improved, upon vis-à-vis, her version, comprised in Ext. PW7/A, (a) inasmuch as, in Ext. PW7/A, she attributes the commission, of, penetrative sexual assault, upon her person, by the convict, (b) and, also the afore assault(s), occurring upon the bed, whereto she became carried by the convict. She has also in stark contradiction(s), vis-à-vis, the, narration, made in Ext. PW7/

A, and the one(s), borne in Ext. PW10/B, made echoing(s) therein, qua her aunt, one Shreshtha Devi, upon being, apprised by her, vis-à-vis, the afore penal misdemeanor, becoming perpetrated upon her, by the convict, (c) rather belaboring her, and, locking her inside the room, and, threatening to kill her. The conspicuous effect, of, the afore contradiction(s), interse Ext. PW10/A, vis-à-vis, Ext. PW7/A and, also, hence interse Ext. PW10/B, and, Ext. PW7/A, and, thereafter, with the prosecutrix deposing, rather only in tandem with Ext. PW7/A, (d) is, qua, the afore contradictory stance(s), adopted by the victim, reiteratedly nail a firm and formidable conclusion, vis-à-vis, her testification, being both incredible, and, untrustworthy.

9. In summa, for the reasons which have been recorded hereinabove, this Court holds that the learned trial Court, has not appraised the entire evidence, on record, in a wholesome and harmonious manner, and, also the analysis thereof, by the learned trial Court, hence suffers, from, a perversity or absurdity of misappreciation and non-appreciation, of evidence, on record.

10. There is merit in criminal appeal No. 49 of 2019, and, the same is allowed. The accused, is, acquitted, of, the charge. His personal, and, surety bonds, are, ordered to be forthwith cancelled. The effect thereof, is, that criminal appeal No. 355 of 2019, as becomes preferred by the State, against the verdict, of, acquittal, made upon one Shreshtha Devi, is, dismissed. Records be sent back forthwith.