

(2020) 09 SHI CK 0454
In the High Court Of Himachal Pradesh
Case No : Criminal Appeals No. 151 Of 2020

Saravjeet Ram @ Sarfu

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 30-09-2020

Acts Referred:

Protection Of Children From Sexual Offences Act, 2012 — Section 4
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2020) 09 SHI CK 0454

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Rajesh Kumar Parmar, Hemant Vaid, Hemanshu Mishra

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The instant appeal, is, directed by the convict/accused/appellant herein, against the pronouncement made by the learned Special Judge, Nalagarh, District Solan, H.P, upon Trial No. 43-NL/7 of 2019/16, on 5.2.2020, whereunder, he convicted, the accused/appellant herein, for his, committing, an offence punishable, under, Section 4 of Protection of Children from Sexual Offences Act, 2012 (in short "POSCO" Act), besides consequent, thereto, sentence of rigorous imprisonment, for, a period of ten years, and, a, fine of `10,000/-, stood imposed, upon the convict/accused/appellant, and, in default of payment of fine amount, he was sentenced, to, undergo simple imprisonment for a period of two months.

2. The genesis of the prosecution case, is, embodied in, the, statement recorded by the mother of the child/victim, statement whereof, is, embodied, in, Ext. PW2/A. In pursuance to, Ext.PW2/A, an apposite FIR, became recorded, at Police Station, Baddi, FIR whereof, is, embodied, in, Ext. PW8/B. In Ext. PW2/A, there, is, an ascription of penal misdemeanor(s), vis-à-vis, the accused/convict,

inasmuch as, his upon the person of the victim, aged about 06 years, hence perpetrating, a, penetrative sexual assault. The afore sexual assault, made by the convict, upon the minor victim, occurred at the site of occurrence, as embodied, in, Ext. PW15/A. Recoveries of parcel, Ext. P-1, and, blanket Ext. P-2, became effectuated, through memo embodied, in Ext. PW2/B. The MLC appertaining, to, the victim/prosecutrix, is, embodied in Ext. PW-16/A. The blood samples of the victim, on FTA cards became collected, through, Ext. PW3/C, and, the blood samples of the accused, on, FTA cards, also, became collected, and, is/are, embodied, in, Ext. PW15/C. Both the afore collected blood samples, on FTA cards, respectively, of, the accused, and, of, the victim became transmitted, through, Road Certificate, borne in, Ex. PW5/D to, the FSL concerned, (i) and, thereupon, the FSL concerned, in its report, as, embodied in Ext. PX, made an opinion, qua their not occurring, the apposite compatibility inter se the afore blood samples collected, on FTA cards, respectively, of, the victim, and, of, the accused. The parcel, Ext. P-3 containing, shirt Ext. P-4, T-shirt-cum-vest, Ext. P-5, lower Ext. P-6, and underwear Ext. P-7, all worn at the relevant time by the accused were sent, through, Road Certificate, as embodied in Ext. PW5/D, vis-à-vis the FSL concerned, (i) whereupon, the FSL concerned, in its report, as embodied, in Ext. PW15/G, made an opinion, rather suggestive, vis-à-vis no incriminatory role therethrough, becoming invincibly fastenable, upon the accused

3. The prosecution to succeed in its fully discharging, the, burden appertaining, to, its efficaciously proving the charge, against the accused, it became enjoined, to, ensure, qua the prosecutrix upon hers, entering into the witness box, hers rendering, an, inspiring, and, creditworthy version, vis-à-vis, her ascribed penal misdemeanour, qua the convict, hence, happening at the site of occurrence. Moreover, the testification made in Court by the victim, is, also, enjoined to be free from any stain, of, any doctoring, or, tutoring being, meted to her, by her parents. In other words, an inspiring untutored testified version, of, the prosecutrix, would coax this Court, to, sustain the charge against the accused. The prosecutrix stepped into the witness box, as PW-1, and, after the learned trial Court, upon purveying certain queries, to, her, to gauge, her, intelligibility, and, whereunto, she purveyed intelligent answers, hence constrained it, to, declare her as, a, competent witness. Though, in the opening of her examination-in-chief, she omits to with specificity, hence narrate the date and time of occurrence, (a) however, in the latter part, of, her examination-in-chief, she has with utmost force, made ascriptions, of, penal misdemeanors, vis-à-vis, the accused, inasmuch as, his committing sexual assault, upon her person, (b) she has also made a disclosure therein vis-à-vis, hers, becoming initially meted threatenings, by the accused, against hers, making any disclosure, of, the afore occurrence to anyone. Furthermore, she also makes testified echoing(s) vis-à-vis, hers initially making the apt disclosure, to, one Neha, and, thereafter, the afore Neha, making a disclosure, of, the occurrence vis-à-vis her mother, one Sakina, and whereafter, the afore, Sakina, is testified, to, disclose the above incident, to, her mother, hence on the same day. Even though, during the course,

of, hers becoming subjected, to, cross-examination by the learned defence counsel, she, made an acquiescence, vis-à-vis, hers becoming accompanied to Court, by her parents. Yet, the afore, does not beget, an inference, vis-à-vis her rendering, a, tutored or coached version, vis-à-vis, the occurrence, as thereafter, in her cross-examination, she makes a complete denial, to, a, suggestion, qua hers being coached by her parents, to, make a deposition, before the learned trial Court. The mother of the prosecutrix, upon, stepping into the witness box, as PW-2, makes, an improvement, upon the testification, as earlier made, by her daughter, and, appertaining, to the later testifying, vis-à-vis hers makes the initial disclosure, to, one, Neha, and, thereafter, the afore Neha, transmitting the afore disclosure(s), as made to her, by the prosecutrix, to her mother, and, whereafter, one Sakina, making an intimation, to, PW-2 vis-à-vis, the occurrence, (a) Inasmuch as, despite the prosecutrix making disclosure(s), vis-à-vis, hers, not making any intimation to her mother, yet PW-2, making an echoings, vis-à-vis, her daughter, rather also disclosing the incident to her. However, the afore minimal improvement(s), as upsurge(s) inter se the testification, of, the victim, and, the testification, of, her mother, rather become(s), both, marginalized, and, also become(s) subsumed, through, a, suggestion holding affirmative echoings, becoming put to her, during the course, of hers, being subjected to cross-examination, (b) inasmuch as, qua her daughter making, an apt, disclosure to her, on, 22.7.2016, and, when, an, affirmative answer(s) thereto, emanated from PW-2, (c) thereupon, the apt sequel, hence ensuing, therefrom, reiteratedly, is/are, the afore, minimal inter se contradictions, inter se, the respective testifications of PW-1, and, of, PW-2, and, appertaining to the afore factum, becoming fully nullified.

4. Furthermore, even though, one Neha, and, Sakina, wheretowhom, the victim-prosecutrix, made a disclosure vis-à-vis occurrence, (a), though during the course of theirs respectively testifying in Court, make renegings from their respectively recorded statement in writing, yet therefrom, the charge against the accused, would not founder, (b) as, the, afore rendered testifications, with the completest inter se corroboration both by the prosecutrix, and, her mother, rather constitute, the fulcrum of the firmest evidentiary strata, of, immense vigour, against the accused.

5. The reports, of, the FSL respectively, embodied in Ext.PW15/G and, in Ext.PXXXX1, though, do not make any echoing(s) vis-à-vis any inculpatory role, of, the accused, (i) and also, though the MLC, prepared by the Doctor concerned, upon hers, subjecting the victim to medical examination, has upon, hers' stepping into the witness box, as PW-16, has testified, vis-à-vis the sequel, of, her medical examination, upon the person of the victim, leading her to make a conclusion vis-à-vis, no penetrative sexual assault becoming perpetrated upon the victim, yet hers proving the narrations made therein, vis-à-vis, rather, sexual assault becoming attempted, to be, made upon the prosecutrix, (ii) yet, both the afore, non-incriminatory echoings, qua the accused, becoming embodied, in MLC Ext. PW16/A, and, in the report of FSL, as respectively, embodied, in Ext.

PXXXX1, cannot capitalize, an inference, qua thereupon the charge against the accused becoming negated (iii), as for the reasons afore stated, with there occurring complete inter se corroboration inter se the testification of the victim, and, of the mother of the prosecutrix, thereupon, the afore rather constituting the fulcrum, of, the firmest evidentiary strata of utmost probative vigour, hence against the accused, (iv) and, with the afore rendered inter se corroborative, testifications, making voicing(s) vis-à-vis, the accused, touching the private parts, of, the victim, and, also, vis-à-vis, hers being caused pain thereon, (v) whereupon(s) dehors, there being no penetrative sexual assault becoming perpetrated upon the victim, hence, it does not capitalize, the learned counsel for the accused, to, make any valid argument(s), vis-à-vis, his being punishable, for, attempting, to, commit sexual assault, than, for, his committing, the, charged offence, upon the victim, (vi) conspicuously, since the afore firm evidence appertaining, to, the touchings of the private parts of the prosecutrix, is, sufficient to constitute, the, commission, of, the charged penal misdemeanors, upon, the victim, by the convict.

6. Be that as it may, and dehors, all, the afore stated made inference(s), the prominent piece of evidence, hence enjoying the utmost sanctity, is yet comprised in the acquiescence, made by the Investigating Officer, upon his stepping into the witness box, as PW-15, and, especially in his cross-examination, wherein, he visibly makes an affirmative answer, to, a suggestion, meted to him, by the learned defence counsel, and, appertaining, to, the mother of the prosecutrix recording her statement, before him, under Section, 161 Cr.P.C. The afore acquiescing answer hence meted, by PW-15, to a corresponding thereto, hence affirmative suggestion(s), purveyed to him, during his cross-examination, by the learned counsel for the accused, hence, begets an, inevitable sequel inasmuch as, the defence accepting the validity, and, truthfulness, of, the previous statement, as became recorded, under Section 161, Cr. P.C by the Investigating Officer, of, the mother of the victim, namely, one Smt. Ishrawati PW-2. Consequently, the effects, of, no incriminatory role being scribed, in the report of FSL, as embodied in Ex.PW15/G, and, in, Ex.PXXXX1, becomes effaced, besides the effects, of, motive, if any attributable, to, the prosecutrix also becomes fully obliterated.

7. For the reasons which have been recorded hereinabove, this Court hold that the learned trial Court, has appraised the entire evidence on record in a wholesome, and, harmonious manner, apart therefrom the analysis, of, the material on record by the trial court, hence not suffering from any gross perversity or absurdity of mis-appreciation and non-appreciation, of, evidence on record.

8. Consequently, the instant appeal is dismissed. In sequel, the impugned judgment is affirmed and maintained. All pending applications also stand disposed of. Records be sent back forthwith.