

(2023) 03 SHI CK 0084
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 135 Of 2020

State Of Himachal Pradesh

APPELLANT

Vs

Madan Lal And Another

RESPONDENT

Date of Decision : 29-03-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 173(2), 311, 313, 378, 391
Indian Penal Code, 1860 — Section 34, 376, 376(2)D, 506
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6

Citation : (2023) 03 SHI CK 0084

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Anup Rattan, I.N. Mehta, Yashwardhan Chauhan, J.S. Guleria, Rajat Chauhan, Shanti Swaroop

Final Decision : Disposed Of

Judgement

Virender Singh, J

1. State has preferred the present appeal, under Section 378 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC'), against the judgment, dated 2nd May, 2019, passed by the learned Special Judge, Hamirpur, H.P. (hereinafter referred to as 'the trial Court').

2. By way of the judgment, dated 2nd May, 2019, the learned trial Court has acquitted the respondents (hereinafter referred to as 'the accused') in Sessions Trial No. 7 of 2018, from the charges framed against them, under Sections 376 (2) D, 506 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC') and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act').

3. Brief facts, leading to the filing of the present appeal, before this Court, may be summed up, as under:

3.1. The police of Police Station Nadaun had filed the report, under Section 173

(2) of the CrPC, against the respondents, before the learned trial Court, on 6th February, 2018.

3.2. As per the report, under Section 173 (2) of the CrPC, on 8th November, 2017, the Inspector/SHO, Police Station Nadaun, was present at a place known as Anoo, then, the child victim, aged about 17 years, submitted a complaint before SHO, which was addressed to the Superintendent of Police, District Hamirpur.

3.3. In the said complaint, the child victim has disclosed that she is not feeling safe at her house and requested the police to provide protection to her. She has further mentioned in the application that injustice has been done with her at her residence. Hence, she has requested to help her. The said complaint was forwarded to Police Station by SHO, with a direction to register the FIR, under the relevant Sections.

3.4. In the complaint, the child victim had disclosed that she is studying in 'X' School (name withheld). She has got admission in that school in the month of May, 2017. Prior to that, she was studying in the Government High School, 'Y' (name withheld). In the said complaint, apart from the name of her village, the child victim has also disclosed the name of her mother.

3.5. According to her, she has repeatedly been ravished for the last two years, by none other than her father. According to her further version, she had disclosed this fact to her mother last year. Then, her mother had talked to her father. When her father came back, then, he had beaten the child victim, as well as, her mother and threatened them not to disclose this fact to any one, otherwise, he will finish them.

3.6. The child victim has further recorded in the complaint that her father wants to implicate her god brother. Due to this apprehension, her god brother had gone to Delhi. The father of the child victim pressurized her to take medicines, otherwise, threatened her to consume some poisonous substance. When the child victim insisted to get her blood tested, then, her father had refused to do so. The father of the child victim also threatened to kill her, in case, she named him. Thereafter, the child victim was taken to Panipat, where they had resided for two days, at the house of paternal aunt of the child victim.

3.7. It has further been mentioned in the complaint that once, her father had got her raped, by her brother and also, her father disclosed that he wanted to implicate her cousin brother. The complainant also mentioned that these facts were also brought to the notice of the Principal as well as to the Harassment Committee of the School.

3.8. Lastly, she has mentioned in the complaint that her grievances be redressed, as she is interested to live.

4. On the basis of the above facts, the police registered FIR, under sections 376, 506 read with Section 34 IPC and Section 4 of the POCSO Act and the criminal

machinery swung into motion.

5. Thereafter, the investigation of the case was entrusted to IO/SHO, Police Station Nadaun, as well as, Inspector Rita Sharma, Incharge, Anti Human Trafficking Unit, Hamirpur.

6. The child victim was got medico- legally examined and her blood samples were obtained on FTA Cards for DNA profiling. She was produced before the learned Additional Chief Judicial Magistrate, Nadaun, where her statement, under Section 164 CrPC was recorded. Thereafter, the alleged spot, i.e. the residence of the child victim as well as the place known as Dharamgarh Mor, District Patiala (Punjab), was visited by the Investigating Officer and the spot map was prepared during the investigation. The physical evidence was also collected, including the truck, on which the accused were working as drivers. Accused-Madan Lal was arrested on 12th November, 2017 and accused No. 2 was arrested on 13th November, 2017. Both were medico-legally examined and blood samples were preserved for DNA profiling. The age proof of the child victim was obtained from the local panchayat as well as from the school. From those documents, the date of birth of the child victim was found to be 28th August, 2001. The relevant documents from the Sexual Harassment Committee of the School, where the child victim was studying, was also obtained.

7. During the investigation, the child victim was found to be pregnant, as such, by moving the application before the Senior Medical Officer, Regional Hospital, Hamirpur, the opinion with regard to the abortion of the foetus of the child victim was obtained and thereafter, the foetus was got aborted at Regional Hospital, Hamirpur. The foetus was preserved for DNA profiling.

8. The physical evidence, so collected, during the investigation, was sent to Regional Forensic Science Laboratory, Mandi, whereas the foetus of the child victim, as well as, the blood samples, obtained on the FTA cards, were sent to State Forensic Science Laboratory, Junga, for DNA profiling.

9. When the challan was filed before the Special Judge, by that time, the report of the DNA profiling from the State Forensic Science Laboratory, Junga, was awaited.

10. After complying with the codal formalities, the learned trial Court found a prima facie case against the accused persons, punishable under Sections 376 (2)D, 506 read with Section 34 Indian Penal Code, 1860 — Section and Sections 4 and 6 of the POCSO Act. Consequently, both the accused persons were charge-sheeted accordingly.

11. When the charges, so framed, were put to the accused persons, they had pleaded not guilty and claimed to be tried.

12. Since the accused persons have not pleaded guilty, as such, the prosecution has been directed to adduce evidence, to substantiate the charges framed against the accused persons. Consequently, the prosecution has examined as

many as 31 witnesses.

13. After the closure of the evidence, the entire incriminating evidence, appearing against the accused persons, was put to them in their statements, recorded under Section 313 CrPC, in which, both the accused persons have denied the entire prosecution case, however, in the defence, both of them have not led any evidence.

14. The learned trial Court, after hearing the arguments of the learned Public Prosecutor as well as the defence counsel, vide judgment, dated 2nd May, 2019, has acquitted the accused persons, from the charges framed against him.

15. Feeling aggrieved from the said judgment, the present appeal has been preferred by the State, before this Court.

16. The judgment of acquittal has been assailed on the ground, that the learned trial Court has not only failed to consider the prosecution evidence, but, has also adopted unrealistic standards to evaluate the direct and cogent evidence.

17. The findings of the learned trial Court have also been assailed on the ground that the testimony of the prosecution witnesses has been discarded without any reason.

18. Assailing the judgment of acquittal, it is the stand of the State that the learned trial Court, in para 16 of the impugned judgment, has held that the report of DNA profiling is awaited, whereas, according to the appellant, the said findings are contrary to the facts, as, it is impossible to believe that the samples could not have been analyzed by the State Forensic Science Laboratory for more than a year. The learned trial Court, in a hasty manner, has not waited for filing of the supplementary challan.

19. It has been contended that the learned trial Court has not considered the scientific evidence in the shape of DNA report, which is about the person, who is the biological father of the terminated foetus.

20. According to the learned Deputy Advocate General, the report of the State Forensic Science Laboratory was received on

21 st June, 2019, whereas, the learned trial Court has decided the matter on 2nd May, 2019. As such, the findings of the learned trial Court, as contained in para 16 of the impugned judgment, have been stated to be unsustainable in the eyes of law.

21. Highly relying upon the statements of PW-5, PW-7, PW-9, PW-26 and PW-28, it has been argued that the DNA samples were sent to State Forensic Science Laboratory, Junga. The learned trial Court, according to the learned Deputy Advocate General, in a haste manner, has decided the matter, without waiting for the DNA report.

22. Heavily relying upon the DNA report, which has been annexed with the

appeal, it has been argued that accused-Madan Lal has been found to be the biological father of the foetus.

23. On the basis of the above grounds, the learned Deputy Advocate General has prayed that the appeal may kindly be accepted and the judgment of acquittal may kindly be set aside, by convicting the accused persons, for the commission of offences, for which, they have been charge-sheeted, by the learned trial Court.

24. It is pertinent to record herein that during the pendency of the appeal, before this Court, accused No. 1-Madan Lal expired on 15th March, 2020. As such, the appeal against him was ordered to be abated, vide order, dated 31st May, 2022.

25. Alongwith the appeal, the appellant - State has moved the application, under Sections 391, 311 read with Section 482 CrPC, for placing on record the DNA report, in FIR No. 100 of 2017. The said application was allowed by this Court, vide order, dated 26th November, 2021 and the matter was ordered to be remitted to the learned Special Judge, Hamirpur, for affording the prosecution, an opportunity to place and prove on record the DNA report, dated 21st June, 2019. The relevant para-14 of the said order, is reproduced, as under:

"Thus, we are of the considered view, that the report of SFSL, Junga, Annexure A/1, is necessary to be proved in the facts and circumstances of the case and for such purpose, the application under consideration is allowed. The matter is, accordingly, remitted back to learned Special Judge, Hamirpur, for affording the prosecution an opportunity to place and prove on record report dated 21.06.2019 of SFSL Junga, Annexure A/1 in accordance with law by strictly adhering to the provisions of Chapter-XXIII of the Code of Criminal Procedure. Learned Special Judge, Hamirpur, shall thereafter certify such evidence to this Court. The parties are directed to appear before learned Special Judge, Hamirpur, on 6.12.2021. On said date, learned Special Judge, Hamirpur, shall fix further date, affording opportunity to the applicant/appellant to prove above noticed additional evidence in accordance with law.

This entire exercise shall be completed by learned Special Judge, Hamirpur, on or before 31.12.2021 and the compliance shall be reported to this Court on or before 6.1.2022."

26. Perusal of the compliance report submitted by the learned Special Judge, Hamirpur, demonstrates that as per the directions of this Court, the statements of PW-30, Dr. Vivek Sahajpal and PW-31 Dr. Visheshwar Sharma, have been recorded. However, without putting the incriminating evidence, appearing against the accused persons, to them, in their statements, recorded under Section 313 CrPC, the same cannot be considered, by this Court.

27. Admittedly, when the judgment of acquittal has been passed by the learned trial Court, the evidence, so recorded by the learned Special Judge, in pursuance of the directions of this Court, dated 26th November, 2021, was not available, as

such, for the complete adjudication of the matter, the same is liable to be remanded back, by setting aside the judgment of acquittal, passed by the learned trial Court. Ordered accordingly.

28. Since, one of the accused, namely, Madan Lal, has already expired and the proceedings against him have been ordered to be abated, as such, accused No. 2-Vishal, through his counsel, is directed to appear before the learned Special Judge, Hamirpur, on 17th April, 2023, at 10.00 a.m., with a direction to the learned Special Judge, Hamirpur to put, the incriminating evidence appearing against accused-Vishal, which was recorded, in pursuance of the directions of this Court, to him and to decide the matter afresh.

29. It is worthwhile to record herein that the necessity of remanding the matter back to the learned trial Court has arisen due to the fact that the evidence, so recorded by the learned Special Judge, in pursuance of the order, dated 26th November, 2021, has not been put to the accused persons and consideration of the said evidence by this Court, would amount to curtailing the opportunity of filing the appeal, to the parties, i.e. State as well as the accused, before this Court, which is not permissible under the law.

30. The appeal is disposed of accordingly.

31. Record be sent back.