2025 INSC 1232

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1295 OF 2018

VARUN KUMAR ALIAS SONU ...APPELLANT(S)

Versus

THE STATE OF HIMACHAL PRADESH & ORS. ...RESPONDENT(S)

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. The present appeal has been directed against the final judgment dated 18.03.2015 and the final order dated 08.04.2015 rendered by the High Court of Himachal Pradesh at Shimla in Criminal Appeal Number 139 of 2008, whereby the appeal filed by the State of Himachal Pradesh against the petitioner was allowed and the judgment dated 05.12.2007 of the Sessions Judge, Hamirpur, Himachal Pradesh, passed in Sessions Trial Number 11 of 2007 was partly set aside.

2. The factual matrix of the present case is as under:

2.1. Girdhari Lal, uncle of the victim girl, lodged a report with the police on the basis of which FIR No. 88 dated 28.02.2007 was registered

at Police Station, Sadar (Hamirpur) for offences punishable under Sections 363 and 366 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC"). During the course of investigation, Sections 376 and 377 of the IPC were added to the FIR. After investigation, the Investigating Officer filed a chargesheet against the present appellant /accused as well as the co-accused, Deepak Rai Verma.

2.2. The appellant/accused was charged for having committed offences punishable under Sections 363, 366, 376 and 377 of the IPC, while the co-accused was charged for committing offences under Sections 212 and 368 of the IPC.

2.3. The prosecution examined as many as 23 witnesses in order to establish its case before the concerned trial court. The statements of the accused persons under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the CrPC") were also recorded.

2.4. The Trial Court, by judgment and order dated 05.12.2007, acquitted both the accused persons.

2.5. Thereafter, the State of Himachal Pradesh filed an appeal before the High Court against the judgment and order of acquittal rendered by the trial court. The High Court, by way of the impugned judgment,

partly allowed the appeal against the appellant/accused and the appellant/accused was convicted for committing offences punishable under Sections 363, 366, 376 and 377 of the IPC. *Vide* the final order dated 08.04.2015, the appellant/accused was sentenced to imprisonment for a period of seven years and fine of Rs. 20,000/-, and in default of payment of fine, further undergo imprisonment for a period of one year. The High Court dismissed the appeal *qua* the co-accused, thereby confirming the order of acquittal passed by the trial court so far as the co-accused is concerned.

2.6. The appellant/accused has therefore preferred the present appeal before this Court.

3. Learned counsel for the appellant/accused contended that though the prosecution failed to prove the case against the appellant/accused beyond reasonable doubt, the High Court has wrongly convicted the appellant/accused for committing the alleged offences. Learned counsel referred to the deposition of the prosecution witnesses, including the deposition given by the victim (PW-4) as well as the deposition given by the Doctor (PW-1), who had examined the victim. It is contended that the medical evidence does not support the version given by the victim, despite which the High Court has convicted the appellant/accused. It is further submitted that there are

major discrepancies and contradictions in the statements of the prosecution witnesses, despite which the High Court has believed the version given by the victim. At this stage, it is contended that the victim cannot be termed as a sterling witness and therefore, the High Court ought not to have relied upon the version given by the victim. When there is a conflict between the medical evidence and the ocular evidence of the prosecution, the benefit of doubt is required to be given to the accused and in fact the trial court has rightly passed the order of acquittal in favour of the appellant/accused.

5. Learned counsel for the appellant/accused further submitted that when two views are possible on the basis of the evidence laid by the prosecution and if the Trial Court has taken one possible view by acquitting the accused, it was not open for the High Court to take another possible view relying upon the evidence laid by the prosecution. It is contended that the scope of interference in an order of acquittal is limited, despite which the High Court has interfered with the order of acquittal rendered by the trial court and therefore, the impugned judgment passed by the High Court is liable to be set aside.

6. Learned counsel for the appellant/accused has not disputed the age of the victim. In fact, on the basis of the evidence led by the

prosecution before the trial court, the trial court determined the age of the victim as 15 years.

7. Learned counsel for the appellant/accused, therefore, urged that the present appeal be allowed and thereby, the impugned judgment passed by the High Court be set aside.

8. *Per contra*, learned counsel appearing on behalf of the respondent State opposed the present appeal. Learned counsel submitted that the High Court has reappreciated the entire evidence led by the prosecution and thereafter, given a finding that the age of the victim was 15 years at the time of the incident and since, the said finding is not disputed by the appellant/accused, this Court may consider the age of the victim as 15 years. Thus, it is contended that the victim was a minor and that too below 16 years of age at the time of the incident.

9. Learned counsel for the State thereafter contended that the victim (PW-4) has fully supported the case of the prosecution and in fact the victim has narrated the manner in which the incident took place while giving deposition before the Court. Specific allegations with regard to committing rape and anal intercourse were levelled by the victim against the appellant/accused. At this stage, it is pointed out from the

deposition given by the Doctor (PW-2), who examined the victim, that "it is possible that she was subjected to intercourse". Further, another Doctor (PW-1) has also opined that the victim "may have undergone sexual intercourse within one week prior to the time of examination", which was done on 02.03.2007. Further, it was stated that there was nothing to suggest that sexual intercourse had not taken place. It is also contended that PW-2 has stated that "there was no evidence of anal intercourse", however, at the same time the said Doctor has further stated that "the possibility of sodomy cannot be ruled out". Learned counsel also contended that PW-1 has specifically stated that "on enquiry, the victim admitted to have had sexual intercourse on 27.02.2007 at about 12 midnight one time only". It is therefore urged that the victim, at the very first instance, gave the details of the incident before the Doctor.

10. Learned counsel for the respondent State therefore contended that the victim can be termed as a sterling witness and relying solely upon her statement, even without corroboration, conviction can be recorded. Furthermore, in the present case, even the medical evidence does not rule out the sexual intercourse. It is contended that despite the aforesaid evidence led by the prosecution before the trial court, the trial court acquitted the appellant/accused and therefore, the

High Court, after considering the aforesaid relevant aspects/evidence, rightly set aside the judgment and order rendered by the trial court. Learned counsel, therefore, urged that no interference is required in the impugned judgment passed by the High Court, and hence, this appeal is liable to be dismissed.

11. Having heard learned counsel appearing for the parties and having gone through the material placed on record and the evidence led by the prosecution, it emerges that so far as the age of the victim is concerned, the same has not been disputed before this Court. As per the case of the prosecution, the victim was about 15 years old on the date of the incident. Keeping in view the aforesaid aspect, if the deposition given by the victim (PW-4) is carefully examined, it transpires that the victim has specifically deposed before the trial court about the manner in which the incident took place. Specific allegations with regard to committing rape upon her by the appellant/accused and committing unnatural sex upon her have been levelled by the victim against the appellant/accused. The victim has specifically deposed that when she reached her friend's house, the appellant/accused took her to Una in a bus. At that time, the victim had borrowed two pairs of suits from her friend. At Una, the appellant/accused took her to the house of his cousin (the co-accused), who was residing with his wife and

daughter. The victim has further deposed that she along with the appellant/accused slept in one room, whereas, others slept in another room. Further, during the night, the appellant/accused subjected the victim to forcible sexual intercourse. Next morning, the victim changed her clothes on the asking of the wife of the co-accused. In the evening, the victim was told by the co-accused that her family had lodged a report with the police, and the police were searching for them. Thereafter, they went to the factory premises of the co-accused and stayed there. At that place, the appellant/accused subjected the victim to carnal intercourse. Thus, from the testimony given by the victim, it is clear that she was subjected to sexual intercourse by the appellant/accused. From the evidence given by the victim, we are of the view that the victim can be termed as a sterling witness.

12. Keeping in view the aforesaid deposition, the testimony of PW-1 is examined. It transpires that the said witness has specifically stated that "on enquiry, she admitted to have had sexual intercourse on 27.02.2007 at about 12 midnight one time only. According to her, this was the first sexual act. She had taken bath and changed her clothes after that act." Thus, from the aforesaid deposition of PW-1, it can be said that when the victim was brought for medical examination, she disclosed before the independent witness, i.e., the Doctor (PW-1),

about the sexual intercourse. It further transpires from the deposition of PW-1 that the doctor gave a provisional opinion that the victim may have undergone sexual intercourse within one week prior to the time of examination. However, the final opinion was reserved. Thereafter, while giving the final opinion, it has been stated that there was nothing to suggest that sexual intercourse had not taken place.

13. Similarly, PW-2 has deposed before the court that when she examined the victim, the victim "was conscious, cooperative and well oriented to time, place and person". Further, the victim said that "male partner had anal intercourse with her on 28.02.2007 night. According to her, it was her first such sexual act and after this, did not have another one". PW-2 further stated that "there was no evidence of anal intercourse, but the possibility of sodomy cannot be ruled out".

14. Thus, from the aforesaid deposition given by the Doctors, i.e. PW-1 and PW-2, who had examined the victim, it can be said that the medical evidence does not rule out the possibility of rape upon the victim.

15. Even assuming that the victim had wilfully volunteered to sexual intercourse, this aspect becomes immaterial, as the victim was a minor on the date of the incident in question. As observed hereinabove, as

per the case of the prosecution, she was aged about 15 years on the date of the incident.

16. We have also gone through the reasoning recorded by the High Court while passing the impugned judgment and we are of the view that, looking at the evidence led by the prosecution before the trial court, the view taken by the High Court was the only possible view. Despite this, the trial court had given the benefit of doubt to the appellant/accused and thereby acquitted him. Thus, we are of the view that the High Court has rightly set aside the judgment passed by the trial court *qua* the appellant/accused and therefore, no interference is required in the impugned judgment and order of the High Court.

17. In view of the aforesaid detailed analysis, the appeal fails and accordingly, stands dismissed.

.....J.
[MANOJ MISRA]

.....J.
[VIPUL M. PANCHOLI]

NEW DELHI,
OCTOBER 14, 2025.