



**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA**

**Cr. Appeal No. 348 of 2011 along  
with Cr. Appeal No.235 of 2011.**  
**Reserved on: 23<sup>rd</sup> December, 2015.**  
**Date of Decision: 1<sup>st</sup> January, 2016.**

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**1. Cr. Appeal No. 348 of 2011.**

Ravinder Singh .....Appellant.  
**Versus**  
State of H.P. ....Respondent.

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**2. Cr. Appeal No. 235 of 2011.**

Santosh Kumari .....Appellant.  
**Versus**  
State of H.P. ....Respondent.

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**Coram.**

**The Hon'ble Mr. Justice Rajiv Sharma, Judge.**  
**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

Whether approved for reporting? Yes.

**For the Appellants:** Mr. Rajesh Mandhotra and  
Ms. Kanta Thakur, Advocates.  
**For the Respondent:** Mr. P.M. Negi, Deputy  
Advocate General with Mr.  
Ramesh Thakur, Assistant  
Advocate General.

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**Sureshwar Thakur, Judge**

Since both the aforesaid appeals arise from a  
common judgment hence are being disposed of by a  
common judgment.

2. Both the appeals stand directed by the accused/appellants against the impugned judgment rendered on 10.06.2011 by the learned Sessions Judge, Kangra at Dharamshala in Sessions Case No. 33-J/VII-2010, whereby, the learned trial Court convicted and sentenced accused/appellant Ravinder Singh for his committing offences punishable under Sections 376(1) and 506 of the Indian Penal Code (hereinafter referred to in short as IPC) besides convicted and sentenced accused Santosh Kumari for hers committing offences punishable under Sections 315 and 201 of the IPC.

2. Brief facts of the case which are necessary to determine the instant appeals are that in the month of April, 2008 and thereafter several times and on 22.11.2009 at Kut Talab, accused Arvind Kumar had perpetrated forcible sexual intercourses upon the person of the minor prosecutrix and criminally intimidated as also threatened her with dire consequences in the event of disclosure of the incident to her parents or elsewhere. On the prosecutrix being subjected to forcible sexual intercourses by the accused she became pregnant. The said occurrence was disclosed by the prosecutrix to her

aunt. Accused Ravinder and Santosh Kumari administered to the prosecutrix a medicine to abort foetus carried by her in her womb. The matter was reported to the police and the FIR was registered against the accused in the police station. During the course of investigation, the preserved clothes, vaginal slides, vaginal swabs, pubic hair etc. were sent for chemical and forensic examination and the Investigating Officer prepared the spot maps of the places where the prosecutrix was subject to forcible sexual intercourse by the accused on the identification of the prosecutrix. The statements of the witnesses were recorded separately and forensic report from FSL, Junga was procured separately.

3. On conclusion of the investigations, into the offences, allegedly committed by the accused, a report under Section 173 of the Code of Criminal Procedure was prepared and filed in the competent Court.

4. Accused Ravinder Kumar was charged by the learned trial Court for committing offences punishable under Sections 376(1), 315, 506 and 201 of the IPC and accused Santosh Kumari was charged by the learned trial Court for committing offences punishable under Sections

315 and 201 of the IPC to which both pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 19 witnesses. On closure of prosecution evidence, the statements of the accused, under Section 313 of the Code of Criminal Procedure, were recorded in which they pleaded innocence and choose not to lead any evidence in defence.

6. On an appraisal of evidence on record, the learned trial Court, returned findings of conviction against the accused/appellants.

7. The accused/appellants stand aggrieved by the judgment of conviction recorded by the learned trial Court, hence have instituted the instant appeals before this Court. The learned defence counsel has concerted to vigorously contend qua the findings of conviction recorded by the learned trial Court being not based on a proper appreciation of evidence on record, rather, theirs being sequelled by gross mis-appreciation of material on record. Hence, he contends qua the findings of conviction being reversed by this Court in the exercise of its appellate

jurisdiction and theirs being replaced by findings of acquittal.

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

9. 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.

10. The prosecutrix as underscored by her date of birth certificate comprised in Ex.PW4/B was born on 17.09.1996. Consequently, she was a minor at the stage contemporaneous to the alleged perpetration of forcible sexual intercourses upon her person by the accused. Being a minor, she was not competent to accord any valid consent to the sexual overtures, if any, perpetrated on her person by the accused. In sequel, her consent, if any to the sexual intercourses which she performed with the accused is wholly insignificant besides irrelevant. Even though Ex.PW7/G records the factum of the radiological

age of the prosecutrix standing therein determined to be between 14 to 15 years. As a corollary with an occurrence of a margin of error of two years on either side and the benefit of error of two years beyond 14 to 15 years being affordable to the accused stands espoused by the learned counsel for the appellant to constrain an inference of the prosecutrix at the stage contemporaneous to the ill-fated occurrence standing arrived at the age of consent to mete a valid consent to the accused for his sexually accessing her. Thereupon, the learned counsel for the appellant canvasses qua given the factum of the prosecutrix being competent to accord a valid consent to the accused for his sexually accessing her at a stage contemporaneous to the sexual encounters inter se them purportedly commencing since April, 2008 upto November, 2009 conjunctively construed in tandem with her omission to report the matter promptly since April, 2008 uptill the date of lodging of an FIR, is a manifestation of hers consensually succumbing to the sexual overtures of the accused. However, the vigour of the aforesaid submission addressed before this Court by the learned counsel for the appellant stands dispelled in the face of their being a vivid

and graphic display in Ex.PW4/B qua the prosecutrix being born on 17.9.1996 hence a minor at the stage contemporaneous to the alleged forcible perpetration of sexual intercourses upon her person by the accused. The portrayal in Ex.PW4/B inasmuch as its recording therein 17.9.1996 to be the date of birth of the prosecutrix when stood not assayed to be controverted by the learned defence counsel for the accused by cross-examining PW-4 telling upon the factum of the date of birth of the prosecutrix recorded in Ex.PW4/B being not at the instance of or at the behest of the parents of the prosecutrix whereupon an inference of its standing recorded at the whim or caprice of the person who scribed it was hence emanable, necessarily begets an inference of the date of birth of the prosecutrix recorded in Ex.PW4/B standing scribed therein at the instance of or at the behest of the parents of the prosecutrix whereupon it hence acquires conclusivity qua the factum of the prosecutrix standing born on 17.9.1996 as recorded therein. In after math it carries an imperative effect of the opinion of the radiologist comprised in Ex.PW7/G recorded with observations therein qua the radiological age of the

prosecutrix being between 14 to 15 years being tenuous. Even otherwise when Ex.PW4/B has, for reasons aforesaid, attained conclusivity qua the factum of recording therein of 17.09.1996 being the date of birth of the prosecutrix, it stands on a sacrosanct pedestal vis-a-vis the opinion recorded in Ex.PW7/G which otherwise may be a mere assessment open to, as emanable on a reading of the cross-examination of PW-7, margin of error of two years, hence, leaving it open to infirmities of imprecision besides inexactitude ingraining it, which infirmities gripping it do not obviously constitute any firm determination therein with precision qua the radiological age of the prosecutrix. In principle the age of the prosecutrix as stands displayed in birth certificate Ex.PW4/B especially when the apt disclosure therein stands unshaken by potent evidence unveiling the fact of the scribing of the date of birth of the prosecutrix therein being not at the instance of the parents of the prosecutrix which evidence in displacement of the recitals of the date of birth of the prosecutrix in Ex.PW4/B when stands not upsurged, renders it to outweigh besides countervail the imprecise assessment of her age in Ex.PW7/G.

11. Having rendered a determination of the prosecutrix having not reached the age of consent for affording a valid consent to the accused for his sexually accessing her would not ipso facto advance the espousal of the prosecution of the charge against the accused standing sustained especially when the factum of the charge against the prosecution standing clinched warrants weighing besides assessing with a keen discernment by this Court of the testimony of the prosecutrix besides of other prosecution witnesses. Primarily, the solitary deposition of the prosecutrix would command sway for recording findings of conviction against the accused unless on a wholesome reading of her deposition besides the depositions of other prosecution witnesses unveil the prime fact of each in their respective examinations-in-chief vis-a-vis their cross-examinations rendering disharmonious besides inconsistent versions qua the incidents/incident or a close reading of their testimonies reveal each of the prosecution witnesses having mutually contradicted each other. Naturally, if inter se contradictions occur in their testimonies comprised in their respective examinations-in-chief vis-a-vis their

respective cross-examination or their respective depositions qua the ill-fated occurrence(s) stand afflicted with a malady of intra se contradictions, as a corollary, the testimony of the prosecutrix would enjoin this Court to discard it. Moreover, an inference of her deposition qua the occurrence(s) standing belied would surge forth.

12. For gauging whether the testimony of the prosecutrix is reliable besides creditworthy, her testimony has to be conjunctively read along with the testimony of PW-3 Kumari Shivani who accompanied the prosecutrix to school enroute whereat the accused met them and beseeched the prosecutrix to meet him at place Kut-Talab. PW-3 Kumari Shivani had overheard entreaties made by the accused upon the prosecutrix for the latter joining him at Kut-talab. She had made a disclosure of the aforesaid entreaties made upon the prosecutrix by the accused, to her mother, Urmila Devi, PW-2. In the event of PW-3 Shivani supporting the prosecutrix and PW-2, Smt. Urmila qua the aforesaid entreaties having been made upon the prosecutrix by the accused for the latter joining him at Kut-talab would facilitate this Court for construing the testimonies of both, PW-2, Smt. Urmila as well as of the

prosecutrix being creditworthy. However, in case, she contradicts them, both the prosecutrix as well as PW-2 would stand belied. PW-3 was a minor yet on her competence to depose as witness standing gauged by the learned trial Court by putting queries to her whereon PW-3 meteing intelligible answers led it to declare her to be a competent witness to testify wherein she on standing subjected to a piercing cross-examination by the learned defence counsel has made unfoldments connotative of the fact of hers labouring under active tutorings standing meted to her by her uncle. Apart therefrom when a reading of her cross-examination unveils the factum of hers obeying the command of her paternal/maternal uncles clinches the factum of hers deposing a tutored version qua the incident which factum is further unearthable arising from hers admitting a suggestion put to her by the learned defence counsel of her uncle being available outside the Court at the stage when she was recording her deposition qua the occurrence before the learned trial Court and of his having meted directions to her to name Ravinder to be the accused in the alleged incidents of sexual encounters

inter se him and the prosecutrix. Preponderantly with hers conceding to suggestions put to her by the learned defence counsel of hers deposing against the accused at the instance of her paternal/maternal uncles renders her deposition being replete with vice of tutorings obviously rendering her version qua the incident comprised in her examination-in-chief being construable to be in-volitional rather standing prodded by active tutorings meted to her both by her uncle as well as her parents, with the ensuing sequel of her testimony not lending succor to either the deposition of PW-2 or to the testimony of the prosecutrix of the accused having met the prosecutrix on the ill-fated day when both were proceeding to school whereupon he beseeched the prosecutrix to meet him at Kut-Talab. For reasons aforestated with the testimony of the prosecutrix standing belied by PW-3 Shivani yet it would not also with immediacy foster any conclusion of exculpation of the guilt of the accused in the alleged forcible sexual intercourses he performed with the prosecutrix .

13. For firmly determining the prima donna factum of the prosecutrix rendering or not rendering a concocted tale qua the alleged forcible sexual encounters which she

performed with the accused, her testimony has to be read in a wholesome manner. Only on a wholesome perusal of her testimony comprised both in her examination-in-chief and her cross-examination would unearth the factum of hers rendering a disharmonious or inconsistent version qua the incident hence her testimony standing ridden with a vice of inter se contradictions would be construable to be neither trustworthy nor inspiring. In the endeavour to ferret from a whole some reading of the testimony of the prosecutrix comprised both in her examination-in-chief as well as in her cross-examination whether she therein has rendered a disharmonious version qua the incident, an incisive reading of her testimony in her cross-examination unfolds the factum of hers admitting (a) the suggestion put to her by the learned defence counsel of hers not having met the accused in the month of August, September, October, November, 2009 whereupon an inference sprouts of hers contradicting the version deposed by her in her examination-in-chief of the accused having met her in November, 2009. (b) The inter se contradictions qua the aforesaid factum in her examination-in-chief vis-a-vis her cross-examination

erodes the solemnity or creditworthiness of the factum aforesaid constituted in her examination-in-chief besides with hers also admitting the further suggestion put to her during the course of her cross-examination by the learned defence counsel of a boy named Arvind resident of village Manoh Sihal having sexually accessed her, with aplomb lends vigour to an inference of hers exculpating the guilt of the accused for which he stood charged and convicted by the learned trial Court. (c) Moreover, hers conceding in her cross-examination of hers having disclosed the name of Arvind at the time of lodging EX.PW12/A; (d) in addition hers admitting the suggestion put to her by the learned defence counsel during the course of his subjecting her to cross-examination of hers on pressure standing exerted upon her by her parents to disclose whatever stood scribed by the police in the FIR, foments a conclusion of the FIR wherein the name of accused Ravinder occurs standing scribed by the police at their own behest even prior to any disclosure qua the incident standing purveyed to them by the prosecutrix contents whereof she was pressurised to accept. In aftermath, the occurrence of the name of accused Ravinder in the FIR palpably

stands generated from pressure standing exerted upon her by her parents to name him therein even when she had disclosed to the police the name of Arvind to be the person who had sexually accessed her. Naturally the occurrence of the name of Ravinder in the FIR is an invention arising from mistaken identity. Also his naming therein is a stark unfoldment of his standing falsely implicated by the prosecutrix. For reiteration, dehors the aforesaid inferences arising from the admissions aforesaid emanating in the cross-examination of the prosecutrix held by the defence counsel, the inevitable inference therefrom is also of despite hers having named Arvind to be the person who had perpetrated forcible sexual intercourses upon her person she was compelled to accept the scribing by the police in Ex.PW12/A of Ravinder Kumar being the person who had perpetrated forcible sexual intercourses upon her. Elicitations of the aforesaid admissions from the prosecutrix by the learned defence counsel while conducting her cross-examination impinging upon accused Ravinder standing mistakenly identified by the prosecutrix gains vigour from the factum of hers also in the latter part of her cross-examination

admitting the suggestion put to her by the learned defence counsel of besides Arvind no other person having sexually accessed her besides from hers admitting the suggestion put to her by the learned defence counsel of hers on hers gaining pregnancy disclosing to her aunt, the factum of a boy named Arvind having sexually accessed her. In sequel, the aforesaid inferences with formadibility clinch a deduction of the guilt of the accused standing exculpation by the prosecutrix. Even when the testimony of PW-3 Shivani has been concluded to be ingrained with a vice of doctorings as well as tutorings standing meted to her both by her uncles as well as her parents vices whereof render her testimony to be discardable. Apart therefrom, when PW-3, for reasons aforestated contradicts the testimonies both of the prosecutrix as well as of PW-2, her mother and the aunt of the prosecutrix, especially with the latter deposing a version qua the occurrence only on a disclosure made to her by PW-3, hence, emaciates the credibility of PW-2 as also of the prosecutrix. In sequel, with the prosecution case standing ingrained with a vice of not only inter se contradictions aforesaid occurring in the testimony of the prosecutrix

comprised in her examination-in-chief vis-a-vis her cross-examination besides when it also stands imbued with a vice of intra se contradictions preeminently, for reasons aforesaid arising in the testimonies of the prosecutrix, PW-3 Shivani as well as PW-2 Smt. Urmila, the aunt of the prosecutrix sequely for reiteration renders it to stand infected with a taint of intra se contradictions. As a sequitur with taints of inter se contradictions existing in the testimonies of the prosecution witnesses aforesaid arising from theirs deposing contrarily a version qua the incident in their respective examinations-in-chief vis-a-vis their respective cross-examinations besides with a taint of intra se contradictions ingraining their respective depositions concomitantly the prosecution version hence standing gripped with grave infirmities renders susceptible to doubt the version qua the incident spelt out by the prosecutrix, whereupon an inference is drawable of her creditworthiness standing belittled.

14. Be that as it may, with the infirmities aforesaid in the prosecution case, hence making pervasive inroads qua the veracity of the prosecutrix version, the learned trial Court at the end of the cross-examination of the

prosecutrix queried the prosecutrix qua the contradictions which stood upsurged in her version qua the incident comprised in her examination-in-chief vis-a-vis her cross-examination whereupon the prosecutrix had named accused Ravinder to be the person who had perpetrated sexual intercourses upon her. However, even if the learned trial Court had elicited from the prosecutrix by its at the end of her cross-examination by the learned defence counsel querrying her, the name of the accused Ravinder to be the person who subjected her to forcible sexual intercourse yet the aforesaid elicitation surfacing from the prosecutrix would not subsume nor smother the effect of hers prior to the aforesaid elicitation of the name of accused Ravinder by the learned trial Court by querrying her on conclusion of her cross-examination by the learned defence counsel, contradicting in her cross-examination the inculpatory role meted to the accused in her examination-in-chief. Any negation of exculpation of the guilt of the accused by the prosecutrix in her cross-examination wherein she has forthrightly unfolded the factum of a boy named Arvind having forcibly sexually accessed her merely on hers unfolding on hers being

queried by the learned trial Court the name of accused Ravinder to be the person who had forcibly sexually accessed her would tantamount to placing reliance upon the testimony of the prosecutrix even when she precedingly in her cross-examination had therein exculpated guilt of the accused. Rather the ditherings and vacillations therefrom at a stage when on conclusion of her cross-examination, the learned trial Court on querying her elicited from her the name of accused Ravinder to be the person who had forcibly sexually accessed her, only pronounce upon the factum of hers holding a wavering opinion qua the identity of the accused. Waverings and oscillations therein by the prosecutrix when obviously stand emerged in hers inculcating accused Ravinder on conclusion of her cross-examination on hers standing queried by the learned trial Court also obviously stand in stark departure to hers precedingly in a consistent and harmonious manner with aplomb naming Arvind to be the person who had forcibly sexually accessed her. Imperatively only when the prosecutrix had consistently besides harmoniously in her cross-examination had inculpated accused Ravinder therein would render her

testimony to be inspiring besides creditworthy rather contrarily when she deviates and digresses from the norm of deposing throughout with consistency and harmony, necessarily this Court would not on an inconsistent besides disharmonious testimony of the prosecutrix harboured, for the reasons aforesaid, upon the identity of accused Ravinder fasten any inculpatory role to accused Ravinder. The fastening of an inculpatory role to accused Ravinder only on the prosecutrix at the end of her cross-examination on hers standing queried by the learned trial Court unfolding his name to be the accused would also be in detraction to the testimony of PW-3 Shivani, whose testimony on its incisive reading stands hereinabove marshalled to be ridden with a vice of tutorings and doctorings meted to her both by her parents and her uncles, hence discardable besides contradicting the version of the prosecutrix. In aftermath, for balancing the testimonies of both the prosecutrix and PW-3 Shivani they are to be read entwinedly rather than disjunctively. In sequel ascription of an inculpatory role to Ravinder by the prosecutrix on conclusion of her cross-examination by the learned defence counsel on the learned trial Court

querying her whose inculpation is for reasons aforesaid construable to be discardable besides unamenable for any reliance thereupon constituted by its infracting the norm of her testimony standing appraisal in a wholesome rather than in a fragmentary besides in an isolated manner. In aftermath with deference and reverence to the rule of appraising her testimony in a wholesome manner rather than in a fragmentary or isolated manner, the exculpation of the accused by the prosecutrix in her cross-examination cannot be either scored off nor can stand effaced merely on hers on conclusion of her cross-examination on hers standing queried by the learned trial Court hers therein inculpating Ravinder. In nut shell this Court is constrained to conclude of the prosecutrix rendering an untruthful version qua the incident besides her version qua the incident being bereft of any credibility.

15. The prosecutrix had gained pregnancy and to abort the foetus carried by her in her womb, accused Ravinder and co-accused Santosh Kumari had purportedly administered a medicine to her bought from Laxmi Medical Store. On the aforesaid deposition of PW-2 as well as of the prosecutrix, the prosecution has concerted to

connect the accused in the commission of the offence alleged. Also thereupon the prosecution has assayed for implicit reliance being placed upon elicitation by the learned trial Court on its querying her wherein an inculpatory role qua accused Ravinder stands purveyed by the prosecutrix. However, though the prosecution hence concerted to link the accused in the commission of the offences constituted against them yet its endeavour cannot mete with any success in the face of the prosecutrix in her cross-examination admitting the suggestion put to her by the learned defence counsel of hers consuming medicine at the instance of her mother and aunt concomitantly dispelling the role of the accused of theirs fetching medicines from Laxmi Medical Store for aborting the foetus carried by her in her womb. Moreover, with the mother of the prosecutrix in her cross-examination feigning ignorance qua the prosecutrix disclosing to the police of medicines for aborting her pregnancy standing administered to her by her and her aunt besides hers also feigning ignorance qua the identity of the persons, who administered the medicines for aborting the foetus carried by the prosecutrix in her womb

while hence hers not being categorical in naming Santosh Kumari (accused), the mother of accused Ravinder, to be the person who administered them rather when her testimony is both wavering as well as off the mark for clinching the factum aforesaid cannot constitute it to be rendering either conclusive or firm evidence qua the mother of the accused administering medicines to the prosecutrix for aborting her pregnancy. With shaky evidence existing qua the aforesaid factum, begets an inference of the endeavour of the prosecution to hence link the accused in the commission of the offence standing capsized. Even during her cross-examination, PW-17, the mother of the prosecutrix has feigned ignorance of the implication of accused Ravinder standing begotten by mistaken identity. Obviously, the mother of the prosecutrix again has been uncategorical about the identity of accused Ravinder. Lack of communication by her with firm categoricity qua the identity of accused Ravinder, renders infirm in-coagulation with the taint ridden testimony of the prosecutrix, any naming by her on the Court quering her of accused Ravinder being the

person who forcibly sexually accessed nor it can hold any deference.

16. 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 apart therefrom the analysis of the material on record by the learned trial Court suffers from perversity or absurdity of misappreciation and non appreciation of evidence on record. Consequently, the instant appeals are allowed and the judgment of the learned trial Court is set-aside. Accused/appellants are acquitted of the offences charged. They be set at liberty forthwith, if not required in any other case. Fine amount, if any, deposited by the accused/appellants, be refunded to them. Records be sent back.

**(Rajiv Sharma)  
Judge.**

**(Sureshwar Thakur)  
Judge.**

**1<sup>st</sup> January, 2016  
(jai)**