

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

**Cr. Appeal No. 507 of 2019.**

**Reserved on: 26<sup>th</sup> February, 2021.**

**Date of Decision: 5<sup>th</sup> March, 2021.**

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.....Appellant.

**Versus**

State of H.P.

...Respondent.

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**Coram**

**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.  
The Hon'ble Mr. Justice Chander Bhusan Barowalia,  
Judge.**

Whether approved for reporting? Yes.

**For the Appellant:**

Mr. V.S. Chauhan, Senior Advocate  
with Mr. Ajay Singh Kashyap,  
Advocate.

**For the Respondent:**

Mr. Hemant Vaid, and, Mr. Narender  
Guleria, and, Mr. Ashwani Sharma,  
Additional Advocates General with  
Mr. Vikrant Chandel, Dy. A.G.

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**Per Sureshwar Thakur, Judge.**

The accused/appellant herein, became charged for, the, commission of offences punishable, under, Sections 341, 376 and, under Section 506 of the IPC. The learned trial Court concerned, made an order, of, conviction, vis-a-vis, the afore framed charges, under, Sections 341, 376, and, under Section 506 of the IPC and,

hence, sentenced the convict, to, undergo rigorous imprisonment for a period of 10 years years, and, to pay a fine of Rs.25,000/-, for commission, of, an offence punishable under Section 376 of the IPC, and, in default of payment of fine amount, he was sentenced to further undergo simple imprisonment for a term of one year. He was further sentenced by the learned trial Court, to, undergo rigorous imprisonment, for a period of one month and, to pay a fine of Rs.5,00/-, for commission, of, an offence punishable, under, Section 341 of the IPC, and, in default of payment of fine amount, he was sentenced, to, undergo simple imprisonment for seven days. Moreover, he was further sentenced by the learned trial Court, to, undergo rigorous imprisonment, for a period of one year, and, to pay a fine of Rs.5,000/-, for commission, of, an offence punishable, under, Section 506 of the IPC, and, in default of payment of fine amount, he was sentenced, to, undergo simple imprisonment for three months. All the afore sentences are ordered to run concurrently.

2. The convict/accused/appellant herein, becomes aggrieved therefrom, hence, through, his casting the extant appeal before this Court, he strives to beget reversal(s) of the afore made conviction, and, the afore

consequent therewith sentence(s) hence imposed, upon him, under the afore verdict.

3. The genesis of the prosecution story, becomes, embodied in the apposite FIR, FIR whereof becomes borne in Ex.PW11/A. The prosecutrix therein attributes to the accused criminal penal misdemeanor(s) punishable under Section 376 of the IPC. The incriminatory narratives carried therein also became subsequently echoed by the prosecutrix hence before the learned Magistrate concerned, wherebeforewhom, proceedings became drawn under Section 164 of the Cr.P.C.

4. The prosecution, has relied, upon best scientific evidence, unfolded by the FSL concerned, in, its report embodied in Ex.PW17/A, wherein, echoings occur, vis-a-vis, Exhibit 2a, the vaginal swab of the prosecutrix as became collected through Ex.PW17/C, and, also Ex.P-7, exhibit whereof is the blood sample, on, FTA cards, hence collected from the accused, rather upon each being subjected, to DNA profiling, sequelling the result of both making inter se completest matching or consistency, (a) necessarily the afore inter se matching is conclusive proof, vis-a-vis, the relevant incriminatory participation, of, the accused, (b) more so when probative vigour thereof

remains unendeavoured to be denuded, by adduction of cogent evidence.

5. However, the prosecutrix, was a major, at the relevant stage, and, hence became competent to mete her valid consent to the accused/convict, for his subjecting her to sexual intercourse(s). Since, the prosecution was enjoined to adduce evidence, personificatory, vis-a-vis, the accused perpetrating forcible sexual intercourses, upon, the prosecutrix, rather at the relevant stage, and, at the site of occurrence, (i) and, the afore evidence became enjoined to be carried in MLCs, respectively drawn of the prosecutrix, and, of the accused, (ii) inasmuch, as the apposite MLCs, personifying, vis-a-vis, through resistive abrasions, and, bruises existing on the bodies of both the accused, and, of the prosecutrix, the latter rather not consensually succumbing to the accused's sexual misdemeanors. In the afore endeavour of this Court, rather looking for evidence , personificatory of resistances meted by the prosecutrix, to the sexual overtures of the accused, this Court, has obviously proceeded, to make a deepest study of the respectively drawn MLCs, of the accused, and, of the prosecutrix, MLCs whereof, become designated exhibit marks Ex.PW13/A, Ex.PW13/B, and,

Ex.PW16/A. However, in the afore exhibits, no echoings of any abrasions, or bruises rather carried, respectively on the body either of the prosecutrix, and, upon the body of the accused become pronounced. Though, for unflinchingly proving the charges against the accused, the resistive bruises, and, abrasions, reflected in the respectively drawn MLCs of the accused, and, of the prosecutrix, rather comprised the best evidence qua therewith, yet when the afore evidence marking the resistance of the prosecutrix, to the sexual overtures of the accused, is amiss in the MLCs drawn, vis-a-vis, her, and, also in the MLC drawn, vis-a-vis, the accused, (ii) thereupon, the afore omissions therein, are inferable to be suggestive qua the prosecutrix consensually succumbing to the sexual overtures of the accused, and, thereafter hers contriving a false case against the accused/convict.

6. Be that as it may, the afore made inference becomes succored, from a studied, and, incisive analysis, of, the deposition carried in the cross-examination of the prosecutrix, wherein, though, she made an echoing qua hers resisting the sexual overtures of the accused, (a) yet obviously when the afore made echoing of the prosecutrix

has remained unsuccored, by, medical evidence, thereupon, it carries no probative evidentiary vigour. Even otherwise, since, the prosecutrix has acquiesced to a suggestion qua her holding good, and, cordial relations with the accused, and, also when the purported pretext of hers visiting Roharu Bazar, for gas booking, becomes belied from, appertaining therewith, Ex.PW5/A and, receipt Ex.PW5/B, neither carrying her name nor the name of her husband, (b) thereupon, it appears that since she has acquiesced to the suggestion qua hers holding extremely good, and, cordial relations with the accused, or/and, hence becomes (construable, to, volitionally take to the company of the accused, and, also becomes construable to mete the apposite completest volitional consent to the accused, for his subjecting her to sexual intercourse(s). Significantly also when cogent evidence, in support of charge drawn under Section 506, of, the IPC is amiss hereat, reiteratedly the afore drawn charge also founders.

7. 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, the analysis thereof, by the learned trial Court, hence suffers, from,

perversity or absurdity of mis-appreciation and non-appreciation, of evidence, on record.

8. Consequently, there is merit in the extant appeal, and, it is allowed accordingly. The impugned judgment is quashed, and, set aside. Accordingly, the accused is acquitted from the charged offences. He be forthwith released from custody. Release warrants be prepared accordingly. Fine amount, if any, as, deposited be refunded to him. All pending applications also stand disposed of. The records be sent down forthwith.

**(Sureshwar Thakur)**  
**Judge**

**(Chander Bhusan Barowalia)**  
**Judge.**

**5<sup>th</sup> March, 2021.**  
**(jai)**