

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-871-2022 (O&M)

Reserved on: 24.4.2023

Date of Decision: 2.5.2023

Child in Conflict with Law “A”

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Buta Singh Bairagi, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. FIR bearing No. 152, which becomes enclosed in Ex. P-6, became registered with Police Station Badhani Kalan, District Moga, carrying therein offences, embodied under Sections 354, 354-A, 354-B, 506 of the IPC, and, under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act, 2012’) (offences under Section 376-AB IPC, and, under Section Section 6 of the POCSO Act, 2012 Act added later on). The offender in the FIR (supra) was a juvenile in conflict with law. Thus, in an order made on 20.1.2022, by the learned Principal Magistrate, Juvenile Justice Board, Moga, a conclusion became made, that the juvenile in conflict with law, is able to understand the nature, and, consequences of the offences, as well as, the circumstances in which he allegedly committed then. The said conclusion was founded, upon a primary assessment regarding the physical, and, mental capacity of the juvenile concerned. Thus, bearing in mind the inquiry (supra), as, made by the Principal Magistrate, Juvenile Justice Board, Moga, resulted in an order (supra), being drawn by him, on 20.1.2022. Therefore, the Court of the

Additional Sessions Judge, Fast Track Special Judge, Moga, which is, thus a Children's Court, as defined in Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act of 2015), and, Rule 13 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (for short 'Rules of 2016'), inasmuch as, it becomes assigned the jurisdictional competence to try the offence(s) under the POCSO Act, 2012, resultantly made an opinion, that there is a requirement of trial becoming entered into against the juvenile in conflict with law qua offences (supra), rather as an adult person, thus in terms of the provisions of the Code of Criminal Procedure. Furthermore, the juvenile in conflict with law, who had admittedly completed 16 years of age, at the time of his allegedly committing the offences (supra). Resultantly, vide order made on 2.3.2022, by the learned Court of the Additional Sessions Judge, Fast Track Special Judge, Moga, which became designated for entering, upon trial, upon, a juvenile in conflict with law, rather as an adult, thus in terms of the provisions of the Cr.P.C., especially when he committed an offence punishable under the POCSO Act, it became directed that the juvenile concerned, be tried as an adult.

Factual Background

2. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. P6 is assigned. The narrations carried in Ex. P6 are, that on 10.11.2021, SI Gurvinder Kaur along with LC Jatinder Kaur was present at Police Station, where complainant Balvir Kaur, mother of victim along-with her husband Gurtej Singh had come present, and, got recorded her statement, that she is having four daughters. Her daughter/victim is her second daughter. Her daughter/victim, aged seven years is studying in 2nd class at Government Primary School, Bhode. Her daughter/victim used to

their neighborhood. On 2.11.2021 at about 5.00 P.M., she heard the sound of cries and weeping of her daughter/victim while she was going to throw the garbage, and, passing in front of the house of Amanat Kaur. Thereafter, she went inside the said house to know the reason about the cries of her daughter/victim. On her asking, her daughter/victim told her, that she had gone for urination towards the side of animals. Child in conflict with law 'A' called her to take chocolate, and, took her towards the bathroom built in the kothi. Child in conflict with law 'A' pulled her underwear and also pulled his lower and asked for sucking of his penis, and, threatened her that if she tells about the incident to anyone, he will kill her. Then child in conflict with law 'A' put his penis on her anus. She started weeping. On hearing this, she got perplexed. Pinky Kaur, aunt and mother Gurjot Kaur of child in conflict with law 'A' also came at the spot. She complained them, but they did not listen to her. She along with her daughter came back to their house. In the night, she told the incident to her husband. When her husband visited house of child in conflict with law 'A' to lodge complaint, his family members assaulted and abused her husband. Panchayats were also convened, but to no avail. Thereafter, she had come to report the matter to the police.

Investigation proceedings

3. On the basis of the above statement, SI Gurwinder Kaur made police proceedings, on the basis of which, FIR under Sections 354,354-A 354-B, 506 IPC and 8 of POCSO Act, 2012 was registered. On 10.11.2021 at about 2.20 p.m., she along with ASI Raghvinder Parshad visited spot, and, prepared rough site plan at the instance of complainant. She recorded statement of the witnesses. Victim, aged 7 years, was produced before the Magistrate concerned, for recording her statement under Section 164 Cr.P.C.

On 11.11.2021, child in conflict with law 'A' was apprehended. As per birth

certificate of victim, her date of birth is 27.06.2014 whereas, as per birth certificate of child in conflict with law 'A', his date of birth is 15.03.2004. Child in conflict with law 'A' was produced before Shri Rahul Garg, Principal Magistrate, Juvenile Justice Board, Moga. On the basis of remarks given by District Attorney office, offence under Section 376-AB IPC and under Section 6 of POCSO Act were added. SI Gurwinder Kaur got conducted medical examination of victim from Civil Hospital, Moga, but mother of the victim refused for giving vaginal swabs for DNA analysis. Only blood samples of child in conflict with law 'A' sent for DNA analysis, but as there was no counter sample for comparison, the- blood sample was returned back by the Forensic Science Laboratory to the police. On conclusion of investigation, final report under Section 173 Cr.P.C. against child in conflict with law 'A' was prepared and presented before the Principal Magistrate, Juvenile Justice Board. After presentation of enquiry report before Principal Magistrate, Juvenile Justice Board, its copies were supplied to child in conflict with law "A' as envisaged under Section 207 Cr.P.C.”

Proceedings before the Principal Magistrate, Juvenile Justice Board, Moga

4. The learned Principal Magistrate concerned, vide order dated 20.1.2022, after conducting preliminary assessment, sent the case to the learned Sessions Judge, Moga with the request that the child in conflict with law “A” is to be treated as an adult under Section 18(3) of the Act of 2015. Thereafter the learned Sessions Judge, Moga entrusted the case to the learned trial Judge concerned.

Trial Proceedings

5. In proof of its case, the prosecution examined 11 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned

trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. He also chose to adduce defence evidence, but did not lead any defence witness into the witness box.

6. After the trial, as became entered into against the juvenile in conflict with law, by the learned Additional Sessions Judge, Fast Track Special Court, Moga, a verdict of conviction was made upon the appellant on 30.8.2022, qua the above charges for offences punishable under Section 506 of the IPC, and, under Section 6 of the POCSO Act, 2012. However, since at the time of the verdict of conviction, being made, upon the juvenile in conflict with law, on 30.8.2022, he was below the age of 21 years, and, had not attained the age of 21 years, thus in terms of Rule 13(8)(iii) of the Rules of 2016, he was ordered to be sent to the place of safety at Faridkot, and, was ordered to be produced on 31.8.2022, for his being heard on the final dispositional order, and, awaiting drawing of an individual care plan.

7. On the production of the juvenile in conflict with law, on 31.8.2022, before the learned trial Judge concerned, a final dispositional order was made, whereby he was sentenced to undergo rigorous imprisonment for a period of one year, and, also to pay a fine, as comprised in a sum of Rs. 1,000/-, besides in default of payment of fine, he was sentenced to undergo rigorous imprisonment for a period of fifteen days, in respect of an offence punishable under Section 506 of the IPC. Moreover, he was also sentenced to undergo rigorous for a term of 20 years, and, also to pay a fine of Rs. 50,000/-, besides in default of payment of fine, he was sentenced to rigorous imprisonment for a period of one year, in respect of an offence punishable under Section 6 of the POCSO Act, 2012. In addition,

all the sentence were ordered to run concurrently. Moreover, the period of

detention already undergone by the juvenile in conflict with law, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, and, adjusted towards the above imposed term(s) of substantive sentence(s) of imprisonment. Furthermore, out of the total fine amount, an amount of Rs. 10,000/- was ordered to be paid by the convict to the prosecutrix, as compensation. In addition, till he attained the age of 21 years, he was ordered to be sent to the place of safe custody.

8. It was further ordered by the learned trial Court concerned, that since the juvenile in conflict with law, who turned into an adult, had become held guilty, and, the prosecutrix was below 18 years old at the time of occurrence, thus through invoking the provisions of Section 33 sub-Section 8 of the POCSO Act, 2012 read with Rule 9 of the Protection of Children from Sexual Offences Rules, 2012, an amount of Rs. 4,00,000/- became awarded, as compensation, to be paid to the victim for her rehabilitation thus for the mental trauma caused to her, and, the matter was ordered to be sent to the District Legal Services Authority, Moga for the payment of the above compensation from NALSA's "Compensation Scheme for Women vVictims/survivors of sexual assault/other crimes, 2018".

9. Since as on date, the juvenile in conflict with law, has attained the age of 21 years, therefore, he is, stated by the learned State counsel, to be suffering the above imposed substantive sentence(s) of imprisonment, thus in the adult prison concerned.

Analysis of the statement of the victim, who stepped into the witness box as PW-1.

10. The victim prosecutrix stepped into the witness box as PW-1. The victim, as revealed by her birth certificate, to which Ex. P2 is assigned, was a minor, both at the stage of the offences (supra) becoming perpetrated, upon her, besides at the stage when she stepped into the witness box.

Therefore, she was under a legal encumbrance, to mete any valid consent to the juvenile in conflict with law, to subject her to sexual intercourse, if any. Moreover, also the learned trial Judge concerned, through querying her, thus for ensuring the gauging of her intelligibility but from the answers made by her to such queries, and, after considering her giving intelligible answers to the relevant queries, thus declared her as a competent witness, and, thereafter permitted her, to testify in respect of the penal occurrence. In other words, in the above endeavour, a reading of the opening of the statement of the prosecutrix, thus reveals, that the learned trial Judge concerned, for fathoming the intelligibility as well as the legal competence of the child witness, to depose as such, before him, had proceeded to make queries to her. However, since she made intelligible answers to such made queries to her, thus, the learned trial Judge concerned, made an opinion, that she has the capacity, and, competence to depose, as a witness. In sequel, she was permitted to testify in respect of the penal occurrence.

11. In her examination-in-chief, she has supported the genesis of the prosecution case, as becomes embodied in the FIR (supra). A reading of her examination-in-chief, though, unfolds that she has made articulations therein but in support of the penal occurrence, as carried in Ex. P6, yet per se, on a reading of her examination-in-chief, no firm conclusion can become formed, that she has rendered a truthful, untutored, and, confidence inspiring narrative, in respect of the penal occurrence. Therefore, it is but imperative to also read her deposition, as comprised in her cross-examination.

12. A reading of the cross-examination of the prosecutrix reveals, that therein the defence making a suggestion to the prosecutrix, that she had been taking tuition from Muskan Kaur for the last two years, besides the defence making a suggestion to her, that at the relevant time, the juvenile in

conflict with law, was available at the house of her tutor one Muskan Kaur, but emphasizingly thereto(s) the prosecutrix made affirmative answers. In addition, a suggestion was also made by the defence to PW-1, that the washroom wherein the penal occurrence took place, is at some distance from the place where she was taking tuition from one Muskan Kaur, but thereto also an affirmative answer, thus emanated from the prosecutrix. Moreover, she has, in her cross-examination, also denied the suggestion that she has falsely implicated the accused, at the instance of her parents.

13. A wholesome, and, conjoint reading of the testification (supra) of the prosecutrix, as carried respectively in her examination-in-chief, and, in her cross-examination (supra), especially when she in her examination-in-chief, has attributed an unrebutted incriminatory role to the accused, thus leads to an inference, that the above affirmative answers, as made by the prosecutrix, to the above suggestions, as meted to her by the defence. Therefore, necessarily a conclusion becomes fostered, that the prosecutrix has rendered a truthful confidence inspiring version, in respect of the penal occurrence.

Statement of PW-2, mother of the prosecutrix

14. The mother of the prosecutrix stepped into the witness box as PW-2, and, she has therein proven her previously made statement, to which Ex. P1, is assigned, and, which resulted in FIR (supra), becoming registered at the police station concerned.

15. Be that as it may, though in her examination-in-chief, she has deposed, that her minor daughter had revealed the penal occurrence to her, on 2.11.2021, at about 5.00 P.M, in sequel to hers noticing, that she was weeping, besides hers showing her unwillingness to take tuition from one

Muskan Kaur. The incident, as disclosed to her by the prosecutrix, is

testified by her to be the one, as revealed in her statement Ex. P1.

16. Though, both the prosecutrix, and, her mother make voicings in unison, about the incriminatory participation of the accused in the penal occurrence. Thus, necessarily immense evidentiary credence, is to be assigned to their inter se corroborative depositions, as made in respect thereof.

Delay in the lodging of the FIR is insignificant

17. Nonetheless, the penal occurrence, which occurred on 2.11.2021, at the house of one Muskan Kaur, the tutor of the prosecutrix, became reported to the police on 10.11.2021. Therefore, the learned counsel for the appellant has argued, that when the said delay has remain unexplicated, thus even the testifications though rendered with inter se corroboration, by PWs (supra), rather are stained with the vices of premeditation, and, concoction, and, thus becomes incredible. The learned counsel for the appellant in making the above submission, planks the same upon the factum, that though the prosecutrix revealed to her, the occurrence on the very same day, when the said occurrence took place at the crime site, but since the explanation for the occurrence of the relevant delay, is embedded in the factum, that one Pinky, aunt of juvenile in conflict with law, and, the mother of the juvenile in conflict with law, arriving in front of the house of Muskan Kaur, and, both started quarreling with her. The above quarrels though resulted in the PW-2 taking her daughter to her house, and, though she states that she, in the night time, revealed the occurrence to her husband Gurtej Singh. In addition, though she states, that on the subsequent date, her husband had gone to the house of the juvenile in conflict with law, for making a complaint with his parents, but yet the parents of the juvenile in conflict with law, started quarreling with her husband, thus resulting in the

PW-2 and her husband Gurtej Singh reporting the matter to the panchayat, and, the panchayat stating to them, that the accused, and, his family members would admit their guilt. Moreover, though she also states, that for about 4-5 days, the family members of the juvenile in conflict with law, fought with them with sticks. Though thus she purportedly became deterred to make a prompt reporting of the incident to the police. However, the learned counsel for the appellant argues that, the above explanations relating to the occurrence of delay in reporting of the incident, to the police, are but pretextual explanations. He rests the above argument on the ground, that when during the course of her cross-examination, PW-2 was confronted with her previous statement Ex. P1, for ensuring that therein also a recital occurs, thus in tandem with her speakings in the examination-in-chief, that on the relevant day, the family of the juvenile in conflict with law, had abused PW-2 at night time, yet the said echoings rather not occurring therein, but only a speaking occurring therein, that the family of the accused had fought with the family of the prosecutrix. Moreover, the further fact, as deposed by her in her examination-in-chief, but in explanation of the relevant delay, inasmuch as, hers speaking therein, that on the next day, her husband had visited the house of the accused for making a complaint with his parents, in respect of the penal occurrence, and, that then the family members of the juvenile in conflict with law, started quarreling with her husband, when did not, on PW-2 becoming confronted with Ex P-1, rather occur therein. Moreover, also when during the course of her cross-examination, the echoing made by PW-2 in her examination-in-chief, that the deterrence in making the prompt reporting of the incident to the police, ensued from PW-2, and, her husband visiting the panchayat, and, the panchayat intimating them, that the family members of the juvenile in

conflict with law, would admit their guilt, yet on PW-2 becoming confronted with PW-1, the said echoings not occurring thereins. Therefore, he argues that since the above delay is unexplained, and/or, is unexplicated, therefore the delayed reporting of the penal incident to the police, results in the prosecution version being tainted with a vice of premeditation, and, concoction.

Reason for rejecting the above submissions

18. The reason for rejecting the above submissions, is firmly grooved in the factum, that though there may be a purported pretextual explication, emanating from PW-2 in hers making a prompt reporting of the incident to the police. Nonetheless, the effects thereof, become completely underwhelmed or become eclipsed, in the light of the prosecutrix completely supporting both, in her examination-in-chief, and, her cross-examination, rather the genesis of the prosecution case, as carried in Ex. P6. Moreover, also when, as above stated, despite the prosecutrix, in her examination-in-chief making candid speakings, thus underscoring the incriminatory participation of the accused in the crime occurrence, yet the said speakings remaining unshattered of their efficacy, even during hers facing the ordeal of a grilling cross-examination. Contrarily, the defence in her cross-examination, made suggestions to her whereby it not only admitted, rather thus for reasons (supra), the trite factum of the prosecutrix taking tuition on the relevant day, at the house of one Muskan Kaur, but also admitted the factum that at the time, the juvenile in conflict with law, was also present in the house of the said Muskan Kaur. Furthermore, since the crime site is the washroom in the house of Muskan Kaur, therefore, when during her cross-examination, the prosecutrix was meted a suggestion, that the said washroom is located at a distance from the place where Muskan Kaur was

tutoring her. Therefore, thus obviously the defence admits, to the said washroom being the crime site, especially when the accused has not taken to subsequently efficaciously deny the fact, as grooved in her cross-examination, that at the relevant time, he was present in the house of Muskan Kaur, through its leading the said Muskan Kaur, into the witness box, as a defence witness. Therefore, for lack of any exculpatory explanation becoming purveyed by the accused, thus after the defence ensuring during her cross-examination, elicitation from the prosecutrix, that the juvenile in conflict with law, was also available at the crime site. Therefore, leads to an inference, that the defence conceding, both to the availability of the juvenile in conflict with law at the crime site, and, also his availability along with the prosecutrix, at the house of one Muskan Kaur, besides his acquiescing to his presence in the washroom which is the crime site.

19. Resultantly, it cannot be said, that even if there was some unexplained delay, but for the reasons as assigned by the learned defence counsel, in the prompt reporting of the penal occurrence, to the police agency, rather the said delayed reporting, yet does not lead, to a conclusion, that the crime story is suffering from any taint of falsehood or from any taint of any concoction or premeditation. The reason being that, on a wholesome appraisal of the testification of the prosecutrix, the trite underlinings, thus emerge but in vivid display about the incriminatory participation of the appellant, in the crime occurrence.

20. The argument of the learned defence counsel, that since the prosecutrix, as revealed on a reading of the deposition of PW-10, had refused to undergo a medical examination, besides refused to supply to the

investigating officer, her vaginal swab or DNA samples thus for the relevant

matchings thereof, being made by the expert concerned. Therefore, the crime story is prevaricated. However, for the reasons to be assigned hereinafter, the said argument is rejected.

21. The prime reason for rejecting the above argument, is founded, upon the premise, that since this Court has assigned grave evidentiary solemnity to the confidence inspiring testification of the prosecutrix. Therefore, when the medical evidence or the forensic evidence, is only corroborative to the said confidence inspiring testification, as, rendered qua the crime story, thus by the prosecutrix. Thus, obviously the corroborative medical evidence or forensic evidence, even if for the above reasons, does not exist on record, rather cannot denude the vigour of the confidence inspiring testification, as, rendered by the prosecutrix, in respect of the crime event. Therefore, the unwillingness of the prosecutrix to undergo medical examination, and/or to supply her vaginal swabs or DNA sample, thus for examination(s) thereof, being made, along with the DNA samples of the accused, rather becomes completely inconsequential.

22. The further reason for making the above inference stems, from the factum, that PW-7, who recorded the statement of the prosecutrix, in terms of Section 164 of the Cr.P.C., has upon his stepping into the witness box, rather in his examination-in-chief, proven the said statement, and, to which Ex. P4 is assigned. Since he has, in his examination-in-chief, unequivocally testified, that only after his reading over the said statement to the victim, and, whereafter she admitted the contents thereof, to be correct, thus appended her signatures at point 'A' to point 'E' thereof, and, which resulted in the issuance of a certificate order Ex. P7, but also with echoing(s) therein, that the said statement was voluntarily made. However, when the said echoings existing in his examination-in-chief, rather remained uncross-

examined. Therefore, also a conclusion is to be formed, that the testification made in the Court, by the prosecutrix, when is in complete corroboration to Ex. P4, thus creditworthiness is to be assigned thereto. Therefore, there was no need at all for corroborative thereto medical or forensic evidence, being collected by the investigating officer concerned, nor for the same becoming adduced.

Final order

23. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as also consequent therewith sentence, as became imposed upon the convict-appellant, by the learned convicting Court, are maintained, and, affirmed. If the convict is on bail, thereupon, the sentence(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

24. Records be sent down forthwith.

25. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 2nd, 2023
Gurpreet/Ithlesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No