



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

551

CRA-D-746-2022(O&M)

Judgment reserved on: 18th September, 2024
Judgment pronounced on: 27th November, 2024

Deepak s/o Raj Kumar

.....Appellant(s)

Versus

State of Haryana

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Arjun Sheoran, Advocate and
Mr. Rohan Gupta, Advocate
for the appellant(s).

Mr. Sharan Sethi, Addl. Advocate General, Haryana
for the respondent(s) – State of Haryana.

SANJAY VASHISTH, J.

1. Appellant-Deepak, son of Raj Kumar, aged 23 years (as mentioned in the memorandum of appeal), resident of Village Roopgarh, Tehsil and District Jind (Haryana), has filed the instant appeal by challenging the judgment of conviction and order of sentence, dated 12.04.2022, passed by learned Additional Sessions Judge, Fast Track, Special Court, POCSO, Jind (for short, 'learned Trial Court'), whereby appellant-Deepak, has been held guilty of committing offences under Sections 341, 342 and 506 of the Indian Penal Code (for short, 'IPC'), and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'), in a case arising out of FIR No. 166, dated



30.05.2018, under Sections 341, 342 and 506 IPC, and Section 6 of POCSO Act, registered at Police Station Sadar, Jind, Distt. Jind.

2. Offences under which appellant has been convicted and the period of sentence awarded thereon, is as under:

Offence under which convicted	Sentence/ imprisonment awarded	Fine imposed	<i>Sentence/imprisonment in default of payment of fine</i>
341 IPC	Simple imprisonment for a period of one month.	Rs. 500/-.	Simple imprisonment for a period of two days.
342 IPC	Rigorous imprisonment for a period of one year.	Rs. 1,000/-.	Simple imprisonment for a period of one month.
506 IPC	Rigorous imprisonment for a period of two years.	Rs. 5,000/-.	Simple imprisonment for a period of two months.
6 of POCSO	Rigorous imprisonment for a period of twenty years.	Rs. 1,00,000/-.	Simple imprisonment for a period of two years.

All the sentences have been ordered to run concurrently and the period already undergone by the convict during trial, is also to be set off towards the sentence of imprisonment.

3. Apart from this, having relied upon the judgments of the Hon’ble Apex Court in Bodhisattwa Gautam v. Subhra Chakraborty, AIR 1996 SC 922, and Nipun Saxena and another v. Union of India and others, (2019) 2 SCC 703, and as per NALSA’s Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes-2017, compensation amount of Rs.5,00,000/- (Rupees five lacs) has also been recommended, to be paid to the victim.



4. It is also apt to mention here that at the time of commission of offence, age of victim was 4½ years, and appellant being aged 17 years and 02 months, was a Child in Conflict with Law (hereinafter to be referred as ‘CCL-Dxxx’), as his date of birth is 29.03.2001. Since, at the time of passing of order of sentence, i.e. on 12.04.2022, he had already attained the age of 21 years on 29.03.2022, Children’s Court has ordered that he would complete his term of sentence in jail.

FACTUAL MATRIX:

5. On the statement of father of the prosecutrix/victim, FIR No. 166, dated 30.05.2018 (Ex. PW-13/A), under Sections 341, 342 and 506 of the IPC, and Section 6 of the POCSO Act, was registered at Police Station Sadar, Jind.

6. On 30.05.2018, SI Kamlesh Devi (PW-9) was telephonically informed by the Moharir Head Constable (MHC) of Police Station Sadar, Jind, that the victim, who was sexually assaulted, is admitted in the General Hospital, Jind. Thereupon, SI Kamesh Devi (PW-9) reached to the hospital for recording the statement. At first instance, victim was declared unfit to make statement, but grand-mother (Santro Devi) and father (Rakesh) were present with the victim. Statement of father of the victim was recorded (Ex.PW4/A), who described the incident as under:-

“ Stated that I am a resident of above mentioned address and I am 8th pass. I run a workshop at Narwana Road, Jind under name of “Kala Workshop”. Today I had gone to village-Mundhaal for some work, where Narender son of Dhoop Singh called me on telephone and he informed me that some miss-happening has happened with V-xxx (victim). You should



reach at Government Hospital, Jind. The girl has been brought to the hospital. When we reached at the Government Hospital, I saw my daughter V-xxx (victim), age 4 - 4½, admitted in Government Hospital, Jind. My mother Santro Devi was also present there alongwith her. When I inquired about the incident, my daughter told me that, "Today at 11-12.00 Clock, when I had gone to the shop of Raj Kumar to purchase milk, then there Deepak son of Rajkumar was sitting alone in the shop. He took me in the shop on the pretext of giving me a toffee. Then he opened the chain of my pent forcibly and inserted his finger forcibly in my vagina. He threatened me not to disclose this incident to anybody, otherwise he would kill me". I came to my home crying and I disclosed the whole incident to my grand mother. Legal action be taken against Deepak son of Raj Kumar caste-Harijan, resident of Roopgarh. The doctor gave treatment and injections to my daughter. The child is very much frightened. She is unable to get her statement recorded. Statement got recorded, heard, which is correct. Sd/- Rakesh."

Said statement of victim's father was recorded at Government Hospital, Jind, by SI Kamlesh Devi (PW-9) at 07:05 p.m., on 30.05.2018, and after making DD Entry No. 30, on 30.05.2018 itself, formal FIR was registered against the accused.

7. Investigation of the case was started and at the first instance with the assistance of grand-mother of the victim, place of occurrence was identified and demarcated. Rough site plan was made and crime scene team was called at the spot. Two bricks were collected from the place of occurrence and taken into police possession. Victim was medico-legally examined and sealed parcel from doctor was taken in police possession.



8. On getting some secret information, accused was arrested on 30.05.2018 from Bus Stand, Village Roopgarh, and was interrogated on 31.05.2018. In pursuance to the disclosure statement made by the accused, place of occurrence was demarcated. Accused was also medico-legally examined.

9. Victim was also subjected to counseling by the Child Welfare Committee, Jind, and statement of the victim was also recorded by the Magistrate under Section 164 Cr.P.C., on 31.05.2018 (Ex. PW9/N).

10. After completion of investigation, challan/final report was submitted to the Court of Addl. CJM, and on 03.07.2018, after supplying copy of the challan to the accused, case was committed to the Court of Sessions for trial. Consequently, direction was issued to produce the accused in the Court of learned Sessions Judge, Jind, on 17.07.2018, as the accused was in custody at that time.

On 31.07.2018, when arguments were to be heard on charge, an application was filed by the accused for declaring him juvenile, learned Addl. Sessions Judge, Jind, vide order dated 15.02.2019, found that accused is under 18 years of age, and therefore, by declaring him Child in Conflict with Law (CCL), directed the Juvenile Justice Board (in short, 'JJB') to proceed in accordance with law.

11. On filing an application for bail, Juvenile/Child in Conflict with Law was ordered for release on bail on 25.02.2019, and after furnishing the bail bonds etc., requisite release warrants were issued on 28.02.2019.



12. At that stage, Since the trial was to be conducted as in summons case [Section 14(5)(e) of the JJ Act], JJB vide order dated 06.03.2019, served the notice of accusation upon the juvenile, which reads as under:-

“ That you above named juvenile in conflict with law on 30.05.2018 at about 11/12:00 AM in the area of Roopgarh you wrongfully restrained to prosecutrix daughter of Rakesh and thereby you committed an offence punishable under Section 341 IPC and within cognizance of this Board.

Secondly:-

That you the above named juvenile in conflict with law on the aforesaid date time and place you wrongfully confined the prosecutrix daughter of Rakesh and thereby committed an offence punishable under Section 342 of IPC and within the cognizance of this Board.

Thirdly:-

That you the above named juvenile in conflict with law on the aforesaid date, time and place, you committed aggravated penetrative sexual assault upon the prosecutrix daughter of Rakesh and thereby you committed an offence punishable under section 6 of the POCSO Act, 2012 and within the cognizance of this Court.

Lastly:-

That you above named juvenile in conflict with law on the same date, time and place, caused criminal intimidation to prosecutrix daughter of Rakesh and thereby committed an offence punishable under Section 506 IPC which is within the cognizance of this Board.

And I hereby direct that you be tried by this board on the above said notice of accusation

Sd/-

(Guneet Arora)

PMJJB/JMIC, Jind. 06.03.2019”



Juvenile did not plead guilty and claimed trial.

PROSECUTION WITNESSES:

13. To establish and prove its case, prosecution examined total 16 witnesses and closed its evidence on 20.12.2019. Summarized deposition of the said witnesses is detailed here-below:-

(i). **PW1 - Dr. Hena Fatma, Junior Resident, Department of Pediatrics, PGIMS, Rohtak,** tendered her affidavit (Ex. PW1/A) in her examination-in-chief. As per her deposition, she while being posted in PGIMS, Rohtak, in the Department of Pediatrics, on 31.05.2018, examined the victim, with a complaint of pain in abdomen and fever for one day, and that patient was admitted in PGIMS, Rohtak, vide CR No. 671844, on 31.05.2018. She also deposed that as per order of consultant on duty, opinion was sought from Gynecology department, and no active intervention was needed from their side. USG abdomen was done, wherein no abnormality was found in USG. Patient was discharged on 05.06.2018 in stable condition. She proved the discharge slip (Ex. PW1/B).

In the cross-examination, the witness explained that she had treated the patient alongwith the consultant for abdomen pain and Bed Head Ticket (BHT) record was not given to the police, as police never called her in regard to the case.

(ii) **PW2 - Dr. Geeta, Medical Officer, Government Hospital, Jind.** She had conducted the medico-legal examination of the victim on 30.05.2018, while being posted at Civil Hospital, Jind. She deposed that the victim, aged 4½ years, female, was accompanied with her grand-mother,



with alleged history of sexual assault on 30.05.2018, at the instance of CCL, who inserted his finger in private part. After describing injuries, the doctor deposed about the same and for reference the same is reproduced hereunder:-

“1. GPE:- *She is conscious, Cooperative, obey the command, irritable. She C/o BPV, Abd pain, pain during micturation of urine, there is no external mark of injury seen over face, chest, thigh, abdomen, lower limbs. On Local Examination. Clotted blood present over mons pubis, there is fresh oozing of blood from posterior fourchette. Congestion and abrasion present over post. Fourchette. Abrasion – small in size 2 x 2 mm over post foruchette. No bleeding from hymen opening, Hymen – intact. No other injury seen over perineal region. Sample taken from hymen opening and perineal area.*

Handed Over to police:-

- 1) *A jeans Pant torn at jip area pant with blood stained, present over pant. A parcel with 4 seal (G).*
- 2) *A vial containing 3 Swabs with 2 seals (G)*
- 3) *A sample seal (G)*
- 4) *An Envelope containing a forwarding letter with copy of MLR No. GR/74/2018/Jind. Surgeon opinion taken and detail given in file with CR No. 8064 on dated 30/05/2018.*

Advise:- *USG – Whole abdomen*

OPINION:- *Possibility of sexual assault will be given after RFSL, possibility of sexual assault cannot be rule out.”*

After seeing the FSL report, said doctor also deposed that as per her opinion ‘*possibility of sexual intercourse cannot be ruled out*’. She also proved that after medico-legal examination, patient was referred to the PGIMS, Rohtak, on 31.05.2018.



In the cross-examination, said doctor acknowledged that no physical assault on the victim was recorded in the MLR (Ex. PW2/B), and mother of the victim was not present there. No internal examination of the victim was conducted and there was no deep injury on the body of the victim. She categorically accepted the suggestion that there was only superficial injury on the body of the victim. However, she stated the suggestion to be incorrect as such kind of injury can happen while playing or by falling on a brick or stone.

(iii) PW-3 – Dr. Pankaj, Medical Officer, Community Health Centre (CHC), Kharakramji, Jind, had medically examined the CCL on 01.06.2018, filed his affidavit in Examination-in-Chief as Ex.PW-3/A and proved the MLR (Ex.PW-3/B). On police request, he had given his opinion (Ex.PW-3/C).

As per his opinion, there was nothing to suggest that the person/CCL examined, is not capable of doing sexual intercourse. Said Doctor also proved the parcels regarding the clothes and other articles of the accused and handed over the same to the police.

(iv) PW-4 – Rakesh, aged 29 years, is related as father of the victim, who appeared and stated that on 30.05.2019, he had gone to village Mundhaal, for some work and there, he received a call from his uncle's son (Virender), asking him to take care of his daughter as she is admitted in the hospital. On going to the hospital, he was told by the victim about the offensive act done by the CCL against her.

During cross-examination, PW4 explained that he received a call from Virender (son of uncle) at about 11/12:00 A.M., on his phone



No.9992137962. Further explained that thereafter he reached Government Hospital, Jind, and there he found that his daughter was very much scared and was fully conscious. Also explained that police met him in the hospital, and a complaint in writing was given to the police. He explained that the distance between his house and Raj Kumar's shop (father of CCL) is about 2 Killas. There was a suggestion by the counsel for the CCL that the bleeding to the victim happened due to stretch between the legs while she was playing, but said suggestion was clearly denied by this witness. He also denied the suggestion of any discord with the CCL-Deepak.

(v) PW-5 Vinod, aged 35 years, deposed that on 30.05.2018, while he was going towards his old house, he saw the victim crying and coming out from the shop of Rajkumar @ Khota, and at that time, CCL was sitting inside the shop. He had gone to his house but while coming back, he saw that the victim and her grandmother-Santro had arrived at the shop of Raj Kumar @ Khota to complain to them. The victim had told him that CCL had assaulted her sexually and also demarcated the place where the act of sexual assault was done. He also deposed that taking an opportunity CCL had fled away from the spot.

Thereupon, victim was given treatment at Government Hospital, Jind,. In cross-examination, he explained that they are three brothers and the names of other two brothers are Rattan Lal and Naresh. Complainant-Rakesh Kumar (PW4)/father of the victim belongs to our family and his house is behind my house. Further explained that in the joint family of Rakesh his mother, wife, children and his brother are also residing. In his cross-examination, said witness also confirmed the time of the incident between



11/12:00 A.M. He also confirmed that firstly he saw the girl crying and after 15 minutes saw her alongwith grandmother smeared with blood, however, he is not an eye witness to the incident. The victim/girl was in serious condition and also admitted that the victim was taken to the hospital alongwith grandmother and that police had also met him in the hospital. Said witness denied the suggestion that he was far away from the Village on the day of the incident. Also denied that he belongs to *Jaat* community and accused belongs to SC caste. Also denied the suggestion that he is giving false statements being a relative of the family of Rakesh. Factum of contesting the election for the post of Sarpanch by his Aunt is clearly admitted, but denied the suggestion of not giving the votes by the family members of Raj Kumar in the said election. Also denied that the victim suffered an injury due to the fall on a hard surface.

(vi) PW-6 is LHC Maya Devi 816, posted at Court Gaurd, Jind.

She proved the disclosure memo (Ex.PW-6/A) of the CCL and that the IO had recorded her statement. Apart from this she explained that she got the victim medically examined at Government Hospital, where five parcels with documents with the seal of i.o. were given to her by the Doctor and the investigating officer had taken the parcels into police possession vide memo Ex. PW6/D.

(vii) PW-7 is ASI Dilbag Singh, Posted at SP Office, Jind, who stated that he being posted as a Draftsmen at DPO Office, Jind, prepared the scaled site plan (Ex.PW-7/A), on 06.06.2018.



(viii) PW-8 is ESI Suresh 767, posted at Police Station Sadar, Jind, who stated that since 30.05.2018, he was posted as a Malkhana Moharir, at Police Station Sadar, Jind, and parcels were deposited by him in the Malkhana.

Further deposed that on 07.06.2018, said parcels through RC No.272 were handed over to EHC Balraj 353 for depositing them at RFSL Sunaria. EHC Balraj deposited all the parcels on the same day and handed over the receipt to him. He also assured that none of his custody has been tampered with.

(ix) PW-9, SI Kamlesh Devi 744/Jind, posted at Women Help Desk, Tohana, who being the Investigating Officer, conducted the complete investigation as narrated by her in the statement.

Said witness proved that on moving of application (Ex.PW9/A) for recording statement of victim, doctor opined vide Ex.PW2/A as “*unfit for recording statement*”. There she met Santro Devi-grandmother of the victim and recorded a statement (Ex. PW4/A) of Rakesh-PW4 and that said statement was taken by the Lady Constable-Poonam Devi to Police Station where formal FIR was registered (Ex. PW9/P). The scene of crime team was called to the site and block bricks were taken in possession from the place of occurrence, on the orders given by the FSL team and accordingly said cement bricks were sealed with the seal of KD. She also proved the factum of recording the statement by learned Magistrate under Section 164 Cr.P.C., on the presentation of the application. Other parts of the investigation were also proved by her.

(x) PW-10, L/EHC Rajbala, posted at Police Station City Narwana, appeared and stated that on 31.05.2018, while she was posted at Police



Station Women, Jind, she was associated in the investigation of the present case. CCL was taken out of the custody and his disclosure memo (Ex.PW-9/E) was written by her.

(xi) PW-11, EASI Ramesh Kumar No.904, Posted at Police Station Women, Jind, who was also member of the investigating team, got conducted the medical examination of the victim.

(xii) PW-12 is the statement of the victim herself, who maintained her statement about the incident, and that the statement under Section 164 Cr.P.C. (Ex.P-9/N) was also recorded.

However, in the Examination-in-Chief, she nowhere stated that the CCL present in the Court is the person who has been named by her in the statement before the Court.

However, on being asked in the cross-examination, victim explained that at the time of the incident, no one was present in the shop, except the CCL.

(xiii) PW-13, Naresh Kumar 951, posted at Police Station Sadar, Jind, proves the formal FIR of the challan as Ex.PW-13/A, and endorsement over it (Ex.PW-13/B).

(xiv) PW-14, EHC Balraj 353, posted at Police Station Sadar, Jind, appeared and proved that on 07.06.2018, he had taken the sealed parcels from Malkhana Moharir to the laboratory, and same were deposited by him on 07.06.2018 itself with RFSL Sunaria.

(xv) PW-15, Santro, who is grandmother of the victim, explained the circumstances for sending the victim to the shop to purchase the milk and that the date of birth certificate of the victim (Ex.PW-9/D) was handed over



by her to the police. Grandmother of victim also proved the circumstances of taking the victim to the Government Hospital, Jind and getting her admitted. Also stated about the recording of the statement of the victim in the presence of Magistrate. She specifically identified that **CCL is present before the Board.**

However, in the cross-examination, she clearly accepted the suggestion that she had not seen the incident physically.

(xvi) PW-16, Sh. Sourabh Khatri, CJM-cum-Secretary, DLSA, Rohtak, appeared and proved the statement dated 31.05.2018 recorded by him under Section 164 Cr.P.C. (Ex.PW-16/B), while he was posted as ACJM on that day.

14. Prosecution tendered the RFSL report (Ex.-PX), FSL and DNA report (Ex.P-4) in evidence, and gave up the evidence of Chairperson CWC, as the same being unnecessary and the witness RFSL Director, was also given up, being unnecessary, and lastly, closed its evidence, by giving a statement on 20.12.2019.

STATEMENT UNDER SECTION 313 CR.P.C.

15. After completion of the process of leading the prosecution evidence, the statement under Section 313 Cr.P.C. of the CCL-Dxxx was recorded on 03.01.2020, wherein he mentioned himself a student of the age of 18 years.

Translated version of the statement of CCL-Dxxx, aged 18 years, recorded under Section 313 Cr.P.C., dated 03.01.2020 reads as under:-

*“Q. The complainant has got registered a complaint
Ex.PW4/A against you regarding threatening and doing*



wrong act. The following exhibits have come against you as an evidence: Police proceeding **Ex.PW9/B** & endorsement **Ex.PW13/B**, Rukka and application for taking statement **Ex.PW9/A**, Doctor's report **Ex.PW2/F**, OPD Card **Ex.PW2/C**, MLR **Ex.PW2/B** and **Ex.PW2/D**, Application for taking Bed Head Ticket **Ex.PW9/R**, Bed Head Ticket **Ex.PW1/B**. Application for taking opinion **Ex.PW9/S**, Doctor's report **Ex.PW2/E**, Rough Site Plan **Ex.PW9/C**, scaled site plan **Ex.PW7/A**. Application for taking opinion about victim **Ex.PW9/K**. Application for taking statement under section 164 Cr.PC **Ex.PW9/L**, statement under Section 164 Cr.P.C. **Ex. PW9/N**, affidavit of statement **Ex.PW9/M**, Application for conducting counselling CWC **Ex.P9/I**, Counselling report **Ex.PW9/J**, Application for the medical of accused **Ex.PW9/G**, Application for opinion **Ex.PW9/H**, application for sealed parcel **Ex. PW9/O** application for report **Ex.PW3/C**, MLR **Ex.PW3/B**, Recovery memo of parcel pertaining to victim **Ex.PW9/O**, Recovery memo of parcel pertaining to accused **Ex. PW6/B**, Recovery memo of block bricks **Ex.PW9/C**, memo of date of birth certificate **Ex.PW9/Q**, Date of Birth certificate of victim **Ex.PW9/P**, disclosure memo of child **Ex.PW9/E** and **Ex.PW6/A**, memo of demarcation of place of occrence **Ex. PW9/F**, F.I.R **Ex.PW13/A**, doctor's affidavit **Ex.PW1/A** & **Ex.PW2/A** and **Ex.PW3/A**. Affidavit **Ex.PW8/A** and **Ex.PW14/A**, Court order **Ex.PW16/D**, Original application for taking statement under section 164 Cr.PC **Ex.PW16/A**, original statement under section 164 Cr.P.C. **Ex.PW16/B** and orginal application for taking certified copy of statement **Ex.PW16/C**. On getting sufficient evidence in the case you were joined in



the investigation. What do you want to say regarding this blame?

Ans. It is incorrect. The case is fake. All the proof and document are fake and false.

Q. The witnesses deposed against you. What do you want to say against this blame?

Ans. All the witnesses are false. They are deposing falsely.

Q. Do you want to lead any evidence in your defence?

Ans. Yes.”

In the statement, the question referred is not of committing any sexual assault by the CCL, but is for ***doing of wrong act***.

16. That from the record available before this Court, it is found that one application dated 28.09.2021, filed by learned APP for the State, under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short, ‘JJ Act’) for transferring the case to learned Children’s Court/Sessions Court, was allowed by JJB vide order dated 06.10.2021, and CCL-Dxxx was directed to appear before the Court of Sessions on 12.10.2021. Consequently, file was also directed to be sent to the Court to which the proceedings of trial were transferred.

In the order dated 06.10.2021, it was observed that CCL-Dxxx, was matured and was mentally and physically capable to commit the offence and to understand the consequences of the act done by him.

17. On challenging the order dated 06.10.2021 by the CCL-Dxxx in appeal, same was allowed by learned ASJ on 07.03.2022, by setting-aside the order dated 06.10.2021, for passing a fresh order by JJB.

Operative part of the order dated 07.03.2022, says as under:-



“ The appeal filed by the child in conflict with law/accused against order dated 06.10.2021 passed by learned Juvenile Justice Board, Jind has been allowed and the impugned order has been set aside.

The present case is remanded back to the learned Juvenile Justice Board, Jind for fresh consideration regarding the intelligency, maturity, physical fitness as to how the child in conflict with law was in a position to know the consequences of the offence in accordance with provision of JJ Act in view of the observations made while deciding the appeal preferred by the child in conflict with law/accused. (Copy of the judgment ordered to be sent tot he court of learned Juvenile Justice Board, Jind while deciding the appeal).

Accused Deepak is directed to appear before learned Juvenile Justice Board, Jind on 11.03.2022 for further proceedings.

Ahlmad is directed to send the file, complete in all respects, to the concerned court immediately.”

18. Again vide order dated 22.03.2022, after examining the provisions of the Act, JJB observed that the CCL-Dxxx is matured enough to understand the consequences of his act and also observed that there is need of trial of CCL-Dxxx as an adult by the Children’s Court. Thus, under the provision of section 18(3) of the JJ Act, case was ordered to be sent to learned District & Sessions Judge, Jind, and, ‘CCL-Dxx’ was directed to appear before the said Court on 02.04.2022.

CCL-Dxxx through his counsel, was also apprised *qua* his right of filing appeal under Section 101(2) of the JJ Act, if felt aggrieved by the



order dated 22.03.2022. For reference, operative part of the said order says as under:-

“18. The collective scrutiny of the above noted discussions, prima facie goes to show that child in conflict with law namely Dxxx has the mental and physical capacity to commit the alleged offence, which falls in the category of heinous offences. Moreover, the child in conflict with law namely Dxxx is also able to understand the consequences of the offences committed by him.

19. Therefore, as an upshot of our above noted discussions, it is surfaced that there is need of trial of aforesaid child in conflict with law namely Dxxx as an adult by Ld. Children Court. Hence, the present case is hereby sent to Ld. District & Sessions Judge, Jind under Section 18(3) of the Act for 02.04.2022. The aforesaid child in conflict with law namely Dxxx is directed to present before the Court of Ld. Sessions Judge, Jind on 02.04.2022 at 10.00 A.M. sharp. Assistant Public Prosecutor of this Board is directed to inform Ld. Public Prosecutor accordingly. Reader is directed to prepare calendra of witnesses. Ahlmad concerned is directed to send the file there complete in respect of child in conflict with law namely Dxxx before the next date of hearing i.e. 02.04.2022. Copy of order be given to CCL as per rules. CCL ‘Dxxx’ through his counsel is hereby informed that he may prefer an appeal under Section 101(2) of the Act, if they are aggrieved by this order. File be sent to the Court of Ld. Sessions Judge, Jind, well in time.”

19. On appearance of CCL-Dxxx, on 02.04.2022 itself learned Addl. Sessions Judge, recorded certain questions and answers, which were



put by it to the CCL-Dxxx. For reference, same are reproduced as here-under:-

“Q: What are you doing?”

Ans. I am doing labour work at Jind.

Q: What is your qualification?”

Ans. I have studied up to 10th.

Q: Why you left the study.

Ans. I have to marry my sister and my father remains ill.

Q: How much you earn?”

Ans. I earn Rs.500-600/- daily.

Q: Do you know the victim?”

Ans. I do not know the victim.

R.O.&A.C.

Sd/-

(Gurvinder Kaur)

Addl. Sessions Judge, Fast Track,

Special Court, POCSO, Jind

(UID NO.HR0116)

02.04.2022”

20. Thereafter, while exercising the power u/s 19 of the JJ Act on 02.04.2022, Court of learned Addl. Sessions Judge, also examined the reports of preliminary assessment prepared by learned JJB and the Clinical Psychologist, and finally concluded that ‘CCL-Dxxx’ be treated as an adult as per the provisions of Cr.P.C., and proceedings were adjourned to 05.04.2022 for defense evidence.

21. On 05.04.2022, 07.04.2022, 12.04.2022, proceedings were fixed by Children’s Court for leading defense evidence and arguments, but no defense evidence was produced and on the same day, final judgment was passed, holding CCL-Dxxx guilty of committing the alleged offences.



22. From the aforementioned chronological description of the proceedings before the JJB and the Children's Court, it would be clear that statement under Section 313 Cr.P.C. was recorded in summarily manner on 03.01.2020 and thereafter, on 28.09.2021, learned A.P.P. moved an application, under Section 15 of the JJ Act, for assessing the child regarding his mental and physical capacity by conducting the preliminary assessment proceedings and said application was decided by the Board on 06.10.2021.

Thereafter, at the instance of 'CCL-Dxxx' said order was taken in appeal and thereupon, vide order dated 07.03.2022, order dated 06.10.2021 was set-aside for re-decision.

Again, learned JJB, exercising its power u/s 18(3) of the JJ Act, vide order dated 22.03.22 allowed the application and sent the case to Children's Court, which also while exercising power u/s 19 of the JJ Act, on 02.04.2022 confirmed that 'CCL-Dxxx' is required to be tried as 'Adult' as per Criminal Procedure Code, 1973. By that time, 'CCL-Dxxx' had attained the age of about 21 years.

**ARGUMENTS BY LEARNED COUNSEL FOR THE APPELLANT
REGARDING NON-COMPLIANCE OF PROVISIONS OF JJ ACT, 2015:-**

23. Mr. Arjun Sheoran, Advocate, for the appellant (CCL-Dxxx) submitted that CCL-Dxxx has been held guilty without adhering to the mandatory provisions of the JJ Act. In fact, proceedings against the CCL-Dxxx were started by issuing notice of accusation by learned JJB, and after recording of the prosecution evidence, statement under Section 313 Cr.P.C.



was also recorded in summarily manner without putting the complete evidence of the prosecution viz-a-viz the allegations.

Whereas, the Children's Court, which convicted the CCL-Dxxx, has not followed the provisions of Section 19 of the JJ Act, because the conviction has been recorded without even charge-sheeting the appellant/CCL-Dxxx under the provisions of Cr.P.C. Further submits that as per Section 19 of the JJ Act, Children's Court was to conduct its own independent trial, once it held that CCL-Dxxx, is required to be tried as an adult.

He also submitted that even the statement under Section 313 Cr.P.C. mandates to put each and every evidence led by prosecution to the accused in pursuance to the charges framed against him. But in the present case, not a single piece of evidence has been put to the CCL-Dxxx with specific allegations. Thus, proceedings conducted by the JJB as a summons case, which are termed as "*inquiry*" under the JJ Act, could not be made basis for convicting the CCL-Dxxx, and then sentencing him for a period of 20 years. Therefore, prays for vitiating the complete trial proceedings.

24. Learned counsel for the appellant further submitted that in the cases where the CCL is between the age group of 16 to 18, and is alleged to have committed heinous offence, process of preliminary assessment is required to be completed at the earliest for reaching to an independent conclusion, as to whether, he/she would face the proceedings before the JJB or before the Children's Court, as an 'adult'. Counsel points out that the CCL-Dxxx was arrested on 30.05.2018, but Public Prosecutor submitted his application after a period of 01 year and 08 months of even recording of the



statement under Section 313 Cr.P.C. by the Board. Even order of transferring the case for conducting the trial under Cr.P.C., by treating CCL-Dxxx as an adult was confirmed by the Children's Court on 02.04.2022. Thus, the time of little less than four years has been consumed for proceeding against the CCL-Dxxx by treating him as an adult. Even conviction is recorded without conducting procedure as mandated under Section 19 of the JJ Act.

While submitting about the vitiating of the proceedings on account of the gross violation of the mandatory provisions of the JJ Act, counsel for the appellant argued that as per Section 14(3) read with Section 15 of the JJ Act, exercise of doing preliminary assessment, was required to be completed within a period of three months, from the date of production of the Child before the Board first time, which in the present case is 31.05.2018. No such procedure was followed at the first instance. It was in the proceedings of the appeal before the Court of learned Addl. Sessions Judge, against the order dated 06.10.2021 that a direction was issued vide order dated 07.03.2022, for fresh consideration and for assessing the intelligence, maturity and physical fitness, as to how the CCL is in a position to know the consequences of the offence.

25. Counsel for the appellant also submits that the Children's Court itself has violated the guidelines laid down by the Apex Court to make compliance of Section 19(1) of the JJ Act, because, once CCL-Dxxx is found to be worth triable as an 'adult' before it, complete trial was to be conducted as per provisions of Criminal Procedure Code, 1973, which has been completely missed-out in the present case.



26. While addressing the arguments, counsel for the appellant submits that the complete object of the JJ Act has gone unnoticed, despite the facts available on record that age of CCL-Dxxx was just above 17 years on the date of incident and at the time of holding guilty and sentencing, he had attained the age of 21 years. Very purpose of holding inquiry, even ascertaining the age of the 'CCL' or preliminary assessment within a specific period mentioned under Section 14 of the JJ Act, has been overlooked by the Courts below. Thus, submits that there being no merit and also there being no compliance of the procedure mentioned in the JJ Act, proceedings be vitiated and consequently, CCL-Dxxx be also acquitted.

Therefore, prays for vitiating the complete proceedings and in support of his submissions, counsel for the appellant, relied upon;

- (i) *Thirumoorthy v. State Represetned by the Inspector of Police, 2024(22) Crimes 21 : Law Finder Doc Id # 2526973.*
- (ii) *Ajeet Gurjar v. State of Madhya Pradesh', 2023 (4) RCR(Criminal) 500.*
- (iii) *Barun Chandra Thakur v. Master Bholu and another, 2023(2) RCR (Criminal) 686.*
- (iv) *Naresh Kumar v. State of Delhi, 2024 AIR (Supreme Court) 3233 : Law Finder Doc Id # 2608622.*

**ARGUMENTS BY COUNSEL FOR THE APPELLANT ON FACTS,
REFERRING THE EVIDENCE:-**

27. Apart from procedural illegality committed by the Court(s) below, appellant's counsel also argued that from the evidence of



prosecution, offence is not fully proved. He submits that the ocular version is not corroborated by the medical evidence. If the allegations of the fingering were to be taken as true, the hymen of the victim could not be found intact. While examining the victim medically no bleeding of the opening of hymen was noticed. Not only this, doctor could not notice any other injury over perineal region. However, while giving an explanation of noticing the freshly oozing of blood from posterior fourchette, learned counsel for the appellant (CCL-Dxxx) submits that same can be the result of fall of the victim and thereby coming into the contact of the portion of the body with some hard pointed or semi pointed object.

He also argued that on other parts of the body i.e. face, chest, thigh, abdomen and lower limbs, no external mark of injury has been noticed by Dr. Geeta (PW2), who firstly examined the victim in Civil Hospital, Jind on 30.05.2018.

While referring to the statement of PW1-Dr. Hena Fatima, who examined the victim at PGIMS, Rohtak after being referred by Dr. Geeta (PW2) for the purpose of further examination, learned counsel for the appellant argued that nothing abnormal was found and the victim was discharged in stable condition on 05.06.2018. Neither Bed head ticket (BHT) has been collected by the police from PW1-Dr. Hena Fatima, nor any statement of the said doctor was recorded. Broadly, learned counsel for the appellant argued that from the injuries noticed during medico-legal examination by the concerned doctors, it cannot be said definitely, and that too beyond doubt that the victim was subjected to any sexual assault such as fingering, etc.



28. Learned counsel for the appellant (CCL-Dxxx) also argued that the complainant's version is based upon the information received by him from his cousin, namely, Vinod (PW5), who infact is an interested witness being family member of the complainant (father of the victim).

Had there been any truth in the story put forth by the prosecution, in all probability it could be the mother of the prosecutrix, who could have come to know of the facts immediately, being residing with the same family. While submitting so, learned counsel for the appellant refers to the cross-examination of PW5-Vinod, wherein he stated that ***"Rakesh lives with his family alongwith his grandmother, wife, children and his brother."*** Except the complainant (father of the victim), who was not even present in the Village at the time of incident and grandmother, none of the other members i.e. wife of complainant (mother of victim), other children and brother of the complainant have come forward to corroborate the version detailed in the FIR, thus, there is every possibility that other members of the family were not interested in involving the appellant unnecessarily in a false case.

29. Learned counsel for the appellant (CCL-Dxxx) further submitted that even if it is assumed that Vinod-PW5 had seen the victim girl crying just after the incident and after 15 minutes saw her alongwith grandmother smeared with blood, it would explain only the situation of crying of girl, who, after 15 minutes was found in the company of her grandmother, smeared with blood, however, said version would not support the case of the prosecution because in the normal course on seeing the girl crying, being one of the family member or the relative of the family, he



would have asked the victim the reason of her crying. Learned counsel for the appellant further pointed out that whether the girl was sent to bring milk from the shop of CCL or not could have been explained by the other family members also, had there been any truth in such a version. Moreover, learned counsel for the appellant challenges the statement for the reason that apart from being relative, he (PW5) seems to be having an interest in the village politics also, as his aunt had once contested the election of Sarpanch, as admitted by him in the cross-examination.

30. Learned counsel for the appellant (CCL-Dxxx) also argued that the victim aged 4 years has been examined as PW-12 but in her complete examination, it is not deposed that the CCL-Dxxx present in Court is the person, who had sexually assaulted her though she names the owner of the shop and the CCL-Dxxx, but the identification of the CCL-Dxxx before the Court by the sole victim is completely missing. Even the question has not been put by the Court, public prosecutor, or even the counsel for the complainant that as to whether the CCL-Dxxx present before the Court is the same person who committed sexual assault upon her by fingering the private part. While saying that the allegation of committing such a crime is highly improbable, learned counsel for the appellant refers to the cross-examination of the victim, wherein she admits that house of the father of CCL-Dxxx is adjoining to the shop and many other houses are adjoining the shop.

31. SUBMISSIONS BY LEARNED ADDL. ADVOCATE
GENERAL, HARYANA:

- (i) On the other hand, learned State counsel submits that the findings recorded by learned Court(s) below are beyond the



shadow of reasonable doubt. Prosecution has led all required evidence to prove the guilt and the complete link of the CCL with the crime has been established on record. Since the offence committed is heinous, strict provisions have been provided in the Act and the Courts are bound to follow the same.

- (ii) Learned State counsel also submits that once the major part of the proceedings has been conducted by the Juvenile Justice Board, it does not lie in the mouth of the appellant that his rights get prejudiced. Moreover, to refute the allegations no evidence has been led by the accused and therefore, the stage before the children's Court/learned Additional Sessions Judge, had reached only to examine the evidence and to pronounce the judgment.
- (iii) Learned State counsel also submits that once the decision of the Juvenile Justice Board dated 22.03.2022 was not challenged further, the only stage with the trial Judge was to decide the fate of the trial and thus, no fault can be pointed out in the proceedings conducted by the Courts below. Therefore, by defending the judgment, prays for the dismissal of the present appeal.

No specific law/judgment, contrary to the law cited and submitted by learned counsel for the CCL, has been supplied by learned State Counsel.

**DISCUSSION ON THE SUBMISSIONS OF PROCEDURAL
IRREGULARITIES AND THE EVIDENCE AVAILABLE ON RECORD:-**



32. We have thoroughly examined the record regarding the Court proceedings and the evidence led by the prosecution.

33. Instead of divulging our opinion with factual aspects of the case, and the evidence led by the prosecution, we would like to firstly deal with the relevant provisions of the JJ Act.

For reference, Section 14 of the JJ Act, is reproduced here-
below:-

“14. Inquiry by Board regarding child in conflict with law.—

(1) here a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial



Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:—

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);

(f) inquiry of heinous offences,—

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.”

Section 14 of the JJ Act, prescribes the maximum time period of four months for conducting inquiry in the non-heinous offences from the



date of production of the child before the Board. Said period can be extended for two months more by the Board, after recording the reasons in writing for such extension.

It also provides that in the serious or heinous offences, if Board requires further extension of time for completion of inquiry, same shall be granted by the Chief Judicial Magistrate (CJM) or the Chief Metropolitan Magistrate (CMM) by recording the reasons in writing.

Section 14(5)(e) of the JJ Act also tells about the procedure to be adopted for disposal of the inquiry by Board in serious offences, as per the procedure for trial in summons cases under the Code of Criminal Procedure, 1973 (Cr.P.C.).

Said provision further guides that for the child above the age of 16 years on the date of commission of an offence, procedure prescribed under Section 15 of the JJ Act has to be followed.

34. Besides, Section 14(3) of the JJ Act also mandates that the process of preliminary assessment **in the case of heinous offences** under Section 15 of the JJ Act, is to be disposed of by the Board **within a period of three months from the date of first production of the child before the Board**. However, period of three months is further extendable at the instance of CJM/CMM by recording its reasons in writing.

35. Process of preliminary assessment into the heinous offences by the Board is explained under Section 15 of the JJ Act. For reference, same is reproduced here-under:-

“15. Preliminary assessment into heinous offences by Board.—

(1) In case of a heinous offence alleged to have been



committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.”

36. Section 15 of the JJ Act states that where the offence is committed by a child, who is within the age group of 16 to 18 years and has allegedly committed heinous offence, Board shall take a preliminary assessment with regard to his mental and physical capacity to commit such offence and to understand the consequences of the offence, which he has committed.



As per second proviso, the process of preliminary assessment has to be completed within a period of three months from the date of first production as mentioned under Section 14(3) of the JJ Act. Undoubtedly, the period of three months, can be further extended by recording reasons in writing at the instance of CJM/CMM.

37. Section 16 of the JJ Act, is an enabling provision of reviewing the pendency of inquiry by the CJM or the CMM. Import of the vesting of the power with CJM/CMM appears to have some check over the proceedings to be conducted by the Board to ensure early disposal of the cases before it.

For reference, Section 16 of the JJ Act, is reproduced here-under:-

“16. Review of pendency of inquiry.—(1) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every three months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards.

(2) The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or non-governmental organisation to be nominated by the Chairperson.

(3) The information of such pendency shall also be furnished by the Board to the Chief Judicial Magistrate or the



Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in such form as may be prescribed by the State Government.

(4) The District Magistrate may, as and when required, in the best interest of a child, call for any information from all the stakeholders including the Board and the Committee.”

38. In addition to above, for reference, Section 18 is also reproduced here-under:-

“18. Orders regarding child found to be in conflict with law.-

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:



Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of subsection (1), the Board may, in addition pass orders to

- (i) attend school; or*
- (ii) attend a vocational training centre; or*
- (iii) attend a therapeutic centre; or*
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or*
- (v) undergo a de-addiction programme.*



(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

39. Section 18(3) of the JJ Act, mandates the Board to decide as to whether after conducting the preliminary assessment proceedings, child is required to be tried by the Children's Court or not ? Whether committed offence is under the category by heinous offences ?

In case, it concludes that the child is required to be tried as an adult, then the proceedings are to be transferred to the Children's Court for trial purposes.

40. Section 19 of the JJ Act is also reproduced here-under:-

"19. Powers of Children's Court.—(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.



(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required."

41. After the decision of the Board under Section 18(3) of the JJ Act, power is vested with the Children's Court to decide as to whether the child is required to be tried as an adult as per the provisions of the Code of Criminal Procedure, 1973, and if so, it would order for conducting trials as per Cr.P.C.

In case, Children's Court does not find that the child requires to be tried as an adult, still it may conduct an inquiry by itself as a board and then may pass order under the provision of the Section 18 of the JJ Act.

In other words, a joint reading of Section 18(3) and Section 19 of the JJ Act, would say that the order of preliminary assessment passed by the Board, treating any child as an adult and transferring the proceedings for trial to Children's Court, would still be subject to the confirmation by the



Children's Court, which has to apply its independent mind over the preliminary assessment report and the other relevant factors.

42. In the case in hand, we are unable to overlook some important procedural defects, which have been done at the instance of both the Courts i.e. the Board as well as the Children's Court. The CCL-Dxxx was arrested on the date of incident itself i.e. on 30.05.2018 and first time on 15.02.2019, learned Addl. Sessions Judge, had noticed that as per the school record and the certificate issued by the Registrar, Birth and Death, date of birth of the accused is 29.03.2001. Thus, held the accused, to be below the age of 18 years at the time of incident.

To the view point of this Court, the period of limitation for conducting the process of preliminary assessment, started commencing from that stage.

Be that as it may, proceedings were continued by the JJB, as a summon case and after issuance of notice of accusation, which was served on 06.03.2019 by the Board and after recording of the statements of the 16 witnesses, evidence of prosecution was closed and thereafter, statement under Section 313 Cr.P.C., was recorded.

We are also conscious of the fact that as per Section 228 of Cr.P.C., never any charge-sheet was framed by Children's Court against the CCL-Dxxx, to proceed under the Cr.P.C. and thereupon to record the prosecution witnesses' statement and then to put each and every evidence to the CCL-Dxxx, as required u/s 313 Cr.P.C., requiring answer from CCL-Dxxx.



43. We are also of the view that fixation of the time limit by the Statute for conducting inquiry or the preliminary assessment, carries some meaningful purpose of achieving the object of enactment. Doing preliminary assessment at the earliest after the alleged incident, would correctly describe the physical and mental capability of the child. In the present case, it has been finally decided after a period of about four years (3 years & 11 months). Despite the arrest of CCL-Dxxx on 30.05.2018, learned Public Prosecutor moved application u/s 15 of the JJ Act, for the first time on 28.09.2021 and by that time accused had already attained the age of 20 years & 6 months.

44. In Thirumoorthy' s Case (supra), Hon' ble Apex Court while addressing the import of Section 19(1) of the JJ Act, has held that the word 'may' is to be read 'shall' . Interpreting the purpose of Section 19(1)(i) of the JJ Act, Court held that the inquiry is not empty formality, and even if Children' s Court reaches to the conclusion that child is an adult, but there is no need of trial of that child as an adult. Still as per the mandate of the JJ Act, the Children' s Court itself proceed with the proceedings, as it would have been proceeded before the Board. In the case before the Hon' ble Apex Court, flagrant violation of the mandatory provision of Section 15 and 19 of the JJ Act, were noticed, as there was neither any charge-sheet against the accused nor any preliminary assessment conducted by the Board.

For reference, paragraphs No.35 to 40 of the Thirumoorthy's case (supra), are reproduced here-below:



*“35. The procedure provided under Sections 15 and 19 has been held to be mandatory by this Court in the case of **Ajeet Gurjar v. State of Madhya Pradesh 2023 SCC Online SC 1255**. In the said case, this Court considered the import of Section 19(1) of the JJ Act and held that the word ‘may’ used in the said provision be read as ‘shall’. It was also held that holding of an inquiry under 19(1) (i) is not an empty formality. Section 19(1)(ii) provides that after examining the matter, if the Children's Court comes to the conclusion that there is no need for trial of the child as an adult, instead of sending back the matter to the Board, the Court itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Children's Court have different consequences.*

36. It was further held that the Children's Court cannot brush aside the requirement of holding an inquiry under Section 19(1)(i) of the JJ Act. Thus, all actions provided under Section 19 are mandatorily required to be undertaken by the Children's Court.

37. As can be seen from the facts of the present case, there has been a flagrant violation of the mandatory requirements of Sections 15 and 19 of the JJ Act. Neither was the charge sheet against the accused appellant filed before the Board nor was any preliminary assessment conducted under Section 15, so as to find out whether the accused appellant was required to be tried as an adult.

38. In absence of a preliminary assessment being conducted by the Board under Section 15, and without an order being passed by the Board under Section 15(1) read with Section 18(3), it was impermissible for the trial Court to have accepted the charge sheet and to have proceeded with the trial of the accused.



39. Thus, it is evident that the procedure adopted by the Sessions Court in conducting the trial of the accused appellant is de hors the mandatory requirements of JJ Act.

40. Thus, on the face of the record, the proceedings undertaken by the Sessions Court in conducting trial of the CICL, convicting and sentencing him as above are in gross violation of the mandate of the Act and thus, the entire proceedings stand vitiated.”

Hon’ble Apex Court in Ajeet Gurjar’s case (supra), held as under:-

“9. There are two parts to sub-section 1 of Section 19. The first part requires the children's Court to decide whether there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973. If the Court is satisfied that the child needs to be tried as an adult as per the provisions of Cr.P.C., the Children's Court can proceed with the trial and thereafter pass an appropriate order subject to the provisions of sections 19 and 21 of the JJ Act.

10. Clause (ii) of sub-section 1 of Section 19 is very crucial which indicates that though the word 'may' have been used in the opening part of sub-section 1 of Section 19, the same will have to be read as 'shall'. Clause (ii) provides that after examining whether there is a need for a trial of the child as an adult, if the children's Court comes to the conclusion that there is no need for the trial of the child as an adult, instead of sending back the matter to the Board, the Court itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Juvenile Justice Board has different consequences.



11. Therefore, holding an inquiry in terms of clause (i) of sub-section 1 of Section 19 is not an empty formality. The reason is that if the Children's Court comes to the conclusion that there is no need to try the child as an adult, he will be entitled to be treated differently in the sense that action can be taken against him only in terms of Section 18 of the JJ Act.

12. The observation of the High Court that the order passed under sub-section (3) of Section 18 has attained finality completely ignores that the order under subsection (3) of Section 18 is not a final adjudication on the question of trying the child as an adult. The reason is that the order under sub-section (3) of Section 18 is based on a preliminary assessment made under Section 15. As such order is based only on a preliminary assessment, the law provides for a further inquiry in terms of subsection (1) of Section 19 by the competent Children's Court. Hence, the Children's Court cannot brush aside the requirement of holding an inquiry under clause (i) of sub-section (1) of Section 19.

13. The learned counsel appearing for the appellant pointed out that the Special Court under the MPDVPK Act at Gwalior, Madhya Pradesh is also trying the cases of dacoity and similar serious offences. He pointed out that in the Sessions Court at Gwalior, there is a Special Court under the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') which is also empowered to act as a Children's Court. We direct the learned Sessions Judge at Gwalior to examine this aspect, and if the Special Court under the POCSO Act is a Children's Court and is not already overburdened, he will administratively transfer the case to the said Court.

14. By setting aside the impugned orders, we direct the Special Court to comply with the requirement of sub-section 1 of Section 19 of the JJ Act. We expect the Special Court to decide the issue as expeditiously as possible. While holding an



inquiry as contemplated by sub-section 1 of Section 19, the concerned Court shall have regard to provisions of Rule 13 of the Modal Rules framed under the JJ Act.”

Further, the Hon’ble Apex Court in Barun Chandra Thakur’s case (supra), examined the correctness of the order of the Single Bench of this Court (Punjab and Haryana High Court), passed in CRR-2366-2018, titled as, “Bholu vs. CBI”, decided on 11.10.2018. For reference, the relevant paragraphs No.59 and 60 of the same are reproduced as under:-

“TIMELINE

59. *There is a timeline provided for the inquiry, submission of the SIR, preliminary assessment and the investigation under the Act, 2015 and the Model Rules:*

- i. The inquiry by the Board under section 14(1) is to be completed within a period of four months from the date of first production of the child before the Board, and it could be extended by a period of two more months by the Board for the reasons to be recorded as per section 14(2).*
- ii. Section 14(3) provides that a preliminary assessment under section 15 should be disposed of by the Board within a period of three months from the date of first production of the child before the Board.*
- iii. Under section 14(4) it is provided that if the inquiry by the Board under section 15 for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated.*
- iv. Under the proviso to section 14(4) dealing with the serious or heinous offences, in case the Board requires further period of time for completion of inquiry, the same may be granted by the Chief Judicial*



Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded.

v. Under section 8(3)(e), SIR is to be submitted by the Probation Officer or the Child Welfare Officer or a social worker within a period of fifteen days from the date of first production of the child before the Board.

vi. In rule 10(5) of the Model Rules, in case of heinous offences committed by a child between the age of 16 to 18 years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board.

60. The timeline given under the various provisions as referred to above, has a rationale. The SIR to be submitted within fifteen days would facilitate the Board in taking a decision on the request for bail at the earliest. The period of one month given under rule 10(5) is to facilitate the Board to take a decision may be on a pending bail matter or for preliminary assessment for which three months' time is provided. The completion of inquiry within four months or any extended period is to ensure that a child is not subjected to unnecessary long and lengthy processes of trials and inquiries and that the matter is taken to its logical conclusion at the earliest.”

Discussion in regard to the preliminary assessment culled out in paragraph No.62, is also reproduced here-under:-

“62. The obligation of the Board in making the preliminary assessment on the four counts mentioned in section 15 of the Act is largely dependent upon the wisdom of the Board without there being any guidelines as to how the Board would



conduct such preliminary assessment. In the absence of any such framework or guidelines, the Board has to use its discretion in taking into consideration whatever material it deems fit for assessing the four attributes.

(a) In the present case, the Board and the Children's Court, relying upon the statement given by the child at the time of first appearance before the Board, the second statement given by the child at a later stage, the SIR and the report of the psychologist indicating an IQ level of 95, have held that the respondent had the mental capacity to commit the offence.

(b) Insofar as the physical capacity is concerned, the Board and the Children's Court have taken into consideration the built of the child and his age to hold that he had the physical capacity to commit the nature of the alleged assault.

(c) The Board relied upon the fact that the respondent was studying in class 11th; he had stated that he is physically and mentally fit and not suffering from any disease; his IQ level shows that he is mentally fit and as such it cannot be said that he did not know the consequences of the alleged offence to be committed by him. From the statement of the respondent recorded during his personal assessment, it was indicated that he was mature enough. All these facts satisfied the Board that the respondent was having sufficient maturity and ability to understand the consequences of his action.

(d) The order of the Board does not anywhere refer to its assessment regarding the circumstances in which the respondent allegedly committed the offence. However, what appears is that the Board relied upon the SIR.”



In Barun Chandra Thakur's case (supra), proviso to Section 15(1) of the JJ Act, whether it is directory or mandatory, was also considered by Hon'ble Apex Court. The relevant paragraphs No.79 & 85 are also reproduced here-under:-

“79. Therefore, looking to the purpose of the Act, 2015 and its legislative intent, particularly to ensure the protection of best interest of the child, the expression "may" in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psycho-social workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practicing professional with a degree in child psychology or child psychiatry. Moreover, in case the Board, in view of its own composition with at least one member, who is a practicing professional with a degree in child psychology or child psychiatry, chooses not to take such assistance, it would record specific reasons therefor.

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85. The High court taking into consideration all these aspects set aside the order of the Board, and remanded the matter and also directed for getting further examination of the child, and this exercise was to be undertaken within 6 weeks. Today, after 3² years, we are not in a position to give an opinion as to whether any further test can be carried out at this stage as the age of the child is now more than 21 years. However, we leave it to the discretion of the Board or the psychologist who may be consulted as to whether any fresh examination would be of any relevance/assistance or not. We have already referred to in detail the kind of analysis or assessment required to be made under section 15. The Act,



2015 or the Model Rules do not lay down any guidelines or framework to facilitate the Board in making a proper preliminary assessment on the relevant aspects. The only liberty given to the Board is to obtain assistance of an experienced psychologist or a psychosocial worker or other expert. In the present case, the only assistance taken is to get the mental IQ of the child. Beyond that, regarding the ability to understand the consequences and also the circumstances in which the alleged offence was committed, no report was called for from any psychologist.”

45. Regarding the mandatory character of the provisions and the prejudice being cause to the accused, in **Naresh Kumar's case (supra)**, Hon'ble Apex Court discussed the issue regarding suffering of the prejudices by the juvenile accused in certain situations. Relevant paragraph No.16 of the judgment says as under:-

*“16. In this context, the maxim “actus curiae neminem gravabit”- “the act of Court shall prejudice no one”, has also to be looked into. In the decision in **Oil and Natural Gas Company Limited Vs. Modern Construction and Company (2014) 1 SCC 648**, this Court held that the Court has to correct the mistake it has done, rather than to ask the affected party to seek his remedy elsewhere. In the context of the decisions referred above, there can be no doubt that in a charge for commission of a serious offence where extreme penalty alone is impossible in case the accused is found guilty, procedural safeguards ensuring protection of right(s) of accused must be followed and at any rate, in such cases when non-compliance of the mandatory procedure capable of vitiating trial qua the convict concerned is raised and revealed from records, irrespective of the fact it was not raised appropriately, it must*



*be considered lest the byproduct of consideration of the case would result in miscarriage of justice. Being the Court existing for dispensation of justice, this Court is bound to consider and correct the mistake committed by the Court by looking into the question whether non-examination or inadequate examination of accused concerned caused material prejudice or miscarriage of justice. We may hasten to add here, that we shall not be understood to have held that always such a mistake has to be corrected by this Court by examining the question whether material prejudice or miscarriage of justice had been caused. In this context, the summarization of law on the subject of consequence of omission to make questioning on incriminating circumstances appearing in the prosecution evidence and the ways of curing the same, if it is called for, by this Court in the decision in **Raj Kumar @ Suman v. State (NCT of Delhi) 2023 SCC OnLine SC 609**, assumes relevance. Paragraph 16 of the said decision reads thus:-*

"17. The law consistently laid down by this Court can be summarized as under:

- i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;"*
- (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;*
- iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;*



(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

46. For the purpose of applicability of the provisions of the JJ Act, Hon' ble Apex Court has examined the character of the provision of the inquiry/preliminary assessment, viz-a-viz the fixed time period, as to whether same is mandatory or the directory in nature. In the case of **Child in Conflict with Law through his Mother v. State of Karnataka and another, 2024(2) RCR (Criminal) 833 : [Criminal Appeal No.2411 of 2024, DOD: 07.05.2024]**, it has been observed that once there is provision of extension



of time, the time period is directive in nature and not mandatory. Also for the reason that no consequences of failure have been provided, as is there, in the case of inquiry into petty offences in terms of Section 14(4) of the JJ Act. Paragraphs No.9.13 and 9.14 of the same are reproduced as under:-

“9.13 As noticed earlier, the preliminary assessment into the heinous offence by the Board in terms of Section 15(1) of the Act has to be concluded within a period of three months in terms of Section 14(3) of the Act. The Act as such does not provide for any extension of time and also does not lay down the consequence of non-completion of inquiry within the time permissible. In the absence thereof the provision prescribing time limit of completion of inquiry cannot be held to be mandatory. The intention of the legislature with reference to serious or heinous offences is also available from the language of Section 14 of the Act which itself provides for further extension of time for completion of inquiry by the Board to be granted by the Chief Judicial Magistrate or Chief Metropolitan Magistrate for the reasons to be recorded in writing. It is in addition to two months’ extension which the Board itself can grant.

9.14 As in the process of preliminary inquiry there is involvement of many persons, namely, the investigating officer, the experts whose opinion is to be obtained, and thereafter the proceedings before the Board, where for different reasons any of the party may be able to delay the proceedings, in our opinion the time so provided in Section 14(3) cannot be held to be mandatory, as no consequences of failure have been provided as is there in case of enquiry into petty offences in terms of Section 14(4) of the Act. If we see the facts of the case in hand, the investigating officer had taken



about two months' time in getting the report from the NIMHANS. ”

View expressed in paragraph No.9.27 of the judgment of the Hon' ble Apex Court is also reproduced here-under:-

*“9.27 In our opinion, the guidance as is evident from sub-section (4) of section 14 of the Act enabling the Chief Judicial Magistrate or Chief Metropolitan Magistrate to extend the period of inquiry as envisaged under Section 14(1), shall apply for extension of period as envisaged in sub-section (3) also. **Such an extension can be granted for a limited period for the reasons to be recorded in writing.** While considering the prayer for extension of time, the delay in receipt of opinion of the experts shall be a relevant factor. This shall be in the spirit of the Act and giving the same a purposive meaning.”*

47. Applying the gist of the judgments discussed here-above, this Court is required to examine whether the ‘**prejudice**’ has been caused to the CCL-Dxxx, due to the belated preliminary assessment done and that too by convicting him without holding complete trial according to Cr.P.C. 1973.

By applying the ratio of the judgments to the facts of the case in hand, we find that the CCL-Dxxx has suffered prejudice, on two counts i.e.:-

- (i) The alleged offence was committed on 30.05.2018, and the CCL-Dxxx was arrested on the very same day and was also interrogated on 31.05.2018 i.e. next day. After completion of evidence, statement under Section 313 Cr.P.C., was recorded on 03.01.2020 by the Board, as per the proceedings recorded in the summons case.



Suddenly, after period of 3 years & 4 months from the date of incident and arrest of the CCL-Dxxx, on 28.09.2021, learned Public Prosecutor woke up and moved application under Section 15 of the JJ Act for conducting preliminary assessment. Finally, order under Section 18(3) of the JJ Act, was passed by the JJB on 22.03.2022 and exercising the power under Section 19 of the JJ Act, the Children's Court also on 02.04.2022 passed order for conducting trial as per Cr.P.C.

In all this process, period of about 4 years (3 years & 11 months) had passed and very purpose of fixing time period for conducting inquiry and preliminary assessment has been made to suffer in the present case. No legislative purpose is left, even if the law, which is directory in nature, is given complete go-bye, by the Courts of law. Right of none else is effected than of the CCL-Dxxx in the present case, whose rights were otherwise required to be protected by the special Statute i.e. JJ Act. Thus, the very objective of the Statute has been defeated.

- (ii) There is another aspect to see that what was the statutory obligation/duty of the Children's Court after reaching to the conclusion under Section 19 of the JJ Act, that the proceedings were required to be conducted against the



CCL-Dxxx afresh under the provision of the Criminal Procedure Code, 1973.

On this issue also, the Children's Court has crossed all limit of errors, because the proceedings were to be started by examining the police report and then to frame the charge-sheet, and then to record the statements of the prosecution witnesses before it. Complete prosecution evidence was also required to be put to CCL-Dxxx, as per Section 313 Cr.P.C. None of these proceedings were conducted. To the utter surprise of this Court, such a proceeding is rarely heard of, whereafter, accused is convicted of an offence and then sentenced for a period of 20 years, without there being any trial as per law.

48. Having noticed arguments and the facts which have come on record, this Court is of the view that the learned JJB has proceeded to record the statements, considering the appellant as Child in Conflict with Law. The opportunity to cross-examine the witnesses was also given considering him as a child. His statement was also recorded as a child under Section 313 Cr.P.C. However, subsequently the JJB has proceeded to examine whether the concerned child was to be treated as an adult for the purpose of trial. The preliminary assessment has, thus, been conducted in terms of Section 14 of the JJ Act after the entire enquiry as a summary trial was already done by the JJB. After having reached to the conclusion and having conducted the assessment in terms of Section 15 of the JJ Act, it proceeded to refer the case



to the Children's Court for trial requiring the same to be tried as an adult. Having noticed the provisions of Section 19 of the JJ Act (supra), we find that the Children's Court has failed to carry out its required duty in terms of Section 19 of the JJ Act.

49. In fact, we find that the child was arrested on the day of alleged incident i.e. 30.05.2018. The preliminary assessment as required under Section 15 of the JJ Act was conducted after an application was moved by the learned APP on 28.09.2021. The Child had attained the age of 20 years 6 months by then. The very purpose of the provisions of limitation of three months laying down under Section 14(3) of the JJ Act stands frustrated. In the present case, we also find that the JJB made its preliminary assessment and referred the case to the Children's Court for treating the child as an adult vide order dated 06.10.2021 and he was directed to appear before the Children's Court on 12.10.2021. The order was challenged by the appellant and the Additional Sessions Judge set aside the order on 07.03.2022 whereafter the JJB again held the appellant matured enough to be treated as an adult vide order dated 22.03.2022 and he was directed to appear before the Sessions Judge on 02.04.2022. On the said date, the Additional Sessions Judge, Children's Court, exercised power under Section 19 of the JJ Act and after examining reports of the preliminary assessment and the Clinical Psychologist report concluded the appellant to be treated as an adult in terms of provisions of Cr.P.C. The case was, however, listed for defence evidence thereafter instead of conducting regular trial, we find that learned Additional Sessions Judge has failed to conduct the independent enquiry and has only relied upon the earlier report of assessment done by the JJB.



In *Ajeet Gurjar's case (supra)*, the Apex Court has treated the provisions of Section 19(1) of the JJ Act as mandatory, which are to be independently undertaken by the Children's Court. It need not be further stressed that treating a person as a juvenile and conducting his trial accordingly and treating him as an adult and conducting his trial accordingly are two different aspects which are required to be kept in mind. Even if the trial was conducted earlier by the JJB as a child, the same evidence could not have been recorded and considered for the purpose of conducting trial by the Children's Court treating him as an adult.

50. However, in the present case, we find that the Children's Court after reaching to the conclusion that he is to be tried as an adult, proceeded to record only defence witnesses and considered the entire statements recorded by the JJB, which were recorded treating the appellant as a child. No charges were framed as per the Cr.P.C. nor it can be said that a fair trial was provided. In fact, the Children's Court should have started a fresh trial by examining the police report and after framing of charges, the statements of the prosecution witnesses were required to be recorded with proper opportunity of cross-examination. Statement under Section 313 Cr.P.C. was also required to be recorded.

Whereafter the arguments ought to have been heard, but we find that in a great haste the Children's Court proceeded to declare the appellant as an adult for the purpose of trial and adjourned the case for defence evidence. The Children's Court fixed the case for defence evidence and proceeded to decide the same on 12.04.2022 within ten days holding him guilty of committing the alleged offence based on the evidence recorded



by the JJB and sentenced him to undergo 20 years of imprisonment. Thus, we find the proceedings conducted by the JJB before deciding whether the appellant was to be tried as a child or as an adult, are worth to be vitiated.

51. While proceeding further, we find that once case was remanded by learned Addl. Sessions judge for passing of fresh assessment order in terms of Section 15 of the JJ Act, it was incumbent upon the JJB to have considered and examined the appellant and his psyche as on the date when the incident is alleged to have been committed by him. However, more than five years had elapsed by that time and it is practically impossible to assess a person of his psychology what he would have been thinking five years back. The entire exercise is found to be an eye-wash and deserves to be set aside. We, therefore, hold the appellant not to be fit to have been tried as an adult.

52. Since every order passed during the proceedings can be examined in the proceedings of appeal by the Appellate Court, in view of the reasons recorded by following the principles, as guided by the Hon'ble Apex Court, we are constrained to raise our strong suspicion about the validity in law of the orders dated 22.03.2022 passed by the JJB, order dated 02.04.2022 passed by the Children' s Court and consequential, impugned judgment dated 12.04.2022 passed by the Children' s Court. Accordingly, same are hereby held to be unsustainable.

53. Having reached to the aforesaid conclusion, we now proceed to examine the case solely treating him as a child and considering the evidence which was recorded by the JJB originally when he was being considered as child by the JJB.



In view of setting-aside of the orders and the impugned judgment, next question arises, whether after such a long time, it would be justified to direct the JJB or the Children's Court to proceed afresh in accordance with law or not ?

During the course of hearing, learned State counsel has also produced the custody certificate dated 30.08.2024. As per said custody certificate, CCL-Dxxx had already undergone total sentence period of 03 years and 06 months, which by now would be 03 months more period inside jail and no other case is shown to be registered against him.

Therefore, instead of remanding the matter back to the Board or to the Children's Court, we propose to examine the evidence led before the JJB ourselves, and thereafter, to reach at some conclusion.

CONCLUSION ON THE PROSECUTION'S EVIDENCE:

54. Firstly, while dealing with the initial oral version recorded in the FIR, this Court finds that alleged incident of fingering with the victim child happened at about 11:00 /12:00 noon on 30.05.2018 in the shop where CCL-Dxxx was already present. On demanding milk by the child, the child was taken to the shop on the pretext of giving a toffee and thereby forcibly opening the chain of the pant of the victim, the finger was inserted in the vagina. On raising a cry, the child was threatened not to disclose the incident to anybody. Immediately thereafter, while crying, the child reached home and disclosed the incident to her grandmother.

55. It has come in the evidence of the victim as well as Vinod (PW5), that in the house apart from victim, her father, grandmother, mother, children, and brother live there. From the record, it does not emerge from



any angle that the incident was detailed by the victim to any other member except to the grandmother. Once the incident has been explained fully by the victim herself and then the information given by her to Santro Devi-grandmother (PW15) and also happening of the circumstances immediately after the incident, having been acknowledged by Vinod-PW5, which have been explained at the time of recording of the evidence before the Board. Apart from already recording their statements during the course of an investigation conducted by the police, there is no point in doubting the happening of the incident as alleged in the case. In other words, it can be concluded that happening of incident between 11/12:00 A.M on 30.05.2018, resulting in the injury on the private part of the victim cannot be doubted from any angle. Even non-examination of the mother of the victim or any other family member could not be of any consequence except increasing the number of witnesses. It is the quality of the evidence which matters, and not the quantity of the evidence/witnesses.

It is noticed by this Court that the incident took place on 30.05.2018 at about 11/12:00 A.M. (day time) and immediately thereafter, V-xxx (victim) was taken to the hospital, where she was medico legally examined at about 01:10 P.M. on the same day. On being disclosed by the V-xxx (Victim) about the alleged act of fingering by the CCL-Dxxx has been recorded by the Doctors even in the MLR (Ex.PW2/B). Although, factual allegations are rarely recorded in the MLR, yet availability of the factual allegations in the MLR itself, shows that immediately after the incident, factual aspect is recorded in an authentic document, and thus, it cannot be assumed that such a story was concocted within one or two hours,



that too, without there being any strong motive in the mind of the complainant party against the CCL-Dxxx. Even by that time, father of the V-xxx (Victim) was not accompanying her to the hospital.

During the Medical examination of the victim, it was also recorded in the MLR that clotted blood was present over the Mons pubis, even, freshly oozing blood was also noticed from the posterior fourchette, and congestion abrasion was also noticed over the post fourchette. Although, hymen is reported to be intact and no other injury was noticed, but the question arises as to how the female child of the age of 4 ½ years (victim in the presence case) suffered the injuries and that too at the shop of the CCL-Dxxx. Once, it is established that the victim suffered injury after reaching the shop of the CCL-Dxxx, it was imperative upon him to explain as to how the injuries were suffered by the victim, if not in the manner suggested by the victim and other family members.

In the absence of the same, medical evidence is found to be in conformity with the ocular version narrated by the witnesses and especially with a statement of the victim herself.

56. Not only this, Dr. Geeta (PW2), who medically examined the victim at first instance made it clear by stating that such kind of injury cannot be suffered while playing or by falling on a brick or stone. After seeing FSL report, Dr. Geeta (PW2) opined that the possibility of sexual intercourse cannot be ruled out. But, once there is no allegation of sexual intercourse by CCL-Dxxx and the exact manner of fingering is not possible to be ascertained, we would refrain ourselves from making any comment over the said opinion given by the doctor. Thus, on this point Court



considers it safe to conclude that the ocular version given by the witnesses i.e. PW4-Rakesh, PW5-Vinod, PW12-Victim herself, PW15-Santro Devi is in conformity/corroboation with the medical evidence.

57. By examining the statement of witness Vinod (PW5), it is found that he cannot be said to be an interested witness being a family member. Firstly, he nowhere stated himself to be a witness of the incident, claiming his presence on spot. Explanation given by him is in regard to the circumstances, which he noticed after happening of the incident, such as, presence of blood on the jeans of the V-xxx (Victim) etc.

Secondly, he has proved the information given by him to the father of the V-xxx (victim) namely; Rakesh (PW4) about the condition of the child. Therefore, considering PW5 – Vinod an interested witness would, in fact, be a misconceived thought.

58. The next argument of the appellant is that CCL-Dxxx has not been identified by the witnesses in the Court. In this regard, the statement of the witnesses would be important. The victim child in the present case is aged only 4 ½ years, who at the time of making statement in Court was studying in the first standard. She has explained in her evidence that whole of the incident was explained by her to the grandmother, who thereafter reached the shop of Raj Kumar alongwith her (victim) to make a complaint in that regard. Even the spot was shown to the grandmother. It is very much clear on record that shop, which is the place of the incident, is owned by Rajkumar and CCL-Dxxx is none else but his son. Therefore, no benefit can be allowed to be extended to the CCL-Dxxx because technically she did not mention anything in her statement before the Court regarding the presence



and identification of the CCL-Dxxx in Court at the time of making the statement.

However, at this juncture, the statement of Santro-PW15 would be of substantial weight, who specifically deposed in examination in chief that *“the child Deepak is present before the Court”*. While conducting cross-examination of the said witness no cross question has been put to the witness, meaning thereby, name of the CCL-Dxxx and his presence is well established through the conjoint reading of the statement of victim child and her grandmother. Even otherwise also, the identity of the CCL-Dxxx has nowhere been disputed or that the CCL-Dxxx is not the son of Raj Kumar, who is the owner of the shop. Thus, no benefit can be extended on that account.

59. Even otherwise also, in such like cases conviction can be based upon the sole testimony of the victim, who unfortunately is a child of the age of 4 ½ years in the present case. The narration of the incident recorded just after the short period of the incident in the medical record speaks volumes. It cannot be presumed that within such a short time a child of this age can be tutored by the grandmother or any other person. Right from the beginning till the deposition before Court, the victim child has stood by the allegations throughout. Thus, there is nothing much to raise doubt over the incident.

Other observations in regard to the commission of the act of penetrative sexual assault in terms of Section 5 read with Sections 29 and 30 of the Act of 2012, insists the drawing of the presumption against the accused (CCL-Dxxx in the present case) and therefore, the plea of CCL-



Dxxx of his false implication that too without any evidence to rebut the evidence led by the prosecution, is not at all believable.

60. Needless to say that prosecution story has been confirmed through the statement of Sh. Sourabh Khatri (PW16), CJM-cum-Secretary, DLSA, Rohtak also, who had recorded the statement of victim under Section 164 Cr.P.C. Thus, factual allegations and the identity of the CCL-Dxxx is also well established in the case.

61. From the reasons recorded here-above, this Court holds that the committal of act of sexual assault against the victim child by the CCL-Dxxx is well established.

62. Having held the appellant to be a child and having found him guilty of having committed the offence of penetrative sexual assault in terms of Section 5 read with Sections 29 and 30 of the Act of 2012 and also guilty of offences under Sections 341, 342 and 506 IPC and accordingly sentenced him to the maximum punishment, which may be provided to a child i.e. of three years. Since the appellant has already remained incarceration for 3 years and 9 months, it is held that the appellant has already undergone the complete sentence period. He shall now, therefore, be released.

63. Additionally, as guided by the Hon'ble Apex Court in *Bodhisattwa Gautam's case (supra)*, wherein it has already been held that jurisdiction to pay compensation has to be treated as part of overall jurisdiction of the Courts, trying the offence of rape, which is an offence against the basic human rights and also the Fundamental Right of personal liberty and life.



Therefore, considering the victim's compensation claim in the light of Section 33 of the POCSO Act, and also in the light of Nipun Saxena's case (supra) as well as taking note of the NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2017, V-xxx (Victim) would be entitled to get compensation amount of Rs.5.00 lakhs (Rs. Five lakhs only), as already notified by the Government.

64. Thus, this Court recommends that the Secretary, District Legal Services Authority, Jind, to award a compensation of Rs.5,00,000/- (Rupees Five Lacs only) to the V-xxx (Victim) by depositing the amount in her account. After making payment of the said amount to the V-xxx (Victim), the Secretary, District Legal Services Authority, shall file his compliance report.

It is made clear that any interim compensation amount, if ever paid to the V-xxx (Victim), same shall be adjusted in the compensation, as awarded today by this Court.

65. The said amount shall be used for welfare and rehabilitation of the minor victim, under the supervision of Welfare Officer, so nominated by the Government of Haryana.

66. Copy of the judgment and order of sentence be supplied to the convict, free of cost. Copy of the judgment and order of sentence be also sent to the Secretary, District Legal Services Authority, Jind for compliance. File be consigned to the record room after due compliance.



67. With the aforementioned terms, the present appeal is partly allowed. Accordingly, the CCL-Dxxx be released from custody immediately, if not required in any other case or for any other purpose.

Since the main appeal has been decided, all other pending criminal miscellaneous application(s), if any, shall stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

November 27, 2024
J.Ram/Rashmi

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>