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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Reserved on:- 17.02.2025

Pronounced on:- 21.04.2025**MXXX (name withheld)**

...Petitioner

Versus**State of Punjab**

...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Amitoj Singh, Advocate for
Mr. Aminder Singh, Advocate
for the petitioner.

Mr. Gautam Thapar, AAG, Punjab.

AMARJOT BHATTI, J.

1. Petitioner/Juvenile MXXX has filed present criminal revision against impugned judgment dated 07.02.2019 passed by learned Additional Sessions Judge, Sangrur, upholding the judgment of conviction and order of sentence dated 02.12.2014 passed by learned Principal Magistrate, Juvenile Justice Board, Sangrur, whereby present petitioner/juvenile MXXX has been convicted under Section 4 of Protection of Children from Sexual Offences Act, 2012 and was sentenced to undergo three years at Special Home/Fit Institution and to pay fine of Rs. 100/-.

2. As per the facts of case FIR has been registered on the statement of victim "KD" (name withheld) recorded by ASI Surjit Kaur on 23.04.2014. Victim alleged that she had studied upto 8th standard and was doing household work. She is eldest in family out of three sisters and one



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brother. Her parents were doing labour work. On 19.04.2014 at about 12 O' clock noon, she was alone in house. She had gone to the house of her uncle Deepa Ram to fetch sugar. Juvenile was standing near the house of his grandfather Mahi Ram, who called her. She went to him and he forcibly took her inside the room. He tied cloth on her mouth and committed forcible rape with her. She managed to remove cloth from her mouth and raised alarm. Lakhwinder Ram @ Lakha who was passing in street knocked at door. She opened the door and Lakhwinder Ram @ Lakha came inside the room. Juvenile managed to escape. She narrated the occurrence to Lakhwinder Ram @ Lakha who consoled her and sent her home. Her parents came home in evening and she disclosed about the occurrence to them. They approached Sarpanch Shallu Ram who was not present in his house. On 22.04.2014, Shallu Ram came home in evening who was told about the occurrence. Thereafter, she along with her parents and Sarpanch Shallu Ram came to lodge the report. On the statement of victim, present FIR was registered under Section 376 of IPC and Section 4 of POCSO Act.

Investigation was conducted. Site plan of place of occurrence was prepared on the identification of spot by Lakhwinder Ram @ Lakha. Victim was medically examined from Civil Hospital, Bhawanigarh. Her statement was recorded under Section 164 Cr.P.C. by Area Magistrate on 24.04.2014. Later on, juvenile was arrested and he was also medically examined. After completion of investigation, report was submitted before Juvenile Justice Board, Sangrur.

3. Juvenile was supplied complete set of copies of report alongwith documents as provided under Section 207 Cr.P.C.



4. Learned Principal Magistrate, Juvenile Justice Board, Sangrur after hearing the arguments served notice upon juvenile under Section 376 of IPC and Section 4 of POCSO Act, which was read over and explained to him in simple language to which he pleaded not guilty and claimed trial.

5. In order to prove the facts of case, prosecution has examined victim as PW-1, Lakhwinder Ram as PW-2, father of victim "NR" as PW-3, Dr. Bindu Kaushal as PW-4, Ct. Manpreet Singh as PW-5, HC Karan Singh as PW-6, Lachhman Singh as PW-7, Ct. Sandeep Singh as PW-8 and ASI Randhir Singh as PW-9. Thereafter, prosecution evidence was closed by order on 21.11.2014.

6. Statement of juvenile was recorded under Section 313 Cr.P.C. to which he pleaded innocence and false implication. However, he did not examine any witness in defence and closed the same on 28.11.2014.

7. After hearing arguments advanced by learned Additional Public Prosecutor for State and learned counsel representing juvenile, he was convicted and sentenced under Section 4 of POCSO Act, as referred above by learned Principal Magistrate, Juvenile Justice Board, Sangrur. Feeling aggrieved of this judgment of conviction and order of sentence dated 02.12.2014, appeal was preferred by juvenile which was dismissed vide impugned judgment dated 07.02.2019 passed by learned Additional Sessions Judge, Sangrur. Feeling aggrieved of impugned judgment dated 07.02.2019, present criminal revision has been filed by juvenile.

8. I have heard the arguments advanced by learned counsel for petitioner as well as learned counsel representing State and have gone through the record carefully.



9. Learned counsel representing petitioner argued that judgment of conviction and order of sentence dated 02.12.2014 passed by learned Principal Magistrate, Juvenile Justice Board, Sangrur is not sustainable in the eyes of law and appeal preferred against aforesaid judgment was wrongly declined by learned Additional Sessions Judge, Sangrur vide impugned judgment dated 07.02.2019. Facts of the case and evidence on record were not rightly considered by both the Courts below. There is delay in lodging the report to police. Alleged occurrence took place on 19.04.2014 at about 12 O' clock noon. However, statement of victim was recorded on 23.04.2014. There was plenty of time with complainant party for deliberation and consultation to falsely implicate the petitioner. Testimony of victim recorded as PW-1 is not trustworthy. Learned Appellate Court failed to consider the letters written by victim Mark D-1 to Mark D-4 which clearly indicates that victim was having relationship with juvenile/petitioner much prior to alleged occurrence. Cross-examination of victim has been totally ignored. Alleged occurrence took place in day time. There is nothing on record to show that she raised alarm to save herself. Testimony of Lakhwinder Ram @ Lakha PW-2 who allegedly reached on the spot is also not trustworthy. Cross-examination of this witness is also totally ignored. He did not make any effort to report the matter to police. In fact, victim wanted to marry juvenile/petitioner and on account of his refusal, he is falsely implicated in this case.

Secondly, learned counsel for petitioner raised issue that there is no specific and clear finding of sexual intercourse with alleged victim. Statement of Dr. Bindu Kaushal PW-4 clearly shows that there was no sign of physical injury and assault. During cross-examination, doctor further



clarified that she did not receive any report from Chemical Examiner Laboratory, therefore, she has not given any specific finding that victim was subjected to sexual intercourse. It was for prosecution to prove the guilt of accused beyond the shadows of reasonable doubt. Juvenile Justice Board as well as first Appellate Court have ignored material aspects of present case. Judgment of conviction and order of sentence has been wrongly upheld by first Appellate Court by passing impugned judgment dated 07.02.2019. It is ignored that petitioner was juvenile. He faced agony of trial since long. It is submitted that revision preferred by petitioner may be accepted and he may be acquitted of notice served upon him.

10. Learned counsel representing State of Punjab raised issue that there is consistent finding of Juvenile Justice Board, Sangrur in judgment dated 02.12.2014 and impugned judgment passed by the Court of Additional Sessions Judge dated 07.02.2019 holding the petitioner/juvenile guilty under Section 4 of POCSO Act. Alleged occurrence is duly proved on record by victim as PW-1 and it is further corroborated by Lakhwinder Ram @ Lakha PW-2 who had reached on the spot when said occurrence took place. "NR" father of victim also stepped into the witness box as PW-3 to prove the facts of case. It was rightly observed by Courts below that in such like cases delay in lodging the report to police is not fatal. It takes time for the family to consider all aspects and it further takes time to make up their mind for lodging the report to police. In this case, parents of victim firstly approached Sarpanch Shallu Ram who was not available. They consulted him and thereafter, victim along with her parents and Sarpanch Shallu Ram came to lodge the report with police. Otherwise, statement of victim is corroborated from oral testimony of prosecution witnesses as well



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as from the testimony of Dr. Bindu Kaushal PW-4. At the time of alleged occurrence, victim was minor. Lachhman Singh, Teacher-cum-Incharge, Government High School, Majhi stepped into the witness box and proved certificate of school as well as Admission Register Ex.PW7/A to Ex.PW7/C which clearly indicates that date of birth of victim is 17.02.1999. Therefore, at the time of said occurrence, she was about 15 years and 2 months old, thus, a minor. The Courts below rightly considered that consent of minor victim does not carry any weight. Entire investigation carried out by ASI Randhir Singh is proved on record as PW-9. Defence raised by learned counsel for petitioner was rightly considered by Juvenile Justice Board, Sangrur as well as by First Appellate Court and same was rightly ignored upholding the judgment of conviction and order of sentence under Section 4 of POCSO Act. Revision preferred by petitioner is without merits and same deserves dismissal.

11. I have considered the arguments and have gone through the trial Court record with the able assistance of learned counsel for petitioner/juvenile as well as learned counsel representing State of Punjab. In the case in hand, FIR is registered on the statement of victim "KD" who is examined as PW-1. As per record, alleged occurrence took place on 19.04.2014 and matter was reported to police on 23.04.2014. Statement of victim recorded by police is Ex.PA, whereas, statement of victim recorded by Area Magistrate under Section 164 Cr.P.C. dated 24.04.2014 is Ex.PB. Victim alleged that on 19.04.2014 at about 12 O'clock noon, she was going to the house of Deepa Ram to fetch sugar and on the way juvenile was standing outside the house of his grandfather Mahi Ram. He called her and when she went near him, he took her inside the house forcibly. He tied her



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mouth with a cloth and committed forcible rape. She managed to remove the cloth and raised alarm. Lakhwinder Ram @ Lakha who was passing in the street heard the alarm and knocked at the door. She opened the latch and Lakhwinder Ram @ Lakha came inside, whereas, juvenile managed to escape from there. Thereafter, she returned home and on the arrival of her parents in evening, she disclosed about the occurrence to them. It is matter of record that there is delay of four days in lodging the report to police. Prosecution has explained the delay by alleging that family of victim firstly approached Shallu Ram Sarpanch of village and thereafter, they came to Police Station along with Shallu Ram to lodge the report. In this case, Shallu Ram Sarpanch has not stepped into the witness box to confirm these facts. However, there is testimony of victim as PW-1 and her father "NR" as PW-3 to confirm this fact. In such like cases where honour of a minor girl is involved, usually it takes time to make up their mind for lodging the report with police. On statement of victim Ex.PA there is police endorsement, having reference that victim had approached police along with her parents and Sarpanch Shallu Ram. Apart from this, statement of victim is corroborated by Lakwhinder Ram @ Lakha PW-2, who by chance was passing in street and on hearing the alarm he knocked at the door and found victim in the room, whereas, juvenile managed to escape from there. Considering the aforesaid factual position, delay in lodging the report to police is not fatal to prosecution case.

12. Other important aspect of present case is whether victim was raped by petitioner/juvenile on the day of alleged occurrence. In the case in hand, victim as PW-1 categorically stated that she was forcibly taken inside the room by juvenile. He tied her mouth with a cloth and committed



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forcible rape with her. Version of victim is supported by testimony of Dr. Bindu Kaushal examined as PW-4. As per her statement, she medically examined victim on 23.04.2014. As per her affidavit Ex.PW6/A, she observed as under :-

“.....

1. That on dated 23.04.2014, I medico legally examined “KD” aged 15 years, female r/o Bimbar Distt. Sangrur and on physical examination from head to toe there is no signs of physical injury and assault. Breasts are developed having fine and delicate straight axillary and pubic hair, revealed H/O Bleeding P/V after physical assault and bleed for one day i.e. on 19.04.2014.

Local examination :- Pubic hair at introits are wet & matted with thick discharge, hymeneal tags are present in lower side which is pink to red in colour and bleed on touch, Patient is cooperative but very anxious, Vagina admits only one finger and tight. Bleeding from vagina present, she does not allow P/S examination as on P/V examination she has pain, and pubic hair clippings taken and sealed and urine for pregnancy examination Negative as per report.”

During her cross-examination, she further observed that there were signs of sexual intercourse and she further stated that it can be confirmed from chemical examiner report. It is matter of record that said chemical examiner report was not received by Doctor, therefore, she has not given any definite opinion about the sexual intercourse with victim. So far as medical record is concerned, it is only a corroborative piece of evidence. Even the sole testimony of victim is sufficient to prove the allegation. In the case in hand, apart from the testimony of victim there is observation of Dr. Bindu Kaushal PW-4 as referred above. Therefore, observation given by Juvenile Justice Board as well as by First Appellate Court regarding commission of sexual intercourse with victim does not require any interference.

13. Other import aspect of present case is alleged relationship of victim with Juvenile. Victim as PW-1 was confronted with alleged letters Mark D-1 to Mark D-4. During cross-examination, victim denied her



writing on the said letters Mark D-1 to Mark D-4. She further stated that she will not be able to produce any of her school notebook for the purpose of comparison of her handwriting. Even if for the sake of arguments, it is considered that victim was having any kind of relationship with petitioner/juvenile, same does not carry any importance. As per school record proved on file by School Incharge Lachhman Singh PW-7, date of birth of victim is 17.02.1999. Therefore, at the time of alleged occurrence, she was 15 years 2 months old. Therefore, consent of victim will not carry any weight.

14. It has further come in cross-examination of victim as PW-1 as well as her father PW-3 that there was party faction in village, according to which complainant side were supporters of Sarpanch Shallu Ram, whereas, petitioner was supporter of other faction. It does not convince the mind of this Court that having affiliation with different groups in village would lead to false implication of petitioner, who himself does not hold any position or authority with any of group. Therefore, this stand taken by learned counsel for petitioner/juvenile does not hold any ground.

15. Therefore, considering the totality of facts, circumstances of case and evidence on record, petitioner/juvenile was rightly held guilty for the offence punishable under Section 4 of POCSO Act, 2012. Therefore, judgment of conviction upheld by first Appellate Court does not require any interference.

16. So far as quantum of sentence dated 02.12.2014 passed by learned Principal Magistrate, Juvenile Justice Board, Sangrur is concerned, petitioner/juvenile has been sentenced to undergo three years at Special Home/Fit Institution and to pay fine of Rs. 100/- under Section 4 of



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POCSO Act, 2012. Occurrence took place on 19.04.2014. Juvenile Justice Board decided this case on 02.12.2014 and thereafter, appeal was decided on 07.02.2019. Petitioner is facing the agony of this trial for the last more than 10 years. At the time of occurrence, petitioner was minor, a young boy of 17 years of age. Whereas, victim was also a minor girl aged about 15 years 2 months. As per custody certificate, petitioner has already undergone actual sentence of 1 year 4 months and 17 days. He was also involved in another FIR No. 203 dated 01.01.2013 under Section 341, 323, 506, 149 of IPC registered at Police Station Bhawanigarh, in which he was acquitted.

Therefore, considering the aforesaid factual position, quantum of sentence dated 02.12.2014 passed by learned Principal Magistrate, Juvenile Justice Board, Sangrur stands modified for the sentence which the petitioner/juvenile has already undergone in present case.

17. Present criminal revision filed by petitioner/juvenile MXXX stands disposed of accordingly.

18. Pending application(s), if any, also stands disposed of.

21.04.2025

lalit

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No