



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

**CRA-D-430-DB-2018 (O&M)
Reserved on: November 10, 2025
Pronounced on: 11.12.2025**

Mumtaz and another

.....Appellants

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present: Ms. Dilpreet Kaur, Amicus Curiae with
Mr. Ranjeet Kumar, Advocate for the appellants

Mr. Siddharth Atttri, Assistant Advocate General, Punjab.

RAMESH KUMARI J.

The instant appeal has been filed by the appellants –Mumtaz and Ringa Hasda @ Bulbul @ Raju (hereinafter referred to as ‘accused’) against the impugned judgment of their conviction and order of sentence dated 06.02.2018, passed by learned Judge, Special Court, SAS Nagar, Mohali for the offences under Sections 376-D, 366A, 328, 120-B IPC and Section 6 of Protection of Children from Sexual Offences Act (hereinafter referred to as ‘POCSO Act’) in a case arising out of FIR No.169, dated 29.05.2016, registered at Police Station Zirakpur vide



which Mohd. Alludin @ Mulla Thekedar has been acquitted and appellants- Mumtaz and Ringa Hasda @ Bulbul @ Raju have been convicted and have been sentenced as follows:-

Offence under Section	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
363 IPC	RI for three years	Rs.5,000/-each	SI for one month
376-D IPC	RI for twenty years	Rs.20,000/- each	SI for two months

Both the sentences were ordered to run concurrently.

FACTS OF PROSECUTION'S CASE

2. The above said FIR-Ex.PW16/B was registered on the basis of statement Ex.PW-1/A of complainant-PW1 'KD'(full particulars withheld to conceal the identity of prosecutrix and her parents and siblings) wherein, she stated that she was resident of village 'XX', Police Station Zirakpur, District Mohali and working as labourer. She had five children. Her eldest daughter 'R' was married and the second issue was her son 'S', The third child, who was daughter, had since died and younger to her was prosecutrix (PW2). The complainant PW1, her husband and prosecutrix worked as labourers with Contractor 'A', in village 'X'. PW1'KD' had suspicion that on 08.05.2016, her daughter (PW2 prosecutrix) had been enticed away on the pretext of marriage by accused- Mumtaz, son of Mohd. Gafoor and accused-Ringa Hasda @ Bulbul @ Raju, who were their co-workers. PW2-prosecutrix was aged 14 years and 6 months, and her mother PW1-complainant had no document relating to the age of her



daughter-PW2. She had been searching for her daughter till the date of recording of her statement (PW1/A) i.e. 29.05.2016, at her own level but she could not be traced out. She was fully sure that accused-Mumtaz and Bulbul @ Raju had enticed away her daughter.

3. **INVESTIGATION**

(a) The statement Ex. PW1/A of PW1 was recorded by HC Gurmit Singh on 29.05.2016, when he alongwith police party was present at 'T' point Dhakoli, for patrolling. He made endorsement Ex. PW16/A on statement PW1/A on the basis of which formal FIR Ex. PW16/B was registered.

(b) Thereafter, on 19.08.2016, PW15-ASI Jagir Singh alongwith Police party and PW1-KD (mother of the prosecutrix) and one Pappu had gone to Chabewal Road, Ludhiana and went to the house of one Sarwan Singh, situated behind Brown Bread Factory. From room No.2 situated there, accused Mohd. Mumtaz and Ringa Hasda @ Bulbul @ Raju, were apprehended and from their custody PW2-prosecutrix was recovered vide Memo Ex. PW1/B, which was signed by prosecutrix, HC Sukhdev Singh, LHC Harmeet Kaur and thumb marked by PW1-KD. PW1-KD also identified both the accused vide memo Ex. PW1/C, which was thumb marked by her and by both the accused. Both the accused were arrested vide Memo Ex.PW6/A and Ex.PW6/B. They were also personally searched and memo Ex. PW6/C and Ex.PW6/D were prepared. Site plan Ex.PW15/A of the place of recovery of PW2 was also prepared.

c) PW15-ASI Jagir Singh also got recorded the statement Ex.PW2/A of prosecutrix under Section 164 Cr.P.C. from the Illaqa Magistrate concerned.



- d) On 20.08.2016, PW15 ASI Jagir Singh moved applications Ex.PW14/A and Ex.PW14/D for medical examination of both the accused regarding their sexual fitness. Both the applications were marked by Dr. Mahender Singh, the then SMO vide endorsement Ex.PW4/B and Ex.PW4/E to PW14-Dr. Harinder Singh, who medically examined both the accused and gave report Ex.PW14/C and Ex.PW14/F that there was nothing to suggest that patients were not able to perform sexual intercourse.
- e) On 20.08.2016, PW15-ASI Jagir Singh also moved an application Ex.PW11/C for medical examination of PW2-prosecutrix. The said application was marked to PW11-Dr. Harpreet Kaur, Medical Officer, Civil Hospital, Dera Bassi vide endorsement Ex.PW11/D by the then SMO Dr. Mahender Singh. She medically examined PW2-prosecutrix and issued MLR Ex.PW11/B and OPD Slips Ex.PW11/E. She also opined vide Ex.PW11/A that analysis of urine for pregnancy test, was positive.
- f) On 30.08.2016, PW2-prosecutrix through counsel moved an application before learned Judicial Magistrate Ist Class, Derabassi seeking permission for termination of her pregnancy. Notice of the application was issued to Additional Public Prosecutor and Medical Board was ordered to be set up to give opinion. After the opinion of the Medical Board, on the basis of letter dated 06.09.2016 of JMIC, Medical Board was constituted vide order Ex.PW11-G by the then SMO-Incharge, which consisted of PW11-Dr. Harpreet Kaur, Dr. Liza Gupta and PW5-Kanwalpreet as members. 11 Weeks' pregnancy of PW2-prosecutrix was terminated and report Ex.PW5/B was forwarded to the learned JMIC vide



covering Letter Ex.PW11/H.

(g) On 20.08.2016, ASI Jagir Singh moved an application Ex.PW9/A & to assess the biological age of PW2- prosecutrix. Vide endorsement Ex.PW9/B, by the then SMO the application was marked to PW9-Dr. Vijay Bhagat, who conducted X-ray examination of PW2 and prepared X-Ray films Ex.PW9/D and Ex. PW9/E and gave opinion Ex.PW9/C that radiological age of PW2 is 17-19 years.

(h) On 29.08.2016 PW-1-complainant produced before PW15-ASI Jagir Singh, school leaving certificate Ex.PW13/B, bearing No.1596 of PW2 in which her date of birth is stated to be 07.07.2002, which was taken into possession vide memo Ex.PW1/D.

i) On 05.09.2016, PW15-ASI Jagir Singh moved applications Ex. PW4/A and PW4/B before learned Illaqua Magistrate for obtaining the blood sample of the accused for DNA examination. The applications were marked by the then SMO to PW14-Dr. Anju, Medical Officer, CHC, Dhakoli. She obtained blood samples of both the accused and made endorsement Ex.PW4/C and Ex.PW4/D on both the applications and handed over the samples to the police officials.

(j) The case property was deposited with the then MHC PW7-HC Roop Lal, who sent the same through Lady Constable PW3-Harmeet Kaur and PW8-HC Manoj Saini to the office of CFSL Chandigarh and CFSL CBI-Delhi.

(k) On the basis of application Ex. PW11/J, which was marked to PW11-Dr. Harpreet Kaur vide endorsement Ex. PW11/K, she opined, after seeing the report of the chemical examiner Ex.PW11/I, that since spermatozoa was detected in the



contents of (a), (b) , II (b), the possibility of sexual act could not be ruled out.

4. **PRESENTATION OF CHALLAN AND FRAMING OF CHARGE**

(a) After completion of investigation, challan against the three accused as mentioned in para No.1 of this judgment, was presented on 28.02.2017 before the learned Judge, Special Court, SAS Nagar, Mohali.

(b) Compliance of provisions of Section 207 Cr.P.C. was made by supplying copies of report under Section 173 Cr.P.C. and all accompanying documents to the accused free of cost.

(c) Finding a *prima facie* case under Sections 363 read with 120-B, 328, 376-D IPC and Section 6 of the POCSO Act, to be made out against the accused, they were charged accordingly vide order dated 27.03.2017. The charges were read over and explained to all the three accused and they pleaded not guilty to the charges and claimed trial.

5. **PROSECUTION EVIDENCE**

In order to prove its case against the accused, prosecution had examined as many as 16 witnesses besides proving the documentary evidence.

The evidence led by the prosecution can be discussed under following heads:-

(a) **Complainant and Prosecutrix version:-**

a (i) **PW1-Complainant** - as observed earlier, the FIR Ex.PW16/B was lodged on the basis of statement Ex. PW1/A got recorded by PW1-KD, who is mother of the prosecutrix-PW2.

She in her statement before the Court proved her statement Ex. PW1/A, which was made by her to the police, thumb marked by her and her husband. She also



stated on oath in the Court that on 08.05.2016, her daughter was taken away by accused Mumtaz and Bulbul @ Raju, who were her co-workers and that at that time, her daughter was 14 years of age and that her statement was recorded by the police after 10-11 days of occurrence. She also deposed that it was probably three months of taking away her daughter, that her daughter was recovered by the police from Phagwara but not in her presence. She was partly declared hostile and learned APP was allowed to put questions to her in affirmative form, during the course of which she identified her thumb marked on memo of recovery Ex. PW1/B of prosecutrix and identification memo Ex. PW1/C of accused and also production of certificate Ex.P1 which was taken into possession vide memo Ex. PW1/D.

a(ii) **PW2-Prosecutrix** supported the prosecution case in her testimony before the Court. She deposed that accused Mulla, Mumtaz and Bulbul @ Raju, who were in tempo offered to drop her at Peer Mushalla in a vehicle, when she had gone to Kishanpura for the purpose of stitching of clothes. But they took her to Ludhiana. Mulla then made her eat one *laddo*, after which she started feeling giddiness. After sometime, Mulla alighted from the tempo. Mumtaz and Bulbul @ Raju took her in another vehicle to Ludhiana. While leaving, Mulla stated to Mumtaz that he should break the sim otherwise, they shall be apprehended. She also stated that on reaching Ludhiana, they had confined her in one room, where Mumtaz and Bulbul @ Raju turn by turn had raped her and thereafter, it became repeated affair as both of them continued to rape her. She also deposed that one day accused forgot to bolt the door from outside and she went outside the room



to answer the call of nature and met one small girl, who told her that the place was Ludhiana. One day at about 5:00 P.M, there was knock at the door and it was her brother-in-law (sister's husband) along with the police people who had come, and then she apprised them of the aforesaid sexual assault by Bulbul @ Raju and Mumtaz and about all the acts committed in conspiracy with Mulla. She also stated about her recovery memo Ex. PW1/B, which bears her signature and also deposed about recording of her statement Ex. PW2/A under Section 164 Cr.P.C. PW2 also stated that she was found to be pregnant and after seeking permission, her pregnancy was aborted. She specifically identified the accused at the time of recording of her statement in the Court.

5(B) **INVESTIGATIVE EVIDENCE**

b (i) **PW16-HC Gurmit Singh** was the initial Investigating Officer. He in his statement before the Court proved the recording of the statement Ex.PW1/A of PW1-KD on 29.05.2016, on which he made endorsement Ex.PW16/A on the basis of which FIR Ex.PW16/B was registered. As per his statement, he also prepared site plan of the place of occurrence.

b(ii) **PW15-ASI Jagir Singh** conducted subsequent investigation of the case as investigation was handed over to him on 20.07.2016. He proved the investigation conducted by him as mentioned in para No.3 of this judgment. He got recovered PW2-prosecutrix from room No.2 of the house of the Sarwan Singh situated backside Brown Bread Factory on Chhabewal road, Ludhiana. When he raided the said house on 19.08.2016 alongwith PW1-KD, one Pappu and officials of the police party. He also proved the recovery memo Ex. PW1/B prepared by him



regarding recovery of PW2 and identification of accused by PW1-KD vide memo Ex. PW1/C. PW15 in his statement proved the following documents:-

- Ex.PW6/A and Ex. PW6/D-Memos of arrest and personal search of accused Mohd Mumtaz;
- Ex.PW6/B and Ex.PW6/C-Memos of arrest and personal search of accused Ringa Hasda @ Bulbul @ Raju;
- Ex.PW15/A-site plan of place of recovery of prosecutrix and place of arrest of accused Mohd Mumtaz and Ringa Hasda @ Bulbul @ Raju;
- Ex. PW9/A-application for medical examination of PW2-prosecutrix;
- Ex. PW10/A and Ex. PW10/B-Memos of arrest and personal search of accused Mohd Alloudin;
- Ex. PW4/A and Ex. PW4/B- applications for obtaining the blood sample of accused Mumtaz and Ringa Hasda @ Bulbul @ Raju;
- Ex. PW11/G-order of SMO constituting a Board of Doctors for termination of pregnancy of PW2;
- Ex.PW11/H-covering letter vide report after medical termination of pregnancy of PW2 was sent (to learned JMIC);
- Ex. P1/D-Memo for taking in possession birth certificate Ex.P1 (also exhibited as school leaving certificate Ex. PW13/B),

He also got conducted medical examination of prosecutrix to assess her age.

5(C) **MEDICAL EVIDENCE**

C (i) **PW11-Dr. Harpreet Kaur**-Medical Officer tendered her affidavit Ex.PW11/A in support of her examination-in-chief. She had medico legally examined the PW2-prosecutrix on 20.08.2016, on the basis of application Ex.PW11/C moved by PW15-ASI Jagir Singh, which was marked to her vide endorsement Ex.PW11/D. She also proved MLR Ex.PW11/B pertaining to



prosecutrix and Vide report Ex.PW11/E, she opined that analysis of urine for pregnancy test, was positive. She was also Chairperson of the Board of Doctors constituted on the basis of application Ex. PW11/F, vide order Ex. PW11/G, for medical termination of pregnancy of PW2-prosecutrix. She conducted the medical termination of pregnancy of PW2 and submitted report of the Board Ex.PW5/B vide forwarding letter Ex.PW11/H.

As per her testimony, on application Ex.PW11/J, she made endorsement Ex.PW11/A and opined that spermatozoa was detected in the contents of (a), (b) II(b) and possibility of sexual assault could not be ruled out.

c(ii) **PW14-Dr. Harinder Singh, Medical Officer, Patiala-** He medically examined the accused Mumtaz and Ringa Hasda @ Bulbul @ Raju on 20.08.2016 on the basis of applications Ex.PW14/A and Ex.PW14/D which were marked to him by Dr. Mohinder Singh vide endorsement Ex.PW14/B and Ex.PW14/E. He opined vide reports Ex.PW14/C and Ex.PW14/F, that there is nothing to suggest that the accused are incapable to perform sexual intercourse.

C(iii)**PW9-Dr. Vijay Bhagat-** He was posted as Radiologist at Civil Hospital Mohali at the relevant time. He conducted X-ray examination of PW2-prosecutrix to assess her radiological age on the basis of an application Ex.PW9/A and as per his report Ex.PW9/C, the age of prosecutrix was found to be 17-19 years. He also proved two X-ray films as Ex. PW9/D and Ex.PW9/E.

c(iii) **PW4-Dr. Anju, Medical Officer, CHC Dhakoli-** She took blood samples of accused Mumtaz and Ringa Hasda @ Bulbul @ Raju on the basis of application Ex.PW4/A and Ex.PW4/B, which were marked to her vide



endorsement Ex.PW4/C and Ex.PW4/D by the then SMO and after taking the blood sample of the accused, she handed over the samples to the police officials.

5(D) **LINK EVIDENCE**

D(i) **PW13-Parbhakar Misher**, was Head Master of Primary School Beoli, Tehsil Bisoli, District Badayon, U.P., who brought the record of admission and withdrawal of the students maintained in the school. Copy of entry of admission register recording the admission of prosecutrix is proved vide Ex.PW13/A and her school leaving certificate is proved vide Ex. PW13/B. He also specially stated that as per entry, the date of birth of prosecutrix is 07.07.2000.

D(ii) **PW7-HC Roop Lal**-was posted as MHC at the relevant time in the police Station Zirakpur and he in support of his examination-in-chief tendered affidavit Ex. PW7/A. The contents of this affidavit state about deposit of case property with him by investigating Officer ASI Jagir Singh and sending of case property by him to the office of chemical examiner, Kharar, Mohali and CFSL, Delhi.

D(iii) **PW3-LHC Harmit Kaur and PW8- HC Manoj Saini**- also tendered their affidavits Ex.PW3/A and Ex.PW8/A which are corresponding to the affidavit of PW7-HC Roop Lal. PW-3 LHC Harmit Kaur deposited the case property in the office of Chemical Examiner, Mohali whereas PW-8 Manoj Saini deposited the case property in CFSL (CBI), Delhi.

5(E) **CORROBORATIVE EVIDENCE**



E(i) **PW6-HC Sukhdev Singh** was accompanying PW15-ASI Jagir Singh on 19.08.2016 when ASI Jagir Singh arrested the accused Mumtaz and Ringa Hasda @ Bulbul @ Raju. He is the attesting witness of following memos :-

- Ex.PW6/A and Ex.PW6/B-memos of arrest of accused Mumtaz and Ringa Hasda @ Bulbul @ Raju;
- Ex.PW6/C and Ex.PW6/D-memos of personal search of both the accused;
- Ex. PW1/C-memo of test identification of above named accused
- Ex.PW1/D -memo vide which school leaving certificate of PW2 was taken into police possession from PW1-KD.

E(ii) **PW10-HC Jaswinder Singh** was also accompanying PW15-ASI Jagir Singh and he also deposed about arrest of accused Mohd. Alludin on 21.08.2016 and he is the attesting witness of memos Ex.PW10/A and Ex. PW10/B i.e. arrest and personal search of accused Mohd. Alludin.

Initially this witness was suppressing the truth regarding the manner and date of arrest of Mohd. Alludin and learned APP was allowed to put questions in affirmative form to this witness and he admitted his presence at the time of arrest of accused of Mohd. Alludin and his signature on both memos which were thumb marked by accused Mohd. Alludin.

E(iii) **PW5-Kanwalpreet Kaur**, Psychiatric Social Worker, De addiction Centre, Civil Hospital Phase-6, Mohali-She was one of the member of the Board constituted by the then SMO Primary Health Centre, Dera Bassi for conducting medical termination of pregnancy of PW2 and she corroborated the testimony of PW11 regarding this. She also proved the order Ex.PW5/A passed by the SMO



and report Ex.PW5/B was prepared after termination of pregnancy of the PW2 on 07.09.2016.

5(f) **HOSTILE WITNESS**

PW12-Sarwan Singh-He in his examination-in-chief stated that he had raised one construction of 12 hutment rooms at Chabewal Road, Ludhiana where, in the said hutment, one person by the name of Makhi Paswan resides on rent and the said Makhi Paswan used to further rent out the rooms and was his care taker of the said building. He denied his knowledge regarding the accused and he also stated that it never came to his notice that from the above said hutment, any hutment was given on rent to both the accused Mumtaz Mohd. and Ringa Hasda in August 2016. He was declared hostile.

Learned APP was allowed to put questions in affirmative form to him and he stated that he came to know about registration of this case from the police, when the police apprised him telephonically about the arrest of Mumtaz Mohd. and Ringa Hasda. He never received any rent from the accused and he volunteered to add that Makhi Parsad used to be his care taker, who must be in a position to tell about the same.

As observed earlier, after tendering report Ex.DX of DNA examination, learned APP closed the evidence.

STATEMENT OF ACCUSED UNDER SECTION 313 CR.P.C AND THEIR PLEA

6. The Statement of accused under Section 313 Cr.P.C. was recorded separately. All the accused denied their involvement in the commission of offence and claimed



false implication. All the accused took the plea that they had been falsely implicated at the instance of contractor 'A', under whom PW2 and her entire family was working. Contractor 'A' was inimical towards them due to some payment dispute. They never abducted/kidnapped PW2. Police has concocted false story at the instance of the said contractor.

7 **DEFENCE EVIDENCE**

Learned trial Court granted opportunity to the accused to lead defence evidence and in defence evidence, accused examined 03 witnesses:-

- (i) **DW1-Abdul Sartar** deposed that he is labourer with Contractor 'A' and PW2-prosecutrix was working with the same contractor. He also deposed that Mulla Ji accused, who was working as Sub Contractor with the said Contractor, for construction of the buildings, had done work as Sub Contractor, worth of Rs. 3/4 Lacs for Contractor 'A' but after completion of sub contract, money was not paid to Mulla by 'A', despite asking for the same. He had demanded money 5-6 times from Contractor 'A' and there was fight between Mulla and Contractor 'A', in July 2016. Mumtaz and Ringa Hasda were workers of Contractor 'A', and they were not paid full wages for their work done. PW2-prosecutrix ran away from the house in the year 2016 or 2017, but he does not know the month when she ran away and with whom she ran away. PW2-prosecutrix came back and her mother and 'A' Contractor had gone to take her from police station and her mother had taken prosecutrix-PW2 to her house. About 3-4 days of her going away, PW2 prosecutrix had made a phone call to Mulla Ji at about 12/1.00 pm and Mulla Ji then facilitated the telephone talk between PW2-prosecutrix and



PW1-her mother. PW2-prosecutrix was having love affair with accused Mumtaz and was on talking terms with other boys. He deposed that all the three accused have been falsely implicated in the present case, at the instance of Contractor 'A', to evade payment of outstanding amount.

DW-2 Afsana (Co-worker), and DW-3 Afroja Khatun (wife of accused Mohd. Alladin @ Mulla) also corroborated the testimony of DW1- Abdul Sartar.

8. Learned trial Court framed the following issues for determination in this case:-

(A) Whether on 8/5/2016, Mumtaz and Ringa Hasda @ Bulbul @ Raju, in connivance with Mohd. Alladin @ Mulla Thekedar, had taken away the prosecutrix, minor, from the lawful guardianship of her parents, while administering poison or stupefying intoxicating thing, with an intent to commit rape upon her and whether from the period 8.5.2016 to 19.8.2016, Mumtaz and Ringa Hasda @ Bulbul @ Raju, had committed gang rape with the prosecutrix and thus, they committed offence punishable u/s 363, 376-D IPC and also the offence punishable u/s 6 of Protection of Children from Sexual Offences Act, 2012?

9. After closure of defence evidence, the learned trial Court upon considering the arguments of learned APP and defence counsel and peruse the evidence on record, acquitted Mohd. Alludin @ Mulla and convicted both the accused- Mumtaz and Ringa Hasda @ Bulbul @ Raju and sentenced them as mentioned in para No.1 of this judgment.

10. **SUBMISSION OF LEARNED COUNSEL FOR THE APPELLANTS**



- a) There is delay in lodging in FIR which casts doubt on the prosecution's story. As per testimony of PW1-complainant, PW2-prosecutrix went missing from home on 08.05.2016 whereas FIR Ex.PW16/B was recorded on 29.05.2016.
- b) PW2-herself left her house and after 2/3 days, returned to her house. She was on friendly terms with accused-Mumtaz. The accused had dispute over payment of wages with contractor 'A' under whom PW2 and her family were working. At the instance of said contractor, the accused were falsely implicated and in support of his contention, learned counsel also referred the statements of 03 defence witnesses examined in this case.
- (c) There was no injury mark on the body of PW2 when she was recovered by PW15 ASI Jagir Singh and medically examined by PW11-Dr. Harpreet Kaur. This proved that the no forceful sexual relations were maintained by accused-Mumtaz with PW2. The relationship of PW2 with accused-Mumtaz was consensual and not forced and for this reason DNA report Ex.PX and endorsement Ex. PW11/K of PW11 Dr. Harpreet Kaur, is insignificant.
- (d) PW2-prosecutrix was major at the time of alleged commission of offence. None of the accused had enticed her away. Her part testimony has already been discarded by learned trial Court because benefit of doubt was given to accused- Mohd. Alladuin @ Mulla and he is acquitted in this case.
- (e) As per statement of PW9-Dr. Vijay Bhagat, radiological age of PW2 was 17-19 years and benefit of margin of error in such assessment of age ought to be given to accused and age of PW2 is to be taken as 21 years.



In the admission and withdrawal register Ex. PW13/A pertaining to PW2, her date of birth is recorded as 07.07.2000 whereas in school leaving certificate Ex. PW13/B her date of birth is recorded as 07.07.2002. There are two conflicting documents regarding her age, which are to be ignored and the age of PW2 as determined on the basis of ossification test is to be relied upon. Learned Judge, Special Court has wrongly discarded the evidence of radiologist and has given undue weightage to the school record.

Learned defence counsel vehemently prayed that it is not a case of gang rape and rather it is case of consensual physical relations between accused-Mumtaz and PW2-prosecutrix who was major at the relevant time and as such, offence under Section 376 IPC and section 6 of POCSO Act is not made out. He vehemently prayed for acquittal of both the accused by setting aside the judgment of conviction and order of sentence and acceptance of appeal.

11. **SUBMISSION OF LEARNED STATE COUNSEL**

Learned State counsel relied upon the oral and documentary evidence led by the prosecution before the trial Court and contended that learned trial court had appreciated the evidence in correct perspective and passed judgment of conviction against both the accused and sentenced them. He prayed for dismissal of appeal.

12. **DISCUSSION**

- (i) Learned defence counsel vehemently contended that there is delay in lodging of FIR and for this reason, prosecution story cannot be believed and that PW2 herself left her house and when she returned she named the accused in the commission of offence at the instance of contractor 'A', however, PW1 KD mother of PW2



specifically stated that on 08.05.2016, her daughter was missing and she had raised the suspicion that she had been enticed away by accused-Mohd. Mumtaz and Ringa Hasda @ Bulbul @ Raju who are her co-labourers. She is also specific that till recording of her statement Ex.PW1/A, she had been searching for her daughter at her own level but could not find her. When the efforts for searching her daughter made by her and her family members were fruitless, she approached the Police for lodging the FIR against the accused by specifically naming two accused. Therefore, the delay in lodging the FIR is well explained in the instant case.

- (ii) In order to prove the age of the PW2-prosecutrix that she was a minor at the time of commission of offence, the prosecution has relied on the admission and withdrawal register Ex. PW13/A produced on record by PW13, Parbhakar Misher, Head Master Primary School, Beoli, Tehsil Bisoli, District Badayon, U.P., the first attended school of PW2-prosecutrix. In Ex.PW13/A, the date of birth of PW.2 is recorded as 07.07.2000 and she was got admitted in Class 1st at Sr. No.1196 on 15.07.2006 and her last date in the school was 01.07.2010. However, in school leaving certificate Ex. PW13/B her date of birth is recorded as 07.07.2002, first date of admission in the school as 15.07.2006 and last day in the school as 01.07.2010 date of rustication is 20.05.2011. Hon'ble Apex Court in ***Jarnail Singh v. State of Haryana, [(2013) 7 SCC 263]*** observed that even though Rule 12 of Juvenile Justice Rules is strictly applicable only to determine the age of a child in conflict with law, the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. Further the Hon'ble



Apex Court in the case of **P. Yuvaprakash v. State reported in 2023 SCC On Line SC 846** held as under:

"12. In view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

"94. Presumption and determination of age. –

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."



13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*
- (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;*
- (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board".*

14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test"

It is absolutely clear that as per Rule 12 of the Juvenile Justice Rules, in order to prove the age of the child or juvenile, the procedure to be followed and the documents to be relied by the prosecution are the matriculation or equivalent certificates if available, in the absence the date of birth certificate given by a Corporation or a Municipal Authority or a Panchayat. In the present case, the prosecution has brought on record the document Ex.PW13/A, the entry of the



school register where PW2 was got admitted in Class 1st, which is very basis of school leaving certificate Ex. PW13/B recording her date of birth as 07.07.2002. In admission register Ex. PW13/A, her date of birth is record as 07.07.2000. Therefore, her date of birth recorded as 07.07.2000 is taken into consideration to determine her age. The radiological test is required only in the absence of date of birth certificate, matriculation certificate, certificate from school first attended and in its absence birth certificate issued by a Corporation or a Municipal Authority or a Panchayat. Thus, the learned trial Court rightly held that the register Ex. PW13/A maintained in the school is admissible in evidence, to prove the date of birth of the person concerned, in view of Section 35 Indian Evidence Act. Such date of birth entry has been recorded by the school authorities in discharge of their official duties and thus, carries weight. Furthermore, it is pertinent to mention that the radiological assessment of age, as made by the medical specialist, as such, does not counter the claim of the prosecution, therefore, PW2 is rightly declared as a “child” being below 18 years of age as on 08.05.2016 as defined under Section 2(d) of POCSO Act.

- (iii) PW2 was recovered on 19.08.2016 from one of the rooms out of 12 hutment owned by PW12 Sarwan Singh situated at Chabewal Road, Ludhiana. Both the accused Mohd. Mumtaz and Ringa Hasda @ Bulbul @ Raju were also present there and were arrested on the spot. Medical examination of PW2 was conducted by PW11 Dr. Harpreet Kaur on the basis of application, Ex. PW11/C on 20.08.2016 and vide her report Ex.PW11/A, PW-11 Dr. Harpreet Kaur opined that analysis for urine for pregnancy test was positive. Thereafter PW2 moved



application Ex. PW11/F and on the basis of order of learned Illaqa Magistrate, Board of doctors was constituted by the SMO, vide order Ex.PW11/G. and 11 weeks pregnancy of PW2 was terminated by PW11 Dr. Harpreet Kaur in the presence of Kanwalpreet Kaur, Psychiatric Social Worker and Dr. Lizy Gupta. The blood samples of both the accused were also obtained on the basis of applications Ex. PW14/A and Ex.PW14/D and the samples was collected by PW14- Harinder Singh, Medical Officer and deposited with PW7-HC Roop Lal who sent the same for DNA analysis. DNA report Ex. PY reveals that three parcels of the following Exs. were deposited on 07.03.2017 which are as under:-

“Parcel-1:One sealed cloth parcel sealed with the seals of "AB". It contained Exhibit-1.

Exhibit-1: Reddish brown liquid kept in two vacutainer tubes described as "blood for DNA test of accused Mohammad Mumtaj".

Parcel-2: One sealed cloth parcel sealed with the seals of "AB". It contained Exhibit-2.

Exhibit-2:Reddish brown liquid kept in two vacutainer tubes described as "blood for DNA test of accused Ringa Husda".

Parcel-3: One sealed cloth parcel sealed with the seals of "AB". It contained four exhibits which were marked as exhibits-3a, 3b, 3c & 3d in the Biology Division of this laboratory.

Exhibit-3A: Reddish brown liquid kept in two vacutainer tubes labeled as "blood sample of prosecutrix".

Exhibit-3B: Cotton wool swab on a wooden stick having extensive fungal growth kept in a plastic tube labeled as "vaginal swab of prosecutrix".

Exhibit-3C: Reddish brown liquid along with tissue material kept in an injection vial labeled as "product of conception for DNA test".



Exhibit-3D: Tissue material kept in an injection vial labelled as "product of conception in formalin for histopathology". The same is returned."

DNA reports PY also reveal that:

"DNA isolation from the exhibits-1, 2, 3a, 3b & 3c was carried out via organic extraction method and was subjected to multiplex PCR amplification for fifteen STR loci & amelogenin using AmpFISTR Identifier Plus Kit. Further, isolated DNA of exhibit-3c was also subjected to multiplex PCR amplification for eight STR loci and Amelogenin using AmpFISTR Minifiler kit. Genotyping of the amplified products was carried out using automated Genetic Analyzer."

As per DNA Report PY the results of Examination is as under:

*"8.1 DNA profile generated from the source of exhibit-3c (Product of Conception) was found to be consistent as biological child of Mohammad Mumtaz (Source of exhibit-1: Blood sample) and Reena (Source of exhibit-3a: Blood sample).
8.2 The source of exhibit-3b (Vaginal Swab) did not yield male fraction DNA for analysis."*

This report Ex. PY categorically proved that product of conception-3C was found to be consistent with biological child of accused Mohd. Mumtaz and PW2 prosecutrix. Therefore, the prosecution proved the foundational facts of its case that accused Mohd. Mumtaz indulged in repeated sexual intercourse with PW2 which resulted into her pregnancy and she was having 11 weeks of pregnancy when she was recovered vide memo Ex.PW1/B and examined by PW11 and her pregnancy was terminated. The contention of learned defence counsel is that PW2 is indulged in physical relations with accused Mohd. Mumtaz being friendly with



her and also because no marks on her body indicating forcible sexual intercourse was noticed is immaterial because of the age of PW2-prosecutrix who was being less than 18 years of age.

PW2 categorically stated in her testimony before the Court as well as in her statement Ex. PW2/A recorded under Section 164 Cr.P.C that she was repeatedly raped by accused Mohd. Mumtaz and Ringa Hasda @ Bulbul @ Raju when she was kept in confinement at Ludhiana. Above all, as observed earlier accused Ringa Hasda @ Bulbul @ Raju was also found present on the spot along with accused Mohd. Mumtaz when room No.2 was raided by the Police team headed by PW15 ASI Jagir Singh and PW2-prosecutrix was recovered from the said room. In such a situation the accused cannot wriggle out of the presumption under Section 29 and 30 of the POCSO Act. Sections 29 and 30 of POCSO Act are reads as under:-

“29. Presumption as to certain offences.-Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

“30. Presumption of culpable mental state.(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.



(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.-In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

The statement Ex. PW2/A of PW2 recorded under Section 164 Cr.P.C. on testimony of PW2 in the Court on oath; testimony of her mother; PW1 coupled with investigation conducted in this case by and PW16 HC Gurmit Singh and PW15 ASI Jagir Singh; medical evidence in the form of MLR Ex. PW11/B; potency reports Ex.PW14/C and Ex. PW14/F of both the accused as proved by PW14 Dr. Harinder Singh; Medical Officer and DNA report Ex.PY of the blood samples of accused Mohd. Mumtaz taken on the basis of application Ex.PW4/A by PW4 Dr. Anju which when compared with the product of conception-3C of PW2 were found to be consistent with biological child of accused Mohd. Mumtaz and PW2 prosecutrix; presence of spermatozoa from the vaginal swabs of PW2; as per opinion Ex.PW11/K of PW11 Dr. Harpreet Kaur made on the basis of report of chemical examiner fully prove the existence of foundational facts that both the accused kidnapped PW2 and took her away from the lawful guardianship of PW1 on 08.05.2016 with intent to commit rape upon her and from the period 08.05.2016 to 19.08.2016 both the accused Mohd. Mumtaz and Ringa Hasda @ Bulbul @ Raju repeatedly committed gang rape with PW2. The accused failed to rebut the above noted foundational facts proved on record by the prosecution.



Their defence that they had been falsely implicated at the instance of Contractor 'A' because the accused had dispute with Contractor 'A' regarding payment of their wages could not be substantiated effectively. Therefore, the accused failed to rebut the statutory presumption under Sections 29 and 30 of POCSO Act.

13. **Conclusion**

In view of above discussion, the only conclusion that can be drawn is that learned trial Court rightly appreciated the oral and documentary evidence and passed the judgment and conviction against both the accused. There is no infirmity, illegality or perversity in the impugned judgment of conviction and order of sentence. The appeal in hand is dismissed being without merits.

We also note that the learned trial Court has not awarded compensation to PW2. The successor Court of learned trial Court is directed to quantify the compensation payable to PW2 and refer the matter to Secretary DLSA, concerned for disbursement of compensation so quantified.

Copy of this judgment be sent to concerned quarters for compliance.

(GURVINDER SINGH GILL)
JUDGE

(RAMESH KUMARI)
JUDGE

11.12.2025

Jyoti - JV