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

**CRA-S-1523-2023 (O&M)  
Reserved on: 03.02.2025  
Pronounced on:- 25.03.2025**

**Kaka Singh alias Kaddu** ....Appellant

Versus

**State of Punjab** ....Respondent

**CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI**

Present:- Mr. Atul Bhatia, Advocate  
for the appellant.

Mr. Gautam Thapar, AAG, Punjab.

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**AMARJOT BHATTI, J.**

1. Appellant/convict Kaka Singh alias Kaddu has filed instant appeal against judgment of conviction dated 13.12.2021 and order on question of sentence dated 14.12.2021 passed by learned Additional Sessions Judge, Fast Track Court Exclusively dealing with Rape Cases, Ferozepur, in Session Case bearing No. 124 of 22.10.2021, titled as "State Vs. Kaka Singh alias Kaddu" vide which appellant is sentenced as under :-

<b>Name of Convict</b>	<b>Offence U/s</b>	<b>Sentence</b>
Kaka Singh alias Kaddu	Under Section 376AB, 511 of Indian Penal Code read with Section 18 of the Protection of Children from Sexual Offences Act, 2012	To undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of 6 months.
	Under Section 450 of Indian Penal Code	To undergo rigorous imprisonment for 7 years and to pay a fine of



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		Rs.5,000/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of 2 months.
	Under Section 10 of the Protection of Children from Sexual Offences Act, 2012	To undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of 2 months.

2. As per the facts of case, complainant KK, mother of victim K gave her statement that she is a household lady, married to JS and out of said wedlock, they are having two children. Her elder son was aged about 10 years and younger daughter K was aged about 7 years and was student of 3<sup>rd</sup> class in Government Sr. Secondary School, Village Saner. On 02.09.2021, she went to her neighbour's house for household work and her children were at home. At about 03:00 PM, her neighbourer namely Kaddu son of Sampuran Singh entered her house. Her daughter was alone in the room and was sitting on bed. Kaka alias Kaddu entered the said room and opened the string (nara) of salwar of her daughter and also opened string (nara) of his pyjama (lower). Then he laid on her daughter and started kissing her face. He tried to commit rape with her daughter but somehow her daughter raised alarm. On hearing alarm, she (complainant) reached the spot and on seeing her, said Kaka fled away from the spot. Said occurrence was narrated to her by her daughter. Accordingly, she prayed for taking legal action against said accused person. On the basis of this statement, case was registered under Section 376/511 of Indian Penal Code, 1860 (for short 'IPC') and Section 6



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and 18 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

During the course of investigation, statements of witnesses were recorded under Section 161 Cr.P.C. Site plan of place of occurrence was prepared. Medical examination of minor victim was conducted from Civil Hospital, Zira. Accused Kaka Singh alias Kaddu was arrested on 03.09.2021 and was medically examined on the next day. On 04.09.2021, application was moved for recording statement of victim under Section 164 Cr.P.C. and accordingly her statement was recorded. After completion of investigation, report under Section 173 Cr.P.C. was presented in Court under Section 376/376AB/511/450 of IPC and Section 6, 10 and 18 of POCSO Act.

3. Finding a prima facie case under Section 376AB/450 of IPC and Section 6 of POCSO Act, accused Kaka Singh alias Kaddu was charge sheeted accordingly, to which he pleaded not guilty and claimed trial.

4. In order to prove the facts of case, prosecution examined Karanbir Grover, Statistical Assistant, Municipal Corporation, Zira as PW1, complainant as PW-2, minor victim as PW-3, brother of minor victim as PW-4, SI Deepka Rani as PW-5, Investigating Officer ASI Shamsheer Singh as PW-6, Dr. Harsh Verma, Medical Officer, Civil Hospital, Zira, District Ferozepur as PW-7, Dr. Harmandeep Singh, Medical Officer, Civil Hospital, Zira, District Ferozepur as PW-8. Thereafter, prosecution evidence was closed by order vide order dated 01.12.2021.

5. Statement of accused was recorded under Section 313 Cr.P.C. by the trial Court to which he pleaded innocence and false implication. Accused opted to lead evidence in defence. However, he did not lead any evidence and



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closed his defence evidence.

6. After hearing arguments advanced by learned Special Public Prosecutor for the State and learned counsel representing accused person, accused Kaka Singh alias Kaddu was held guilty and convicted under Section 376AB, 511 of IPC read with Section 18 of POCSO Act, under Section 450 of IPC and Section 10 of POCSO Act vide judgment of conviction dated 13.12.2021 and order on question of sentence dated 14.12.2021 was passed by learned Additional Sessions Judge, Fast Track Court, Exclusively dealing with Rape Cases, Ferozpur as referred above. Feeling aggrieved of this judgment of conviction and order of sentence, appellant Kaka Singh alias Kaddu filed present appeal.

7. Learned counsel for appellant/convict Kaka Singh alias Kaddu argued that judgment of conviction dated 13.12.2021 and order on question of sentence dated 14.12.2021 passed by learned Additional Sessions Judge, Fast Track Court Exclusively dealing with Rape Cases, Ferozpur is against the facts and law involved in this case. Prosecution failed to prove the guilt of appellant/convict beyond the shadows of reasonable doubt. Prosecution version is highly improbable. Testimonies of prosecution witnesses regarding alleged occurrence are not trustworthy. Complainant i.e. mother of victim examined as PW-2 and testimony of brother of victim examined as PW-4 is contradictory to statement of victim examined as PW-3. Victim alleged that at the time of alleged occurrence, her parents were at home, whereas, mother of victim as PW-2 and brother of victim as PW-4 claimed that they had gone to a house in neighbourhood. Witnesses examined by prosecution have tried to give improved version to falsely implicate appellant/convict. It is highly



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improbable that mother of victim could hear hue and cry raised by victim. There is every possibility that the victim was tutored by her parents. In fact, no such occurrence ever took place. On account of money dispute of appellant with husband of complainant, he is falsely implicated in this case.

Learned counsel representing appellant/convict further raised issue that no offence under Section 376AB read with Section 511 of IPC is made out. There was no attempt to commit rape with alleged victim. As per case of prosecution, convict opened the string of his *pyjama* and also opened the string of *salwar* of alleged victim. He allegedly started kissing her and laid on her. Apart from this, there is no allegation against appellant/convict. Learned counsel representing appellant/convict referred to the testimony of Dr. Harsh Verma PW-7, Medical Officer who medically examined the victim. In this case, victim did not suffer any external or internal injury nor any swabs were drawn. Therefore, there is no report of Forensic Science Laboratory to support the allegations of attempt to rape. Thus, judgment of conviction and order of sentence passed under Section 376AB read with Section 511 IPC read with Section 18 of POCSO Act, 2012 is not on sound footing. Learned trial Court has laid undue emphasis to provisions of Section 29 and 30 of POCSO Act, 2012. Even otherwise, prosecution is required to lead convincing evidence on record to prove the guilt of appellant/convict.

In the light of this, it is argued that trial Court has failed to consider all material facts pertaining to case in hand and appellant has been wrongly convicted and sentenced by trial Court. It is submitted that appellant/convict may be acquitted of the charge framed against him by accepting present appeal.



8. On the other hand, learned counsel representing State argued that facts of case are duly proved on record from the testimony of all material witnesses i.e. mother of victim/complainant PW-2, brother of victim PW-4 and victim herself stepped into the witness box as PW-3. Oral version of prosecution witnesses is duly supported from the testimony of Dr. Harsh Verma PW-7 who medically examined minor victim. In the case in hand, there is prompt FIR. SI Deepika Rani as PW-5 and ASI Shamsheer Singh as PW-6 have proved the entire investigation carried out by them. As per Birth Certificate of child proved on record by Karanbir Grover, Statistical Assistance, Municipal Corporation, Zira as PW-1, victim was born on 17.12.2013. Therefore, at the time of said occurrence, child was 07 years and 08 months old. She was sexually assaulted by appellant/convict on 02.09.2021 when she was alone in house. Appellant/convict is duly identified by victim as well as her mother (complainant) examined as PW-2. Even otherwise, the appellant/convict was known being residing in the neighbourhood. Therefore, considering the evidence on record, appellant/convict was rightly held guilty under Section 376AB, 511 of IPC read with Section 18 of POCSO Act, 450 of IPC and Section 10 of POCSO Act, 2012 and was rightly convicted thereunder. Appeal preferred by appellant/convict deserves dismissal.

9. I have considered the arguments and have gone through the record carefully. Present FIR has been registered on the testimony of mother of victim. Alleged occurrence took place on 02.09.2021 at about 03:00 PM and statement of complainant was recorded on same day, which is Ex.PW2/A. Investigating Officer made endorsement Ex.PW5/A and on that basis, rukka



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was sent and FIR was registered on the same day at 21.50 hours, which is Ex.PW5/B. Therefore, in the case in hand, there is prompt FIR and appellant/convict was specifically named.

10. As per facts, complainant alleged that on 02.09.2021, she had gone in neighbourhood and her son also went out. At about 03:00 PM, her daughter was present alone in house, when Kaka Singh @ Kaddu-appellant/convict who lived in their neighbourhood came inside the house. He opened string of *salwar* of victim and also opened string of his lower/*pyjama* and laid over her and started kissing her. Complainant alleged that appellant/convict tried to commit rape with her daughter. On the alarm raised by her, she reached on the spot and appellant/convict Kaka Singh alias Kaddu ran away from there. Accordingly, appellant/convict was charge-sheeted under the provisions of Section 376AB, 450 IPC and Section 6 of POCSO Act.

In order to prove the aforesaid charge-sheet, complainant stepped into the witness box as PW-2 and her version is also supported by her son examined as PW-4. Victim who is a young girl of about seven and a half years also stepped into witness box as PW-3. After asking formal questions, she was found to be a competent witness to depose. She fully corroborated the facts narrated by her mother. Aforesaid witnesses duly identified appellant/convict. Apart from the provisions of Sections 29 and 30 of POCSO Act, prosecution examined all material witnesses to prove the occurrence.

Learned counsel for appellant/convict referred to cross-examination of PW-3 where she claimed that her father, mother and brother were present at home when alleged occurrence took place but at the same



time, child again clarified that her mother and brother came when said occurrence took place and her father was not present at home. She further confirmed that appellant/convict was residing in their neighbourhood. Therefore, alleged discrepancy pointed out by learned counsel for appellant/convict is not material to create any kind of doubt in testimony of aforesaid witness. It cannot be ignored that victim was a young girl of about eight years of age when she deposed in Court and faced cross-examination and replied to the questions put to her by learned counsel for appellant/convict. There is no evidence led in defence to establish the stand taken by appellant/convict.

11. Ocular version of prosecution witnesses find full support from medical record proved by Dr. Harsh Verma PW-7. He categorically stated that on 03.09.2021, at about 01:25 PM, he medically examined victim accompanied by her mother. Carbon copy of MLR is Ex.PW7/A. Patient came to hospital with alleged history of sexual assault one day earlier and all facts were explained by mother of victim. Doctor gave his opinion that possibility of sexual assault could not be ruled out. Apart from this, SI Deepika Rani has also stepped into witness box as PW-5 and proved the investigation carried out by her on the spot. ASI Shamsher Singh, Investigating Officer has been examined as PW-6. In the light of this, prosecution led convincing evidence on record to prove the facts of the case.

12. In the case in hand, learned counsel for appellant/convict raised issue that from the facts of case and evidence on record, no offence is made out under Section 376AB, 511 IPC read with Section 18 of POCSO Act, 2012. It is pointed out that there was no attempt to rape. Offence of rape is



defined under Section 375 of IPC, which runs as under :-

“**375. Rape.**—A man is said to commit “rape” if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

*First.*—Against her will.

*Secondly.*—Without her consent.

*Thirdly.*—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

*Fourthly.*—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

*Fifthly.*—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

*Sixthly.*—With or without her consent, when she is under eighteen years of age.



*Seventhly.*—When she is unable to communicate consent.

*Explanation 1.*—For the purposes of this section, “vagina” shall also include labia majora.

*Explanation 2.*—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

*Exception 1.*—A medical procedure or intervention shall not constitute rape.

*Exception 2.*—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

Whereas, punishment for attempt to commit offence is explained under Section 511 of IPC. An attempt to commit an offence begins when preparation to commit an offence is complete and culprit does something with intention of committing the offence. Therefore, the moment the culprit commences to do an act with necessary intention, he commences his attempt to commit the offence.

In the case in hand, victim was about seven and a half years old. Therefore, present appellant/convict has been convicted under Section 376AB, 511 of IPC read with Section 18 of POCSO Act. I have carefully considered the act committed by appellant/convict, according to which he opened the string of his *pyjama*/lower and also opened the string of *salwar* of victim and laid over her and started kissing her. In order to constitute offence of alleged attempt to rape, testimony of Dr. Harsh Verma PW-7 is material.



MLR of child victim is Ex.PW7/A. Doctor Harsh Verma as PW-7 deposed that there was no history of bleeding. There was no mark of internal or external injury. There was no fresh bleeding, no complaint of pain and hymen was intact. The vaginal swabs were not taken as hymen was intact and ultrasound was not advised as there was no internal or external injury and hymen was intact. Doctor gave his opinion that possibility of sexual assault could not be ruled out. In the light of medical record proved on file, act done by appellant/convict was short of attempt to rape. In fact, act committed by appellant/convict is fully covered under the definition of Section 9 of Aggravated sexual assault. Section 7 of Sexual assault of POCSO Act, 2012 is defined as under :-

**“7. Sexual assault.**—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

The case of appellant/convict is covered under Section 9(m) of POCSO Act i.e. aggravated sexual assault, according to which a child below twelve years of age is subjected to sexual assault.

Therefore, in my opinion, **conviction of appellant/convict under the provisions of Section 376AB, 511 of IPC read with Section 18 of POCSO Act is not on sound footing and appeal preferred by appellant/convict is partly accepted by acquitting him under aforesaid provisions.**



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In view of aforesaid factual position, judgment of conviction and order of sentence **under Section 450 of IPC is also modified to conviction under Section 451 of IPC.**

Sentence passed by learned Additional Sessions Judge, Fast Track Court Exclusively dealing with Rape Cases, Ferozpur is accordingly, modified as under :-

Name of Convict	Offence U/s	Sentence
Kaka Singh alias Kaddu	Under Section 451 IPC	To undergo rigorous imprisonment for <b>02 years</b> and to pay a fine of <b>Rs.5,000/-</b> . In default of payment of fine, to further undergo rigorous imprisonment for a period of <b>2 months</b> .
	Under Section 10 of POCSO Act, 2012	To undergo rigorous imprisonment for <b>05 years</b> and to pay a fine of <b>Rs.5,000/-</b> . In default of payment of fine, to further undergo rigorous imprisonment for a period of <b>2 months</b> .

13. Appeal preferred by appellant/convict Kaka Singh alias Kaddu is partly allowed with aforesaid modification.

14. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

**(AMARJOT BHATTI)**  
**JUDGE**

**25.03.2025**

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