



2025:DHC:8406



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:22.09.2025

+ **CRL.A. 632/2023 & CRL.M.(BAIL) 1113/2023**

RAMSANJIVAN

..... Appellant

versus

THE STATE NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Mohit Chaurasia, (DHCLSC), Adv.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the
State.
SI Monika, PS Ashok Vihar.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed against the judgment dated 14.10.2022 (hereafter '**impugned judgment**') and order on sentence dated 25.03.2023 (hereafter '**impugned order on sentence**') passed by the learned Additional Sessions Judge ('ASJ'), North West, Rohini, Delhi in SC No. 53351/2016 arising out of FIR No. 224/2016 ('**FIR**').



2. By the impugned judgment, the learned ASJ convicted the appellant for the offences under Sections 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**') and Section 506 of the Indian Penal Code, 1860 ('**IPC**'). By the impugned order on sentence, the learned ASJ sentenced the appellant to undergo rigorous imprisonment for a period of 12 years and to pay a fine for a sum of ₹12,000/- and in default of payment of fine to undergo imprisonment for a period of 02 months for the offence under Section 6 of the POCSO Act. The appellant was also directed to undergo rigorous imprisonment for a period of 5 years and to pay a fine for a sum of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for a period of 01 month for the offence under Section 8 of the POCSO Act. The appellant was also directed to undergo rigorous imprisonment for a period of 3 years and to pay a fine of ₹3,000/- and in default of payment of fine to undergo simple imprisonment for a period of 15 days for the offence under Section 506 of the IPC.

3. Succinctly stated, the FIR was registered on a complaint given by the mother of the prosecutrix. A PCR call *vide* DD No. 14A was received at Police Station Ashok Vihar on 27.04.2016 from the Manager of the School on the basis of which the police reached the school of the prosecutrix. At that time, the prosecutrix, her mother, her father and the school staff members were already present in school.



4. In her statement to the IO, the mother of the prosecutrix stated the prosecutrix is 05 years old and studied in Class – I. It is alleged that on 26.04.2016, the prosecutrix started crying and insistently refused to go to school. It is alleged that when the mother of the prosecutrix counselled her daughter, the prosecutrix alleged that one uncle in school used to harass her. Thereafter, the prosecutrix informed her mother that since the last three days when she went to school, the said uncle took her behind a tree, removed her clothes, put his fingers on her genitals and her chest and also kissed her on her lips.

5. The prosecutrix also alleged that the said uncle threatened her against disclosing about the said incident to anyone. Thereafter, the mother of the prosecutrix informed her husband about the same whereafter they made a complaint to the school principal on 27.04.2016. In the school, it is alleged that the prosecutrix pointed towards the appellant as the one who had committed the alleged acts with her. Thereafter, the prosecutrix was taken to Babu Jagjivan Ram Memorial Hospital with her parents for her medical examination. The mother of the prosecutrix refused the conduction of the internal medical examination of the prosecutrix.

6. Consequently, FIR No. 224/2016 was registered at Police Station Ashok Vihar on 27.04.2016 for the offences under Sections 354A/376 of the IPC and Section 6 and 10 of the POCSO Act.



7. The statement of the victim under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC') was recorded on 28.04.2016. Subsequently, upon the conclusion of the investigation, the chargesheet was filed.

8. The learned ASJ *vide* order dated 29.09.2016 proceeded to frame charges against the appellant for the offences punishable under Sections 6 and 8 of the POCSO Act and Section 506 of the IPC.

9. The prosecution cited 11 witnesses in support of its case including PW-1 (the victim), PW-2 (father of the victim), PW-4 (mother of the victim), PW-6 (manager of the school), PW-7 (Principal of the school), PW-8 (teacher of the victim).

10. The appellant denied the allegations levelled against him in his statement under Section 313 of the CrPC. He asserted that he had been falsely implicated in the case. The appellant denied to have any knowledge about the incident and stated that he was on leave on 21.04.2016. The appellant further denied to have been identified by the victim in the school. He stated that he was working as a gardener in the school and that there were many incidents of plucking of flowers by the children because of which many complaints were made against him for not maintaining the garden properly and he was also scolded by the school management. He stated that one day, he saw 5-6 children plucking flowers, who upon seeing him, started running. He stated that he caught hold of the prosecutrix and scolded her in a loud voice and also hit her on her back 4-5 times. He stated that the



prosecutrix ran away crying and thereafter falsely implicated him in the present case.

11. The learned ASJ, by the impugned judgment, convicted the appellant for the offences under Sections 6 and 8 of the POCSO Act and Section 506 of the IPC. It was noted that the victim was only 05 years at the time when the alleged offence was committed. It was noted that the appellant was admittedly working as a gardener in the said school. It was noted that the prosecutrix, in her testimony, supported the case of the prosecution and stated that the accused called her by making gestures and thereafter took her behind a tree, kissed her lips, removed her clothes, touched her private parts and also inserted a spoon in her anus. The prosecutrix stated that the appellant performed the said acts on three occasions and also threatened her of dire consequence should she disclose about the said incident to anyone. It was noted that during her cross examination, the prosecutrix denied to have deposed at the instance of her parents. The prosecutrix further stated that no one was present behind the big tree where the appellant took her.

12. It was noted that the prosecutrix consistently maintained her stance in her statement under Section 164 of the CrPC and in her evidence before the Court. It was noted that the prosecutrix, in her statement, under Section 164 of the CrPC had stated that the appellant had inserted a spoon in her anus and that nothing contrary emerged from the testimony of the prosecutrix. It was noted that from the



unblemished and consistent testimony of the prosecutrix, the prosecution had established the ingredients to prove the charges framed against the appellant.

13. The learned ASJ also took note of the contention of the appellant that he was not present on 21.04.2016 as per the attendance record, and consequently no incident could have taken place on 21.04.2016. It was noted that the prosecutrix stated that appellant had committed the alleged acts on three different days. It was noted that as per the attendance register, it was apparent that the appellant had not marked his attendance on 21.04.2016, however, on 22, 23 and 25.04.2016, the appellant was present from 8:30 am to 5:00 pm and on 27.04.2016, the appellant was shown to be present from 8:30 am to 11:30 am. It was noted that the victim was however present in school on 21, 22, 25, 27.04.2016.

14. The learned ASJ noted that even if from the above attendance record, it is seen that the appellant had not marked his attendance on 21.04.2016 that did not mean that the appellant did not enter the school premises at all or was not present in the school premises. It was noted that the absence of the recording of the attendance of the appellant in the register was not proof of the fact that the appellant did not come to the school premises at all. It was consequently noted that the defence of the appellant that he was not present on one of the days and did not mark his attendance is not tenable. It was further noted



that even otherwise, the appellant was admittedly present in school on the other two dates.

15. Consequently, considering the unimpeached testimony of the prosecutrix and the failure of the appellant to discredit the testimony of the prosecutrix, the learned ASJ convicted the appellant of the offences under Sections 6 and 8 of the POCSO Act and Section 506 of the IPC.

16. The learned counsel for the appellant submitted that the learned ASJ erred in convicting the appellant for the offences under Sections 6 and 8 of the POCSO Act and Section 506 of the IPC. He submitted that the conviction of the appellant was sustained based on surmises and conjectures and ought to be set aside. He submitted that there exist material improvements in the allegations levelled against the appellant. He submitted that in the original complaint given by the father of the victim to the principal of the prosecutrix's school on 27.04.2016, the only allegation against the appellant pertained to misbehaviour and molestation. He submitted that subsequently in the statement made to the police on 27.04.2016 under Section 161 of the CrPC, the mother of the prosecutrix alleged that the appellant had committed '*chedkhani*' and '*galat harkat*' with the prosecutrix.

17. He submitted that the first material improvement occurred in the statement of the mother of the prosecutrix which led to the registration of the FIR where the complainant alleged that the appellant, for the last three days when the prosecutrix went to school, took her behind a



tree, removed her clothes, touched her genitals and her chest and also kissed her on her lips. He submitted that the theory in relation to the alleged act of molestation committed by the appellant on the last three working days is an embellishment and reflects afterthought. He submitted that thereafter the second material embellishment occurred in the statements under Section 164 of the CrPC recorded on 28.04.2016 where the prosecutrix and her mother alleged that the appellant, in addition to the aforesaid, had also inserted a spoon in the anus of the prosecutrix. He submitted that the addition of the allegation of insertion of spoon is isolated and is reflective of the fact that the victim had been tutored. He submitted that such embellishments cast serious aspersions on the veracity of the allegations levelled against the appellant and ought not to be accepted *ex facie* without further evidences to corroborate the same.

18. He submitted that as per the case of the prosecution, the alleged acts took place on 21.04.2016, 22.04.2016 and 25.04.2016. He submitted that as per the attendance records, the appellant was not present on 21.04.2016 and did not report to duty from 19-21.04.2016. He submitted that the said contention of the appellant was not considered by the learned ASJ and was brushed aside only on the ground that the same was not proof of the fact that the appellant did not come to the school premises at all.

19. He submitted the appellant has been convicted for the offence under Section 6 of the POCSO Act on the allegation that the appellant



had inserted a spoon in the anus of the prosecutrix. He submitted that a perusal of the MLC report of the prosecutrix indicates that the prosecutrix had refused to undergo medical examination. He submitted that the same casts a doubt on the theory of the prosecution in relation to the alleged insertion of the spoon.

20. He submitted that the case of the prosecution further comes under a shadow inasmuch as no CCTV footage was ever collected despite the fact that the school premises is covered by CCTV. He submitted that as per the testimony of PW-6/Manager of the school, the distance between the place of incident and the reception of the school is around 20-22 paces. He further submitted that as per the testimony of PW-8/Teacher of the prosecutrix, CCTV is installed in the school including the playground, main gate, reception and the lobby. He submitted that despite the school being covered within CCTV surveillance, no CCTV footage was ever recovered or brought forth by the prosecution.

21. He submitted that the case of the prosecution is further rendered dubious insofar as the said offences are alleged to have been committed at the time when the children queue up to be handed over to their parents after the school hours got over. He submitted that it is highly improbable for the appellant to have committed the alleged act during the hour of dispersal of children after school, and for the said act to have gone unnoticed by any person. He submitted that the offence was allegedly committed in broad daylight, and the dearth of



any witness to corroborate the same belies every logic and casts a doubt on the case of the prosecution.

22. He consequently submitted that the appellant be acquitted of the offences under Sections 6 and 8 of the POCSO Act and Section 506 of the IPC.

23. *Per contra*, the learned Additional Public Prosecutor for the State submitted that the impugned judgment is well reasoned and warrants no interference. He submitted that the prosecutrix consistently maintained that the appellant took her behind a tree, removed her clothes, touched her genitals and also inserted a spoon in her anus. He submitted that the sole testimony of the prosecutrix is sufficient to sustain a conviction of the accused without the need of further corroboration. He submitted that in terms of Section 29 of the POCSO Act, there exists a presumption He submitted that in view of the cogent and consistent testimony of the prosecutrix, the prosecution has been able to prove its case beyond reasonable doubt.

24. It is pertinent to note that notice was sent to the prosecutrix through the Investigating Officer, however, it was informed that the prosecutrix does not wish to pursue the case.

Analysis

25. At the outset, it is relevant to note that while dealing with an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction, this Court is required to reappreciate the



evidence in its entirety and apply its mind independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi & Ors. v. The State of Madhya Pradesh : Criminal Appeal No. 1350/2021*** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

*“9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in *Majjal v State of Haryaya [(2013) 6 SCC 799]*, where the Court held:*

‘6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.

7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion



that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.' ”

(emphasis supplied)

26. From that standpoint, before this Court ventures into the exercise of ascertaining the guilt of the accused, it is pertinent to briefly note the rudimentary tenets on which the criminal jurisprudence is premised. It is a cardinal principle of the criminal jurisprudence that a conviction cannot be sustained on the basis of mere surmises or conjectures. For this reason, the prosecution is saddled with the duty to establish, by way of cogent and credible evidence, every element of the alleged offence. The evidentiary burden is not trivial and ought to be discharged beyond any reasonable doubt. The standard serves as an indispensable safeguard against the peril of wrongful conviction. Consequently, if the story of the prosecution is blemished and fraught with evidentiary gaps, the benefit of such deficiencies ought to be extended to operate in the favour of the accused.



27. With that lens, a scrupulous examination of the material on record reveals that the case of the prosecution is riddled with evidentiary gaps and fails to establish the case against the appellant beyond reasonable doubt. A perusal of the impugned judgment further indicates that several material aspects having a direct bearing on the adjudication of the case were either not adequately addressed or brushed aside on tenuous grounds.

28. In the present case, the conviction of the appellant was sustained essentially on the basis of the testimony of the prosecutrix. Before this Court proceeds to examine the adequacy of the conviction of the appellant, it is pertinent to mention that this Court is conscious of the fact that the victim is a child and gaps in her statement would not adversely impact the case of the prosecution. Further, while considering the evidence of the victim, it is not imperative for this Court to demand a nearly minute account of the incident.

29. It is well established that an accused can be convicted solely on the basis of the evidence of the prosecutrix without the need of any further corroboration so long as the same inspires confidence. It is pertinent to mention that this Court in its compassionate acknowledgment of a child's vulnerability, is conscious of the fact that a child, in most instances, would be incapable of fabricating such distressing allegations. Having noted so, it is also pertinent to mention that when the allegations of sexual harassment pertain to one committed in a public place, the same stands on a different footing



than one committed within the confines of a room or a private space and demands a separate set of considerations. In such circumstances, if any doubt arises in relation to the veracity of version of the prosecutrix, it is incumbent on the Courts to seek corroboration to ascertain the guilt of the accused [Ref: *Nirmal Premkumar v. State* : **2024 SCC OnLine SC 260**].

30. One of the primary grounds taken by the appellant to challenge the impugned judgment is the material discrepancies and improvements in regard to allegations levelled against the appellant and the manner in which the alleged offence was committed. Upon a meticulous examination of the evidence, in the opinion of this Court, the same has the effect of casting a serious doubt on the veracity of the case of the prosecution. The same is summarised as follows:

30.1. *First*, in relation to the embellishments made in the allegations levelled against the appellant. It is pertinent to note that the initial complaint was given by the father of the prosecutrix to the principal on 27.04.2016. In the said complaint, the father of the prosecutrix alleged that the appellant '*meri beti ke sath misbehave aur uske saath galat behave karta hai aur sexual galat harkat karta hai*'. Subsequently, in the statement made to the police under Section 161 of the CrPC, the mother of the prosecutrix stated that the prosecutrix had informed her that '*humare school mein ek uncle hai jo mere sath chedkhaani va galat harkat karta hai.*' Further, the father of the prosecutrix, in his statement under Section 161 of the CrPC stated that



‘school mein ek uncle hai jo ladki ke sath chedkhaani va galat harkat karta hai.’

30.2. It is pertinent to note that in the initial complaints, nothing was stated in relation to the days or the manner in which the alleged acts were committed. Thereafter, in her subsequent statement to the police that led to the registration of the FIR on 27.04.2016, the mother of the prosecutrix stated that her daughter had informed her that the appellant, for the last three days when she went to school, took her behind a tree, disrobed her, touched her genitals and her chest and also kissed her on her lips. It is pertinent to note that on all these occasions, no whisper in relation to the alleged insertion of spoon by the appellant was made.

30.3. It is also pertinent to note that the medical examination of the prosecutrix was conducted on 27.04.2016 itself, however, on the said occasion as well, the prosecutrix failed to disclose anything in relation to the alleged act of insertion of spoon by the appellant. The allegation in regard to the insertion of spoon was made for the first time on 28.04.2016, in the statement of the prosecutrix and her mother recorded under Section 164 of the CrPC. Since the appellant was convicted for the offence under Section 6 of the POCSO Act, the act of insertion of spoon is a material fact and non-disclosure of the same on the earlier statements of the prosecutrix casts serious doubts on the overall credibility of the case of the prosecution.



30.4. *Second*, on the factum of the discrepancy in relation to the presence of the appellant in school on the dates when the alleged offence was committed. As per the testimony of the mother of the prosecutrix, the alleged acts were committed on three days between 21.04.2016 – 25.04.2016 out of which 22-23.04.2016 were holidays. The learned counsel for the appellant drew the attention of this Court to the attendance sheet which indicates the appellant was absent from 19-21.04.2016. A perusal of the attendance sheet reflects that the appellant was not present in school on one of the days out of the three instances when the offence is alleged to have been committed. It is thus unclear on which three days, as pressed by the prosecution, the alleged offence was committed. The same casts serious doubts on the narrative pressed by the prosecution that the appellant had committed the alleged acts on the last three days between 21.04.2016 – 25.04.2016.

30.5. *Third*, on the factum of the dearth of any CCTV footage covering any part of the alleged incident. It is relevant to note that as per the version of the prosecution, the alleged incident took place behind a tree which is stated to be situated at around 20-22 paces from the reception. On being cross-examined by the learned counsel for the appellant, PW-6/Manager of the school stated that “*The distance between the place of incident and the reception of our school is around 20-22 paces.*” He stated that “*CCTV cameras are installed in our school including at entrance gate, even on the date of incident.*” Further, on being cross-examined by the learned counsel for the



accused on the factum of the dimensions of the tree, PW-6/Manager of the school stated that *'The height of alleged tree may be around 6/7 feet. I cannot tell the radius of the tree. It is correct that the tree is not such thick that any incident can happen behind it.'*

30.6. Further, PW-8/teacher of the prosecutrix stated that *'There are CCTV installed in our school including playground, main gate, reception and lobby.'* It is pertinent to note that despite the place of incident being only 20-22 paces from the reception, and the school being covered under CCTV surveillance, no CCTV footage was taken by the prosecution. At this stage, it also becomes imperative for this Court to examine the testimony of the investigating officer/PW-11 in relation to the examination of CCTV footage. From a reappraisal of the evidence of the Investigating officer/PW-11, it is apparent that the IO took contradictory stances in relation to the examination of CCTV footage. On one hand, PW-11 stated that *'I checked the CCTV footage of the school'* and on the other hand, PW-11 stated that *'again said, as per my memory, I had not checked the CCTV footage. I did not collect the CCTV footage.'* As noted above, the present case is one where the alleged offence was committed in broad daylight in a public place behind a tree which is stated to be around 20-22 paces from the reception and duly covered under the CCTV surveillance. In such circumstances, the deficiency of any CCTV footage goes to the root of the present case and such lacuna raise serious doubts on the veracity of the case of the prosecution.



31. This Court now turns its gaze to the MLC report of the prosecutrix. It is pertinent to note that the allegation against the appellant is that he removed the clothes of the prosecutrix, touched her genitals and also inserted a spoon in the anus of the prosecutrix. The factum of insertion of spoon was first uncovered in the statement of the prosecutrix recorded on 28.04.2016. The MLC report indicates that the medical examination of the prosecutrix was conducted on 27.04.2016. As per the MLC report, there existed no external visible injury at the time of medical examination. Further, as per the account of the alleged incidents narrated by the prosecutrix, it was alleged that the appellant touched her with his hands on both legs, thighs, chest, and the vulva region. No account of any physical assault or vaginal penetration was given at that instance. Further, the internal medical examination of the prosecutrix was refused.

32. At this stage, it is pertinent to mention that this Court does not mean to suggest that an absence of external injury or refusal of internal medical examination *per se* is fatal to the case of the prosecution. However, when the case of the prosecutrix is that the appellant on three different dates had inserted a spoon in her anus, who is a young girl of 5 years, the absence of any external injury/discomfort assumes higher significance. In that regard, it is pertinent to note that PW-3/Medical officer, on being cross-examined by the learned counsel for the appellant, had stated that *'If spoon is inserted in the anal region of a 5 years old girl, it may not be possible for her to sit on two-wheeler scooter.'* Discrepancies of such nature



while not *per se* fatal to the case of the prosecution, cast grave aspersions on the credibility of the case of the prosecution when taking a holistic view of the facts of the case.

33. Consequently, in its quest to unearth the truth, this Court further deems it apposite to consider the attendant circumstances to ascertain the adequacy of the allegations levelled against the appellant. As per the testimony of the prosecutrix, the alleged incident occurred on three different days at the time of dismissal of the students from the school. In relation to the manner in which the alleged incident took place, the prosecutrix stated that '*School mai ek uncle the unhone mujhe ishara karke line mai se bulaya tha.*' On being cross-examined by the learned counsel for the appellant, the prosecutrix stated that '*Un uncle ne mujhe jab line mai se bulaya tha to mai chutti ke baad ghar ko jaane ke liye lagi line mai khadi thi.*' The narrative pressed by the prosecution is that the appellant gestured and called the prosecutrix at the time when she was standing in line to go home and thereafter took her behind a tree and committed the alleged acts. However, in that regard, it is imperative to consider the testimony of the teacher of the prosecutrix in relation to the manner in which the students were dispersed after their dismissal from school. As per the testimony of PW-8/teacher of the prosecutrix, at the time of dismissal of students '*They all remain in queue' while leaving the school. The teachers always stand around the queue at that time.*' On such a conspectus of facts, it appears highly improbable that on three different days, the appellant gestured to the prosecutrix, called her out of the line, took



her behind a tree and committed the alleged acts, all of which, on three different days, went unnoticed by any teacher who are stated to be present around the students at the time of their dismissal.

34. The probability of the allegations is further belied on a holistic reappraisal of the evidence on record. It is pertinent to note that as per the testimony of the prosecutrix herself, she stated that '*Jin teen dino per un uncle ne mere sath galat kaam kiya tha un dino mere papa hi mujhe school chhod kar aaye the aur school lene aaye the.*' As per the testimony of PW-4/mother of the prosecutrix '*The distance between my house and school of my daughter is of 10 minutes on bike.*' On a scrupulous analysis of the facts of the case, it appears implausible that the appellant was able to commit the alleged acts in the short duration between the dismissal of the prosecutrix and her being picked up by her father. No objection was also brought forth that the prosecutrix on any of the alleged three dates came late after her dismissal or appeared distraught.

35. Much emphasis has been laid by the State on the presumption of commission of offence raised against the appellant in accordance with Section 29 of the POCSO Act. The same, in the opinion of this Court, does not aid the case of the prosecution. It is pertinent to note that while Section 29 of the POCSO Act provides for a presumption as to the commission of certain offences, the said presumption is not absolute in nature and only comes into play once the prosecution



establishes the foundational facts [Ref. *Altaf Ahmed v. State (GNCTD of Delhi)* : 2020 SCC OnLine Del 1938].

36. For this reason, in order to trigger the presumption, it is incumbent on the prosecution to lead evidence to prove the foundational facts. If the prosecution fails to do so, in the opinion of this Court, a negative burden cannot be thrust upon the shoulders of the accused to prove otherwise. In the present case, in the opinion of this Court, the appellant, by demonstrating the gaps in the version of the prosecution as well as the improbability of the incident, has rebutted the presumptions raised against him under Section 29 of the POCSO Act.

Conclusion

37. It is axiomatic that the duty of the criminal court is not to convict on a leap of faith because an allegation is made but to convict only when the allegation is proved beyond reasonable doubt.

38. It is equally well-established and demands no repetition that when two views are possible – one favouring the innocence of the accused and one pointing towards the guilt – the one titling in favour of the innocence of the accused ought to be adopted.

39. In the light of the foregoing, this Court is of the view that the conviction recorded by the learned ASJ is unsustainable. The evidence led by the prosecution does not meet the standard of proof required in



a case of this nature. The benefit of doubt ought to be extended in favour of the appellant.

40. Accordingly, the impugned judgment and impugned order on sentence are set aside.

41. The appellant is acquitted of all charges. He shall be released forthwith, if not required in any other case. The bail bond, if furnished, stands discharged.

42. The appeal is allowed and disposed of in the aforesaid terms. Pending application also stands disposed of.

43. A copy of this order be sent to the concerned Jail Superintendent for necessary compliance.

AMIT MAHAJAN, J

SEPTEMBER 22, 2025