* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 12th October 2026
Date of Decision: 02.11.2026
Uploaded on: 02.11.2026

\# **CNR No. DLHC010213362025**

\+ **CRL.A. 502/2025 & CRL.M.(BAIL) 2511/2025**

J.P .....Appellant
Through: Mr. Shivek Trehan, Adv. (DHCLSC) with Mr. Akash Chandna, Adv.

versus

STATE (GOVT. of NCT OF DELHI) & ANR. ....Respondents
Through: Mr. Amarlal, Ms. Aryma Sharma and Ms. Gauri Kumar, Advs. for victim.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

1. This hearing has been done through hybrid mode

2. By way of the present appeal filed under Section 415(2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, "BNSS"), the appellant is seeking setting aside of the judgment dated 06.12.2024 and the order on sentence dated 07.02.2025 passed by the learned ASJ-06 (POCSO), West District, Tis Hazari Courts, Delhi, in connection with ***FIR No. 471/2022***, for the offences punishable under Sections 376 of the Indian Penal Code (hereinafter referred to as 'IPC') & Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, "POCSO Act")

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registered at Police Station Tilak Nagar, Delhi.

3. By way of the impugned judgment dated 06.12.2024, the accused/Appellant (hereinafter 'Appellant') was convicted of the charges under Section 6 of the POCSO Act, on the ground that the accused was not able to explain his defence of false implication and the Prosecution had been able to discharge its burden to prove its case against the Appellant beyond all reasonable doubt. The conclusion of the learned Trial Court is set out below:

> *"71.* ***In the present case, the accused has failed to offer any plausible explanation of his defence of false implication in the present case*** *by the prosecution witnesses even at the cost of facing ignominy and embarrassment for the victim, who was a minor at the time of commission of the offence. Thus, the defence taken by the accused does not inspire any confidence in the absence of specific details thereof and appears to be vague, sham and without any merits.*
>
> *XXXX*
>
> *74. Therefore, in view of the totality of evidence and the facts and circumstances discussed above,* ***I am of the view that the prosecution has successfully established its case against the accused Jai Prakash. The accused Jai Prakash, is hereby held guilty of offences U/s 6 of the POCSO Act and convicted for the said offence.****"*

Factual Matrix:

4. The case of the prosecution arises out of an incident alleged to have occurred in November 2021. The child victim, 'J', was born on 15.10.2018 and was approximately three years of age at the time when the present incident occurred. The appellant is the father of the child. As per the prosecution, PW-3, the mother of the child, had gone out for household work and, upon returning,

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found the child crying. On making inquiries, the child disclosed that the appellant had put his finger into her private part.

5. It is further the case of the prosecution that PW-3 questioned the appellant regarding the incident, whereupon he stated that he had been joking. PW-3 deposed that she noticed bleeding from the child's private part and applied ointment. She further alleged that the appellant threatened her and said that if she told anyone about the incident, then the appellant would not spare their lives and thereafter left for his native village at Azamgarh, Uttar Pradesh.

6. On 20.06.2022, a PCR call was received at Police Station Tilak Nagar regarding the alleged sexual assault of the child by her father. The child was taken for medical examination to Deen Dayal Upadhyay Hospital. Her mother's statement was recorded, and the present FIR was registered. During investigation, the statements of the child and her mother were recorded under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter, "CrPC").

7. The date of birth of the child was verified, and the appellant was arrested on 23.06.2022 from his native village. During investigation, a police team comprising SI Ramkesh, HC Subhash and Ct. Dinesh went to Azamgarh and on 23.06.2022, the accused Jai Prakash was arrested from his native village and brought to PS Tilak Nagar. After getting the accused medically examined, he was produced before the concerned Court and remanded to judicial custody. Upon completion of the investigation, the charge-sheet was filed before the concerned court. Vide order dated 14.02.2023, the learned Trial Court framed charges under Section 6 of the POCSO Act. The appellant pleaded not guilty and claimed trial.

8. During the course of trial, the prosecution examined ten witnesses. The

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evidence of each witness, as captured by the learned Trial Court has been reproduced hereinbelow:

> *"8. PW-I Ms. 'J' is the child victim, who deposed as under:-*
>
> *"Q. Aapke papa kaise hai; achhe hai ya gande?*
>
> *A. Mere papa gande hai*
>
> *Q. Kyu, unhone kya kiya tha?*
>
> *A. Mere papa ne susu khodi thi. Meri shirt utari thi; pant nahin uttari thi. Mere kapde uttare thei.*
>
> *At this stage, the victim has pointed towards her vagina and stated that papa ne yahan ungli daali thi; aur unhone mujhse kaha ki zehar kha ke marr jayo. Main apne papa ke saath akeli thi neeche room me.*
>
> *Aisa papa ne 02 baar kiya tha.*
>
> *Meri susu me dard bhi hui tha. Phir maine mummy ko bataya tha.*
>
> *Q. Aapke papa ne ye sab kab kiya tha?*
>
> *Court observation: Victim is not able to give a proper answer to this question, due to her age.*
>
> *Q. Do you have brothers/sisters?*
>
> *A. No."*
>
> *9.* ***PW-1, Ms. J****, further deposed that she was taken to the hospital where she was medically examined vide MLC dated 20.06.2022, which is Ex. PW 1/A. PW-1 further deposed that she was produced before*

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a Lady Judge at Tis Hazari Court, who recorded her statement U/s 164 Cr. PC, which is Ex. PW 1/B (colly, 05 pages).

10. ***PW-2 Sh. Neeraj Panwar*** *is the landlord of the house where the child victim was residing. PW2 deposed that he is owner of the plot WZ-XX.X, Chowkhandi Village, Tilak Nagar, New Delhi and in October, 2021, he had given one room to Smt. K and her husband Jai Prakash on rent as the husband of Smt. K was suffering from paralysis and was taking treatment from Jhajjar. The daughter of Smt. K was also residing with them. They remained in the said room for about 4-5 months. The abovesaid Smt. K firstly took her husband from there and later on she left the room without informing him. PW2 further deposed that later on, he came to know that some incident had happened with the daughter of Smt.K. PW2 deposed that he had not executed any rent agreement as one of his other tenant had introduced them to him as his Villagers.*

11. ***PW-3 Smt. 'K' is the mother of the victim*** *who deposed as under:-*

"मेरी बेटी का नाम 'J' है. मैं दिल्ली में अपने पति जय प्रकाश (accused) का इलाज करने के लिए जुलाई 2021 आयी थी. मेरे पति को पैरालिसिस हो गया है और इलाज झज्झर हरयाणा से चल रहा था. मैं काम करने के लिए गंगा राम वाटिका में एक कोठी में झाड़ू-पोछा करने जाती थी.

घटना मेरी बेटी के साथ नवम्बर 2021 में धनतेरस के दिन हुई थी. उस दिन मैं काम करने गयी थी अपनी बेटी 'J' को सुलाकर. उस दिन मेरा पति/accused जय प्रकाश घर पर ही था और मैं बाहर से कुण्डी लगाकर गयी थी. मैं काम पर जाती थी तो बाहर से कुण्डी लगा कर जाती थी क्योंकि

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कोई मेरी बेटी जो बहुत छोटी है और मेरे पति को कोई देखने वाला नहीं था. (to look after).

जब मैं धनतेरस के दिन अपने काम करके घर वापिस आयी थी तो मेरी बेटी 'ज' रो रही थी. जब मैं बेटी को दूध पिलाने लगी तो वो दूध नहीं पी रही थी और वो रो रही थी. मेरे पूछने पर मेरी बेटी 'ज' ने मुझे बताया की पापा ने मेरे सुसु में खोदा, खोदा से मेरा मतलब है ऊँगली डाली. जब मैंने देखा तो मेरी बेटी के सुसु करने वाली जगह पर थोड़ी सी ब्लीडिंग (bleeding) थी.

जब मैंने मुल्जिम जय प्रकाश से पुछा तो उसने हसते हुए बोला की मैं मजाक कर रहा था. मैंने जय प्रकाश की माँ को फ़ोन किया और उससे भी बताया. इसके बाद जय प्रकाश ने मुझे धमकी दी की मैं कुछ भी कर सकता हु और तुझे और तेरी बेटी को मरवा भी सकता हु|

मैं बहुत डर गयी थी और डर के कारण मैंने मुल्जिम जय प्रकाश को बस में बैठा दिया ताकि वो गाँव जा सके. मैंने बेटी का इलाज भी नहीं करवाया था.

मैं अपनी बेटी को कही भी नहीं लेकर गयी थी क्योंकि मुझे डर लगता था और मेरी बेटी बता देती थी की उसके साथ क्या हुआ. मैंने तभी बताया जब मेरी बेटी को सुसु करने में दर्द होने लगा घटना के करीब 06 महीने बाद.

मैं अपनी बेटी को Din Dayal हॉस्पिटल लेकर गयी थी इलाज के लिए और हॉस्पिटल से ही मैंने पुलिस को फ़ोन किया| पुलिस वहाँ पर आयी और मुझसे और मेरी बेटी से पूछताछ की|

घटना के समय मेरी बेटी की उम्र 03 साल थी| पुलिस ने मेरे बयान लिखे थे.

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*12. **PW3 Smt. K** identified her thumb impression at point A. upon her statement Ex.PW3/ A and deposed that her daughter was medically examined vide MLC already Ex.PWl/A bearing her thumb impression at point A. PW3 Further deposed that "मैंने पुलिस को घटना वाली जगह दिखा दी थी" and identified her thumb impressions at point A on site plan Ex.PW3/B. PW-2 further deposed that she was also produced before a Lady Judge at Tis Hazari Courts, who recorded her statement U/s 1 64 Cr.PC, which is Ex. PW3/C (colly. 04 pages). PW3 further deposed that she handed over the birth certificate of her daughter to the police and the same was seized vide seizure memo Ex.PW3/D. The copy of the birth certificatehanded over by her to the police is Ex.PW3/E.*

PW-4 Dr. Naved H. Lone, Sr. Medical Officer, DDU Hospital deposed that on 20.06.2022, one child namely 'J' D/o Sh. 'JP', aged about 3 years female was brought to the hospital by SI Meenu for her medical examination under the history of pain in perianal region, she gave history of sexual assault by her father and child's mother also gave history of sexual assault by her (child's) father in November 2021. She was referred to a gynaecologist for further examination. She was examined vide MLC No.252 dated 20.06.2022 Ex. PWl/A bearing my signature and stamp at point B. PW-4 further deposed that on 24.06.2022, one person namely JP S/o Sh. PC (accused), aged about 50 years male was brought for medical examination. The said person was medically examined vide MLC No.5557 dated 24.06.2022 which is Ex. PW4/A. The detailed medical examination is mentioned in the above said MLC and he opined that there is nothing to suggest

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that the accused cannot do sexual act or sexual intercourse.

14. ***PW-5 Dr. Richa Madan*** *was deputed at the place of Dr. Sabrina Sood who is stated to have left the services of hospital. PWS deposed that Dr. Sabrina Sood medically examined the child victim vide MLC Ex.PWl/A.*

15. ***PW-6 HC Kuldeep*** *deposed that on 10.08.2022, he was posted as Constable in PS Tilak Nagar. On that day, on the instructions of IO, he went to Phulpur, Azamgarh, UP and got the birth certificate of child 'J' verified from the Registrar, Birth & Death, and obtained the report upon the photocopy of the said birth certificate, which is Ex.PW3/E. The verification done on the certificate is at position X to X on the document Ex.PW3/E.*

16. ***PW-7 SI Ramkesh Meena*** *deposed that on 23.06.2022, he was posted as SI in PS Tilak Nagar. On that day, upon the instructions of the SHO, he alongwith HC Subhash and Ct. Dinesh went to Azamgarh, UP at the address provided by the complainant in order to a1Test the accused. Accused Jai Prakash was arrested at PS Didarganj, Azamgarh, UP vide arrest memo Ex.PW? I A and his personal search was conducted vide memo Ex.PW7/B. Accused was brought to Delhi and his custody was handed over to IO W/SJ Meenu. Accused Jai Prakash was correctly identified by the witness.*

17. ***PW8 HC Vmod Kumar*** *deposed that on 24.06.2022, he along with IO went to DDU Hospital for medical examination of accused Jai Prakash. After medical examination, IO collected the MLC of the accused and brought the accused to Tis Hazari*

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Courts from where he was remanded to judicial custody. Accused Jai Prakash was con-ectly identified by the witness.

18. ***PW-9 Ct. Dinesh*** *deposed that on 23.06.2022, he was posted as SI in PS Tilak agar. On that day, upon the instructions of the SHO, he alongwith Sl Ramkesh and HC Subhash went to Azamgarh, UP at the address provided by the complainant in order to arrest the accused. Accused Jai Prakash was arrested at PS Didarganj, Azamgarh, UP vide arrest memo Ex.PW7/A and his personal search was conducted vide memo Ex.PW7/B. Accused was brought to Delhi and his custody was handed over to IO W/SI Meenu. Accused Jai Prakash was correctly identified by the witness.*

19. ***PW-10 SI Meenu*** *is the Investigating Officer of this case. She deposed that on 20.06.2022, while being posted at PS Tilak Nagar, she was assigned one call which was registered vide GD No. 113A, attested copy of same is Ex.PW 10/ A. In the said call, the caller had informed that his daughter aged about 4 years has been sexually assaulted by her husband and her daughter is now admitted at DDU Hospital. Upon receiving the said call, she went to DDU Hospital and before that she had called a lady counselor to approach DDU hospital for counselling of the victim. At the hospital, IO met the complainant Smt. KD and victim Ms. J, aged about 4 years. At the One-Stop Center, she made enquiries from the complainant and victim, the victim was got counseled from the lady counselor and the victim was got medically examined at DDU hospital vide MLC Ex.PWl/A in the presence of mother of victim. Then IO recorded the statement of the complainant Smt. KD Ex.PW3/A and prepared tehrir Ex.PWl 0/B upon the said statement and got the present case*

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FIR registered at the PS. Thereafter IO went to the spot alongwith mother of victim and prepared site plan Ex.PW3/I3 . On 21.06.2022, IO got recorded the statement of complainant and victim u/s 164 Cr.PC and after recording of such statements, she obtained copies thereof. The complainant told that the accused who is her husband is at Azamgarh, UP and on 22.06.2022, upon the instructions of SHO, a raiding team was constituted comprising of SI Ramkesh, HC Subhash and Ct. Dinesh for apprehending the accused. On that day itself the victim was produced before CWC. On 23.06.2022, SI Ramkesh handed over the custody of accused Jai Prakash to IO alongwith the relevant documents regarding his arrest from Azamgarh, UP. The accused was got medically examined at DDU Hospital vide MLCEx.PW4/A and his potency test was also got conducted through the same MLC. Accused was produced before the Court from where he was sent to judicial custody. PW 10 fu11her deposed that on 08.07.2022, the complainant produced one birth certificate of the victim which was taken into police possession vide seizure memo Ex.PW3/D. The said birth certificate is Ex.PW3/E and the same was got verified by me from Azamgarh, UP through HC Kuldeep. As per the said birth certificate, the date of birth of victim is 15.10.2018. During the investigation of the case, I recorded the statement of witnesses u/s 161 Cr.PC and collected documents. After the conclusion of investigation, IO filed the charge-sheet in the Court.

9. After recording the Prosecution evidence, the Appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter,

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'Cr.P.C.').In his statement, the appellant denied the prosecution allegations, stating that he was falsely implicated in the present case.

10. He further stated that the victim has been tutored by her mother, PW3; he further stated that PW3 plotted a concocted story to get rid of the appellant as she developed an extramarital relationship with one Suresh of the neighbourhood.

11. He also stated that he is a disabled person who is not capable of performing his day-to-day tasks without someone's help.

12. The learned Trial Court, held that the prosecution had successfully discharged its initial burden, thereby attracting the statutory presumptions under Sections 29 and 30 of the POCSO Act against the Appellant. It further found that the Appellant had failed to rebut the said presumptions, as no plausible defence was put forth in his statement recorded under Section 313 Cr.P.C.

13. Consequently, the Appellant was held guilty and convicted under Section 6 of the POCSO Act, 2012 and sentenced to undergo rigorous imprisonment for a period of twenty years and a fine of Rs. 10,000/-, and in default of payment of the fine, simple imprisonment for one year.

14. Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred the present appeal.

Submissions on behalf of the Appellant

15. Learned counsel for the appellant submits that there was an unexplained delay of approximately seven months in reporting the alleged incident, which, as per the prosecution, occurred on 02.11.2021, whereas the

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FIR was registered on 20.06.2022. It is contended that the explanation furnished by PW-3, namely, that the appellant had threatened to kill her and the victim, is unreliable, as she neither mentioned such threats in her statement under Section 164 Cr.P.C. nor informed the police about them, a fact admitted by her during cross-examination. It is further submitted that PW-3's conduct in sending the appellant to his native village in Azamgarh merely two days after the alleged incident is inconsistent with her claim that she was apprehensive of him.

16. Learned counsel further submits that the appellant had suffered a paralytic attack approximately one and a half years before the alleged incident and had remained bedridden and incapable of independent movement. Reliance is placed on the cross-examination of PW-10, the Investigating Officer, who admitted that the appellant was paralysed prior to the registration of the FIR and could not stand on his own. It is contended that the appellant's physical condition renders the allegations highly improbable and supports the defence that he has been falsely implicated.

17. Learned counsel submits that the medical evidence does not corroborate the prosecution's version. It is pointed out that, despite allegedly noticing bleeding immediately after the incident, PW-3 neither sought medical treatment for the victim nor got her medically examined. The victim was taken to Deen Dayal Hospital only after approximately six to seven months, when she allegedly complained of pain while urinating. Reliance is placed on the testimony of PW-5, Dr. Richa Madan, regarding the improbability of pain persisting for six months following the alleged insertion

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of a finger, as well as the MLC dated 20.06.2022, which records that the victim's hymen was intact and no injuries were observed.

18. Learned counsel further submits that PW-3 had a motive to falsely implicate the appellant, as she was burdened with his care following his paralysis and allegedly wished to sever their marital relationship on account of her relationship with one Suresh. In this regard, reliance is placed on the victim's cross-examination, wherein she acknowledged that Suresh frequently visited their residence and that her mother slept with him. It is submitted that the Investigating Officer admitted that no inquiry was conducted into the alleged relationship between PW-3 and Suresh, despite the defence having raised this aspect.

19. Learned counsel also submits that, while the victim did not specify the number of alleged incidents in her statement under Section 164 Cr.P.C., she subsequently deposed during her examination-in-chief that the appellant had committed the alleged act twice. It is further contended that the victim was unable to explain the concept of months or specify the time of the alleged incident consistently in her statement under Section 164 Cr.P.C. and her examination-in-chief, which raises doubts regarding the consistency and reliability of her testimony and suggests that improvements were made in the prosecution's version.

20. Learned counsel submits that the substantial delay in lodging the FIR, the appellant's physical condition, the absence of corroborative medical findings, the alleged motive for false implication, and the inconsistencies in the victim's statements cumulatively create reasonable doubt regarding the prosecution's case. It is, therefore, prayed that the impugned judgment of

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conviction and order on sentence be set aside, the appellant be acquitted of the charges, and he be released forthwith.

Submissions on behalf of the Respondent

21. Learned counsel for Respondent No. 2 submits that the impugned judgment dated 06.12.2024 and order on sentence dated 07.02.2025 are well-reasoned and based on a proper appreciation of the evidence on record. It is submitted that the learned Trial Court has rightly convicted the appellant under Section 6 of the POCSO Act.

22. Learned Counsel submits that the victim's testimony has remained consistent on material particulars, including the nature of the sexual assault and the identity of the appellant. The alleged contradictions between the testimonies of the victim and her mother are minor and do not affect the prosecution case. Reliance is placed on ***State of Punjab v. Gurmit Singh***, **(1996) 2 SCC 384**, to contend that a conviction can rest on the sole testimony of the prosecutrix if it inspires confidence.

23. Learned counsel further submits that the learned Trial Court has rightly invoked the statutory presumption under Section 29 of the POCSO Act, which the appellant has failed to rebut. No motive for false implication has been established by the appellant.

24. As regards the medical evidence, the Learned Counsel submits that the examination was conducted approximately seven months after the incident. The absence of any injury does not discredit the victim's testimony, particularly when the medical evidence does not rule out penetration.

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25. Learned Counsel also submits that the delay in registration of the FIR stands sufficiently explained, considering that the appellant is the victim's father, who had allegedly threatened and intimidated her. The victim's mother was also under familial and societal pressure, which prevented her from reporting the incident promptly. Accordingly, the impugned judgment warrants no interference and the appeal deserves to be dismissed.

Findings and Analysis

26. This Court has considered the submissions advanced on behalf of the parties and perused the material available on record.

Age of the Victim

27. At the outset, the age of the victim is not in dispute. The birth certificate of the victim, exhibited as Ex. PW-3/E, records her date of birth as 15.10.2018. PW-6, HC Kuldeep, deposed that he had verified the said certificate from the Registrar of Births and Deaths, Phulpur, Azamgarh, Uttar Pradesh. PW-10, SI Meenu, also confirmed that the certificate was seized vide Ex. PW-3/D and subsequently verified during investigation. This Court, upon considering the aforesaid evidence, finds that the victim was a child within the meaning of Section 2(d) of the POCSO Act. Thus, at the time of the incident in November 2021, the victim was approximately three years of age, and her minority stands duly established.

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Victim Being Tutored

28. The principal contention advanced on behalf of the Appellant is that the victim (PW-1) was tutored by her mother (PW-3) to falsely implicate him on account of her alleged relationship with one Suresh. It is further alleged that PW-3 intended to get rid of the Appellant and elope with Suresh. The question which, therefore, arises for consideration is whether the testimony of PW-1 suffers from any infirmity on account of the alleged tutoring and whether the circumstances relied upon by the defence are sufficient to cast reasonable doubt upon her account.

29. It is settled law that the testimony of a child witness, if found reliable upon careful scrutiny, can form the basis of conviction. In ***Dattu Ramrao Sakhare v. State of Maharashtra***, **(1997) 5 SCC 341**, the Hon'ble Supreme Court held that even in the absence of an oath, the evidence of a child witness can be relied upon, provided the witness is capable of understanding the questions and furnishing rational answers. The Court must, however, exercise caution to ascertain that the witness is reliable and that there is no likelihood of tutoring. Similarly, in ***Rai Sandeep @ Deepu v. State (NCT of Delhi)***, **(2012) 8 SCC 21**, the Hon'ble Supreme Court emphasised that the reliability of a witness must be assessed with reference to the consistency of the account on material particulars and its ability to withstand scrutiny.

30. In the present case, the record reflects that the learned Trial Court, prior to recording the deposition of PW-1, put preliminary questions to ascertain her ability to understand and answer questions. The victim correctly answered

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questions concerning her age, schooling and the purpose of her appearance before the Court. When specifically questioned whether anyone was influencing or pressurising her, she answered in the negative. The learned Trial Court, having satisfied itself that the victim was capable of furnishing rational answers, proceeded to record her testimony. The competency of PW-1 to depose having been ascertained, her testimony must be examined to determine whether the allegation of tutoring finds support from the evidence on record.

31. During her deposition, PW-1 affirmed having made the statement recorded under Section 164 Cr.P.C. and identified the Appellant through the one-way computer screen. The relevant portions of her testimony read as under:

> *"Whatever has been written in such statement, I had told the true incidence to the Lady Judge in such statement."*
>
> *"I have seen accused Jai Prakash who have been shown to me on computer screen. He is my Papa and the same person about whom I have stated above. His name is Jai Prakash."*

The victim further described the alleged act, identified the part of her body where it had been committed and stated that her mother was away for work at the relevant time. Her testimony also finds assurance in the deposition of PW-3, who stated that upon returning from work, she found her daughter crying and was informed about the wrongful act committed by the Appellant. Thus, although PW-3 was not an eyewitness, her testimony lends assurance to the

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account of PW-1 concerning the disclosure of the incident and the identity of the alleged perpetrator.

32. The defence has particularly relied upon the answers elicited from PW-1 during cross-examination concerning one Suresh Chacha, to substantiate the allegation that PW-3 had tutored the victim to falsely implicate the Appellant. The relevant portion of her cross-examination reads as under:

> *"Q. Kya aapko pata hai ki Suresh Chacha kaun hai?*
> *A. Haa.*
> *Q. Kya Suresh Chacha aapke ghar aate jaate hai?*
> *A. Haa.*
> *Q. Kya Suresh Chacha aapke saath kabhi kabhi rehte bhi hai?*
> *A. Suresh Chacha sote hai neeche.*
> *Q. Suresh Chacha ke saath kaun sota hai?*
> *A. Mummy."*

33. A perusal of the aforesaid testimony reveals that PW-1, while attributing the alleged act to the Appellant, also stated that her mother slept with Suresh. This circumstance assumes significance in the context of the allegation of tutoring. If PW-3 had indeed tutored the victim to falsely implicate the Appellant in order to pursue her alleged relationship with Suresh, it is difficult to comprehend why she would also tutor the child to make a statement concerning her own association with Suresh, which could potentially cast aspersions upon her. The fact that PW-1 made such a statement during cross-examination, while consistently attributing the alleged act to the Appellant, is a relevant circumstance in assessing the allegation of tutoring. Though this circumstance, by itself, may not conclusively exclude

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the possibility of tutoring, it lends weight to the reliability of PW-1's account. Significantly, PW-1 also specifically denied the suggestion that her mother and Suresh had tutored her to falsely implicate the Appellant.

34. Furthermore, the allegation that PW-3 intended to get rid of the Appellant and elope with Suresh remains unsubstantiated. PW-3 specifically denied the suggestions that Suresh bore her household expenses or paid the rent of the premises. Apart from the statement elicited from PW-1 concerning Suresh, no other cogent material has been brought on record to establish the alleged motive for false implication. Even assuming an association between PW-3 and Suresh, the same does not establish that the allegation against the Appellant was fabricated. Although the defence is not required to establish its innocence, the circumstances relied upon must be sufficient to raise a reasonable doubt regarding the prosecution case. In the present case, the material relied upon by the Appellant does not give rise to such a doubt.

35. The testimony of PW-1 must be appreciated in its entirety, bearing in mind her tender age at the time of the incident. The omission to specify the number of incidents in her statement under Section 164 Cr.P.C., as compared to her deposition that the act was committed twice, does not materially affect the essential allegation. In ***Vijay @ Chinee v. State of Madhya Pradesh*, (2010) 8 SCC 191**, the Hon'ble Supreme Court reiterated that minor discrepancies which do not affect the core of the prosecution case cannot be made a ground for rejecting the evidence in its entirety. Upon a careful consideration of the testimony of PW-1, the evidence of PW-3 and the circumstances elicited during cross-examination, this Court finds that PW-1

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remained consistent on the material particulars concerning the nature of the act and the identity of the Appellant. The allegation of tutoring and false implication finds no sufficient support from the evidence on record and does not undermine the reliability of her testimony. Accordingly, the said contention does not merit acceptance.

Medical Observation

36. The next contention concerns the medical evidence, particularly the alleged continuation of pain in the victim's private parts for approximately six months after the incident. PW-4, deposed that on 20.06.2022, the victim was brought to DDU Hospital with a history of pain in the perianal region. The relevant portion of his testimony reads as under:

> *"On that day, one child namely ' J' D/o Sh. ' JP', aged about 3 years female was brought to the hospital by SI Meenu for her medical examination under the history of pain in perianal region, she gave history of sexual assault by her father and child's mother also gave history of sexual assault by her (child's) father in November 2021."*

37. The aforesaid testimony establishes that the allegation against the Appellant was disclosed at the time of medical examination. Learned counsel for the Appellant has further relied upon the testimony of PW-5, who, during cross-examination, stated as under:

> *"It is highly improbable that in case of insertion of finger into the private part of a female child below 5 years, pain can continue for six months. (Voltd.*

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Psychological trauma can continue over such period.)"

38. The aforesaid statement must be read in its entirety. While PW-5 expressed the improbability of physical pain continuing for six months, she also clarified that psychological trauma could persist over such a period. The witness did not rule out the occurrence of the alleged act. Further, the testimony of PW-3 is that she approached the hospital when the victim complained of pain while urinating approximately six months after the incident. This does not necessarily amount to an assertion that the same physical pain had continued uninterrupted throughout the intervening period. The inability to medically attribute the subsequent pain to the earlier incident cannot, by itself, establish that no such incident had occurred.

39. It is a settled principle that a conviction for a sexual offence can rest upon the sole testimony of the victim, provided the same inspires confidence. In ***State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384**, the Hon'ble Supreme Court held that corroboration is not an indispensable requirement where the testimony of the prosecutrix is otherwise trustworthy. In the present case, the medical examination was conducted several months after the alleged occurrence. The absence of visible injuries at that stage does not necessarily exclude the occurrence of the alleged act. Accordingly, this Court finds no infirmity in the testimony of the victim notwithstanding the absence of independent medical corroboration.

Accused suffering from Paralysis

40. Another contention advanced on behalf of the Appellant is that he was suffering from paralysis and was physically incapable of committing the

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alleged act. The factum of paralysis is borne out from the prosecution evidence itself. PW-3 deposed that she had come to Delhi for the treatment of the Appellant, who was suffering from paralysis. The relevant portion of her testimony reads as under:

> *"मेरी बेटी का नाम 'J' है. मैं दिल्ली में अपने पति जय प्रकाश (accused) का इलाज करने के लिए जुलाई 2021 आयी थी. मेरे पति को पैरालिसिस हो गया है और इलाज झज्झर हरयाणा से चल रहा था. मैं काम करने के लिए गंगा राम वाटिका में एक कोठी में झाड़ू-पोछा करने जाती थी."*

41. The evidence of PW-9, who was a member of the police team constituted to apprehend the Appellant, also establishes the existence of paralysis. He deposed as under:

> *"We went to the above said address and found accused Jai Prakash, who was found resting on a cot and accused was paralyzed."*

During cross-examination, he further admitted:

> *"It is correct that accused was not in a position to move when he was arrested. It is correct that the accused was paralyzed."*

42. Similarly, PW-10, admitted during cross-examination that the Appellant could not stand independently and was bedridden when his custody was obtained. The relevant portion of her testimony reads as under:

> *"I cannot say whether the accused was having 70% disability due to paralysis. However, he could not stand on his own due to paralysis after his custody*

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> *was obtained by me. Accused was bedridden at that time and I cannot say whether he was able to perform his daily chores on his own or not and was dependent upon others for the same."*

43. Thus, the physical disability of the Appellant stands established. However, the material question is whether the said disability rendered him physically incapable of committing the particular act alleged against him. In this regard, the testimony of PW-4 assumes significance. PW-4 examined the Appellant on 24.06.2022 vide MLC Ex. PW-4/A and opined as under:

> *"I opined that there is nothing to suggest that the accused cannot do sexual act or sexual intercourse."*

44. The testimony of PW-3 is also material to this aspect. During her deposition before the learned Trial Court, she stated that the Appellant, despite suffering from paralysis, was capable of changing the child's undergarments using one hand and could also smoke a bidi. The relevant portion of her testimony reads as under:

> *"बच्चे के कपडे भी मैं ही बदलती थी. (Voltd. जब मैं काम पर चली जाती थी और मेरी बेटी सुसु वगेहरा कर देती थी तो मुल्जिम ही मेरी बेटी की चड्डी बदलता था एक हाथ से और वो बीड़ी भी पी लेता अपने एक हाथ से.)"*

45. The inability of the Appellant to stand or move independently cannot, without further medical evidence, be equated with a complete inability to use his upper limbs or commit the particular act attributed to him. Upon considering the testimony of PW-1, the evidence of PW-3 and the medical

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opinion of PW-4, this Court finds that the plea of physical incapacity does not create a reasonable doubt sufficient to displace the prosecution version.

Delay in Lodging the FIR

46. The final contention concerns the delay of approximately seven months in lodging the FIR. PW-3 explained that she did not report the incident immediately owing to fear and the alleged threats extended by the Appellant. The relevant portion of her testimony reads as under:

> *"जब मैंने मुल्जिम जय प्रकाश से पुछा तो उसने हसते हुए बोला की मैं मजाक कर रहा था. मैंने जय प्रकाश की माँ को फ़ोन किया और उससे भी बताया. इसके बाद जय प्रकाश ने मुझे धमकी दी की मैं कुछ भी कर सकता हु और तुझे और तेरी बेटी को मरवा भी सकता हु।"*

She further stated:

> *"मैं बहुत डर गयी थी और डर के कारण मैंने मुल्जिम जय प्रकाश को बस में बैठा दिया ताकि वो गाँव जा सके. मैंने बेटी का इलाज भी नहीं करवाया था."*

47. PW-3 also explained the circumstances in which she refrained from taking the victim for medical examination and subsequently approached the hospital. The relevant portion of her testimony reads as under:

> *"मैं अपनी बेटी को कही भी नहीं लेकर गयी थी क्योंकि मुझे डर लगता था और मेरी बेटी बता देती थी की उसके साथ क्या हुआ. मैंने तभी बताया जब मेरी बेटी को सुसु करने में दर्द होने लगा घटना के करीब 06 महीने बाद."*

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"मैं अपनी बेटी को Din Dayal हॉस्पिटल लेकर गयी थी इलाज के लिए और हॉस्पिटल से ही मैंने पुलिस को फ़ोन किया। पुलिस वहाँ पर आयी और मुझसे और मेरी बेटी से पूछताछ की।"

48. In ***State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384**, the Hon'ble Supreme Court recognised that delay in reporting sexual offences may arise from the reluctance of the victim or her family to approach the police owing to apprehensions concerning social reputation and the consequences of disclosure. Similarly, in ***Tulshidas Kanolkar v. State of Goa*, (2003) 8 SCC 590**, the Hon'ble Supreme Court held that delay in lodging an FIR cannot be treated as a mechanical ground for rejecting the prosecution case. The Court must examine whether a satisfactory explanation has been offered and whether the delay has resulted in any material embellishment or exaggeration.

49. Applying the aforesaid principles to the present case, this Court finds that the delay stands satisfactorily explained. The victim was approximately three years of age at the time of the occurrence, and the person accused was her own father. PW-3 attributed her failure to report the incident immediately to fear and the apprehension that her daughter would disclose what had occurred. The omission concerning the alleged threats in her earlier statement, as pointed out by the defence, has also been considered. However, her explanation for the delay does not rest solely upon the alleged threats. The relationship between the parties, the tender age of the victim and the circumstances in which the incident came to be reported are equally material.

50. PW-10 deposed that on 20.06.2022, information regarding the alleged sexual assault was received vide GD No. 113A, whereafter the victim was

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medically examined and the FIR came to be registered. The statements of the victim and PW-3 under Section 164 Cr.P.C. were recorded on 21.06.2022. Thus, the sequence of events following the disclosure at the hospital stands established through the investigation record. This Court finds that the testimony of PW-1 on the material particulars has remained consistent and no embellishment attributable to the delay has been demonstrated.

51. Having dealt with the contentions raised by the Appellant, this Court proceeds to consider whether the ingredients of the offence punishable under Section 6 of the POCSO Act stand established. Section 3(b) of the POCSO Act includes:

> *he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person;*

Section 5(m) of the POCSO Act further provides that penetrative sexual assault committed upon a child below twelve years constitutes aggravated penetrative sexual assault, punishable under Section 6 of the Act.

52. In the present case, this Court finds that the allegation of digital penetration stood established. The victim, being of extremely tender age, described the act in the language available to her and identified the relevant part of her body before the learned trial court. The essential allegation remained consistent in her subsequent deposition. Her account also finds assurance in the evidence of PW-3 concerning the disclosure made immediately after the incident. The age of the victim being below twelve years at the relevant time, the aggravating circumstance contemplated under Section 5(m) of the POCSO Act also stands established.

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Conclusion

53. Upon a cumulative appreciation of the evidence on record, this Court finds that PW-1 has consistently identified the Appellant and attributed the act of sexual assault to him. Her testimony finds assurance in the evidence of PW-3 concerning the disclosure made by the victim. The medical evidence does not rule out the occurrence, while the evidence concerning the Appellant's paralysis does not establish that he was physically incapable of committing the alleged act. The allegations of tutoring and false implication remain unsubstantiated, and the delay in lodging the FIR stands reasonably explained. The minor variations pointed out by the defence do not affect the substratum of the prosecution case.

54. In view of the foregoing, this Court finds that the age of the victim, the nature of the act, the identity of the Appellant and the material circumstances surrounding the occurrence stand duly established. The testimony of PW-1, read with the evidence of PW-3 and the other material on record, establishes the foundational facts necessary to attract the statutory presumption under Section 29 of the POCSO Act, which the Appellant has failed to rebut. Even independently of the said presumption, the evidence, considered in its entirety, establishes the guilt of the Appellant beyond reasonable doubt.

55. This Court is, therefore, satisfied that the prosecution has established the guilt of the Appellant beyond reasonable doubt and upon a proper appreciation of the evidence, concludes that the Appellant is guilty of aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act. The impugned judgment of conviction dated 06.12.2024 does not suffer from any perversity or misappreciation of evidence warranting

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interference in appeal. Accordingly, the conviction of the Appellant under Section 6 of the POCSO Act is upheld.

56. The learned Trial Court, vide order on sentence dated 07.02.2025, sentenced the Appellant to undergo rigorous imprisonment for a period of twenty years for the offence punishable under Section 6 of the POCSO Act, along with a fine of Rs. 10,000/-, and in default of payment of fine, to undergo simple imprisonment for one year. This Court finds no ground to interfere with the sentence so awarded. Accordingly, the impugned order on sentence dated 07.02.2025 is also upheld.

57. Consequently, the present appeal stands dismissed. Pending application(s), if any, also stand(s) disposed of.

58. A copy of this judgment be communicated to the learned Trial Court and concerned Jail Superintendent for necessary compliance.

59. The judgment be uploaded on the website forthwith.

MADHU JAIN
(JUDGE)

NOVEMBER 2, 2026/YT

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