



\$~4

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

Date of decision: 14th July, 2026

Uploaded on: 14th July, 2026

+

CRL.A. 427/2025

SUDHIR @ LUKKA

.....Appellant

Through: Mr. Anwesh Madhukar, Adv.
(DHCLSC) with Ms. Simaran
Chaudhary, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP for the
State with Ms. Divya Yadav and Mr.
Lalit Luthra, Advs.
Mr. Abhas Mishra, Ms. Neha
Singhal, DHCLSC, Advs. for
Complainant/Respondent No. 2.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present appeal has been preferred under Section 415(2) read with Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') assailing the impugned judgment dated 9th October, 2024 and order of sentence dated 12th December, 2024 passed by Ld. ASJ-06 (POCSO ACT), South-East, Saket Court, Delhi in **Session Case No. 352/2017** arising out of **FIR No. 322/2017**, Police Station Jaitpur under Section 376(2)(i) of the Indian Penal Code, 1860 (hereinafter 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO').



2. By way of the impugned judgment, the accused/Appellant (hereinafter ‘Appellant’) Sudhir @ Lukka was convicted of the charges under Section 6 of POCSO Act and under Section 376(2)(i) of the IPC, on the ground that the Prosecution had been able to discharge its burden to prove its case against the Appellant beyond all reasonable doubt. The conclusion of the Id. Trial Court is set out below:

“35. Since the prosecution has discharged its burden to reasonably prove the case as against the accused, the burden is upon the accused to rebut the presumption u/s 29 and 30 of the POCSO Act and to explain the circumstances as to why he has been falsely implicated. However, the accused has failed to rebut the presumption against him. Though, he has examined DW-1, in his defence, to prove that he was not present at the time of incident and was called later on but the evidence of DW-1 has failed to prove the alibi of the accused. The incident is stated to have happened at about 03.00 PM. The accused left the place of incident after committing rape with PW-1. DW-1 has deposed that on 07.06.2017, police and family member of “T” asked him to call his brother and his brother came at about 06.00 PM. There is nothing in the evidence of DW-1 to show that the accused was not present at the place of incident at the time of commission of the offence at about 03.00 PM. Therefore, the accused has not been able to rebut the presumption against him either by way of cross examination of the prosecution witnesses or by way of leading evidence.

Final verdict:

36. On the basis of above said discussions, the prosecution has been able to prove the case against



*the accused beyond all reasonable doubt. In view of the same, accused **Sudhir @ Lukka** is convicted for the offence punishable under **Section 376(2)(i) IPC & Section 6 of POCSO Act 2012.**”*

Factual Matrix:

3. The case of the Prosecution arises out of an incident that occurred on 7th June, 2017 at about 3:00 PM. The allegations are that the victim ‘T’ (hereinafter ‘Prosecutrix’), a minor girl aged about 13/14 years, was taking rest in her room after offering namaz as she was observing Roza. Her two younger brothers were sleeping and her elder sister had gone to the roof to collect clothes. The Appellant, who was residing in a different room within the same premises, came to her room and did *badtamiji* with her.
4. He thereafter removed her *pyajami*, removed his pant and underwear, and inserted his penis into her vagina. He told her not to disclose the incident to anyone and thereafter ran away. In the meantime, her older sister returned from the roof, and the Prosecutrix told her about the incident.
5. The elder sister of Prosecutrix slapped the Appellant and the Appellant fled away from the spot after threatening Prosecutrix’s sister to teach her a lesson for slapping him.
6. The Prosecutrix and her sister then informed their mother (PW 4), who subsequently called the Prosecutrix’s maternal uncle, and information was conveyed to the police.
7. Vide DD No. 40A dated 7th June, 2017, received at Police Station Jaitpur, information was recorded regarding the sexual assault of the minor girl. Upon receiving the DD entry, ASI Shyam Charan (PW-14), along with Ct. Jitender (PW-8) and W/Ct. Anita (PW-13) reached the spot, met with the Prosecutrix, and sent her for medical examination to AIIMS Hospital along



with her mother and W/Ct. Anita. The Prosecutrix was medically examined vide MLC No. 4891/17, wherein the doctor opined the alleged history of sexual assault, and counselling was conducted through Counsellor Ruby Sain. The Appellant was subsequently arrested on 8th June, 2017 from Harsh Vihar.

8. On the basis of the said information and statement, a case under Section 6 of POCSO Act and Section 376(2)(i) of IPC was registered against the Appellant. Upon completion of investigation, a charge-sheet was filed before the concerned court, and cognizance of the offences was taken. Vide order dated 17th April, 2018, the case was committed to the Court of Sessions for trial.

9. During the course of trial, the Prosecution examined as many as 15 witnesses to establish its case. The evidence of each witness, as captured by the Id. Trial Court has been reproduced hereinbelow:

“4.1 PW-1 Ms. 'T' is the victim. She has deposed regarding the facts of the case. She identified her signature on statement Ex. PW1/A, consent form Ex. PW1/B, arrest memo of accused Ex PW1/C. Her statement recorded u/s 164 Cr.PC is Ex. PW1/D. She had pointed out the place of incident to the police which is Ex. PW1/E. She identified her pajami which she was wearing at the time of incident. The red colour pajami is Ex. P-1.

4.2 PW-2 Ms. Neelam Arora, had issued a certificate Ex. PW2/A in respect of date of birth and admission detail of victim girl, Ms. T D/o Mr. 'AK'. She also produced the admission form Ex. PW2/B, relevant extract of admission register Ex. PW2/C, affidavit of father and mother are Ex. PW2/D and Ex. PW2/E.

4.3 PW-3 Ms. S is the sister of the victim. She



deposed regarding the facts of the case. She has deposed that on 07.06.2017, she alongwith victim T and her brothers was in the house and her parents had gone out for their duty. At about 3.00 PM, she went to the roof to dry the clothes and at that time victim T went to sleep after offering namaz and her younger brothers were playing in the gali. On hearing cry of victim T, she came down in the room and saw that accused was wearing his trousers and victim T was crying. She saw that victim T was not wearing her legging and victim told her that accused did galat kaam with her. Victim T had told her that accused had raped her. She slapped accused and accused threatened her and told her "tujhey iss thapad ka jawab dunga". Thereafter, accused left. She called her mother and informed her about the incident. Her mother called her maternal uncle (mama). Her maternal uncle called the police. Thereafter, victim T was taken to hospital by the police officials.

4.4 PW-4 Smt. 'A' has deposed that she is stepmother of T and T was 13 years old at the time of incident. She has deposed regarding receiving of the call from her daughter and her daughter informed her about the incident. She has deposed that her daughter T had shown her legging and it was having blood stains. She called her brother and her brother called the police. She has deposed regarding recording of the statement of her daughter T as Ex. PW1/A and recording of the statement before the Ld. Magistrate. She has deposed that T was taken for her medical examination.

4.5 PW-5 Smt. 'AB' is the maternal aunt (mami) of the victim. She has deposed that on 07.06.2017, she received call from mother of T and she alongwith her husband reached at the house of T. They came



to know about the incident and her husband called at 100 number. The mobile phone connection was in her name and she had identified the CAF Ex. PW5/ A alongwith copy of her Election ID Ex. PW5/B.

4.6 PW-6 Sh. Amar Chand is the owner of the premises No. 217, Gali No. 12-C, Om Nagar, Meethapur and he had rendered out his house to one Kadir and his family. He had also rented out the premises to one Patwari.

4.7 PW-7 [REDACTED] is the maternal uncle (mama) of the victim. He has deposed regarding receiving of call from his sister and reaching at the house of his sister. He has deposed regarding making call at 100 number from his mobile.

4.8 PW-8 Ct. Jitender has deposed regarding receiving of information about the incident at the Police Station. He alongwith lady Ct. Anita reached at the spot and met with the victim and her mother. The victim was sent for medical examination and thereafter, her statement was recorded. The present case got registered through him and further investigation was marked to Inspector Anwar Khan. He has deposed that IO prepared the site plan at the instance of victim girl, accused was arrested vide Ex. PW1/C and his personal search was conducted vide Ex. PW8/A. Accused made disclosure statement vide Ex. PW8/B and pointing out memo was prepared at the instance of the accused vide Ex. PW8/C. He has deposed that the handkerchief was recovered from the accused and it was identified by the victim. He seized the handkerchief vide Ex. PW8/D. The handkerchief is Ex. P2.

4.9 PW-9 Ms. Saumya Kulshrestha has identified the signatures of Dr. Aprajita Kumari on MLC No. 4891/17 of the victim. The MLC is Ex. PW9/ A. She has deposed that genital examination of the victim,



the doctor has found fourchette and introitus as having longitudinal abrasion mark on posterior fourchette. The anus portion was also examined and as per finding of per rectal examination of the anal was done. Hymen was found torn. Samples were taken by Dr. Aprajita Kumari and given to the police official Lady Ct. Anita in sealed condition alongwith sample seal. The emergency card was also prepared in the hospital of this victim girl, the same is Ex. PW9/B. Her authority letter is Ex. PW9/C.

4.10 PW-10 Dr. Hemant Kumar Kanwar has deposited regarding examination of the accused and preparation of report Ex. PW10/A.

4.11 PW-10A ACP Harish Chander Pathak has deposited regarding giving PCR form Ex. PW10/A to the police officials of PS Jaitpur. He had also issued certificate u/s 65B regarding correct contents of computerized copy of PCR form, same is Ex. PW10/B.

4.12 PW-11 Ct. Naresh Kumar had deposited the exhibits in the office of FSL vide Road Certificate No. 116/21/17. He has deposited that the exhibits were not tampered with till they remained in his custody. Copy of RC is Ex. PW11/A and copy of acknowledgement is Ex. PW11/B.

4.13. PW-12 HC Sandeep Yadav had taken the accused for his medical examination. He collected the sealed pullandas from the doctor and it was seized by the IO vide seizure memo Ex. PW12/A.

4.14. PW-13 W/HC Anita had gone to the residence of T on 07.06.2017 along-with IO. She took T to the hospital for her medical examination. She handed over the eleven exhibits alongwith sample seals to the IO Shyam Charan who had seized the same vide seizure memo Ex. PW13/A.



4.15. PW-14 ASI Shyam Charan is the first investigating officer. He has deposed that on 07.06.2017, on receiving DD No. 40A, he had gone to the house of the victim alongwith Ct. Jitender and W/Ct. Anita. He met with the mother of the victim, elder sister of the victim and with the victim. He sent the victim for her medical examination and recorded her statement as Ex. PW1/ A. He prepared rukka and got the present FIR registered. After registration of the case, the investigation was handed over to Inspector Anwar Khan. Inspector Anwar Khan prepared site plan at the instance of the victim. He arrested accused and conducted his personal search vide memo Ex. PW1/C and Ex. PW8/A. He had also recorded the disclosure statement of the victim which is Ex. PW8/B. Thereafter, IO sent accused through Ct. Jitender for accused medical examination. On accused personal search, one handkerchief sky blue colour was recovered from his possession. IO had seized the same vide seizure memo, after preparing the pullanda of the same, which is Ex. PW8/D. IO had also prepared the pointing out memo at his instance which is Ex. PW8/E. Thereafter, they returned to the police station and IO had recorded his statement to the said effect.

4.16. PW-15 Sh. Suresh Kumar Singla had prepared the FSL report Ex. PW15/ A. On DNA analysis, the allele from the source of exhibit 15 which is gauge cloth piece of accused is accounted in the exhibits No. 6 which is cotton wool swap which is defined as anal inner of the victim.

4.17. PW-15 Retired Inspector Anwar Khan is the second investigating officer. He has identified his signatures on seizure memo Ex. PW13/A, site plan Ex. PW1/E, arrest of accused Ex. PW1/C, personal search memo of accused Ex. PW8/A, disclosure



statement of accused Ex. PW8/B, pointing out memo Ex. PW8/C, seizure memo of handkerchief of the accused Ex. PW8/D. He sent accused for his medical examination through Ct. Sandeep. Ct. Sandeep had handed over to him the MLC, exhibits of the accused alongwith sample seal. He seized the same vide seizure memo Ex. PW12/A. He also got recorded the statement of victim u/s 164 Cr.PC. Thereafter, he had prepared the charge-sheet and filed the same before the Court. After receiving of the FSL report, he prepared supplementary charge-sheet and filed the same before the Court.”

10. After recording the Prosecution evidence, the Appellant was examined under Section 313 Code of Criminal Procedure, 1973 (hereinafter, ‘Cr.P.C.’). In his statement, he denied the Prosecution’s case and claimed false implication in the case. He stated that he was falsely implicated by the Prosecutrix and her family because they had borrowed ₹10,000 from him for Prosecutrix’s brother’s treatment, which he was demanding back.

11. He further stated that his brother Ajay was in a relationship with the Prosecutrix's elder sister, and while his brother and the Prosecutrix's family favored the marriage, but he and his father opposed it due to religious differences.

12. He alleged that on the date of the incident, he was away for work and returned at around 06:00 P.M. only after receiving an emergency call from his brother Patwari. Upon his arrival, he found his brother in the custody of the police and the Prosecutrix’s family, following which he was apprehended by ASI Shyam Charan.

13. He further alleged that after being taken to the Police Station, police officials beat him in the lockup and forced him to give his semen samples. He



maintained that he did not commit any rape and that the present case was lodged at the instance of the Prosecutrix's family to falsely implicate him.

14. The Appellant examined one Sh. Patwari Lal (DW-1) in his defence. The Id. Trial court discussed his testimony as under:

“ 7. In defence, accused has examined DW1 Sh. Patwari Lal. DW1 Sh. Patwari Lal has deposed that he is brother of Sudhir @ Lukka. On 07.06.2017, he was selling vegetables on his rehri and was caught by police and family members of 'T'. They asked him to call Sudhir @ Lukka. He called his brother and his brother came at about 6.00 PM. They caught his brother and gave beating to him and his brother. They got some paper signed by him and his brother and he was not aware what was written in those papers. They took them to the Police Station. He was moved outside the Police Station at about 6.30 PM and his brother was taken away. He is not aware as to why his brother was taken away.”

15. Upon perusing the record, the Id. Trial Court held that the Prosecution successfully discharged its burden, thereby shifting the burden to Appellant to rebut presumptions under Sections 29 and 30 of the POCSO Act against the Appellant. The Id. Trial Court held that it is legally bound to presume the commission of the offence and the existence of a culpable mental state unless the contrary is proved beyond doubt. The Id. Trial Court found that the Appellant failed to rebut this presumption. The testimony of his brother (DW1/Patwari Lal) failed to establish an alibi for the actual time of the incident.

16. Consequently, the Appellant was held guilty and convicted under Section 376(2)(i) of the IPC and Section 6 of the POCSO Act, 2012. *Vide* the



subsequent order on sentence, he was sentenced to Rigorous Imprisonment for life along with a fine of Rs. 10,000/-, with the benefit of Section 428 Cr.P.C. being extended for the period already undergone. In default of the payment of fine, he was to undergo Simple Imprisonment for 6 months. He was further directed to pay Rs. 2,00,000/- as compensation to the Prosecutrix. In addition, as final compensation, the Prosecutrix was awarded Rs.10,50,000/- under the Delhi Victim Compensation Scheme 2018 read with Rule 33(8) POCSO Act 2012.

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

Submissions on behalf of the Appellant

18. Ld. Counsel appearing for the Appellant submits that the Prosecution has failed to satisfactorily establish the age of the Prosecutrix. He places reliance upon the school certificate produced by Ms. Neelam Arora/ PW-2, to submit that the foundational records relied upon by the Prosecution have not been duly proved. He further submits that the minor status of the Prosecutrix has not been established beyond reasonable doubt.

19. Ld. Counsel further submits that the Prosecution's scientific evidence is unreliable as the transportation seal of the biological samples was tampered with and the chain of custody was completely broken. He submits that lady Constable Anita/PW-13 deposed that she handed over the medical exhibits along with the sample seals to the first Investigating Officer, ASI Shyam Charan/PW-14. He further submits that the case has been falsely planted against the Appellant.



20. It is further submitted that the biological samples were sent to the Forensic Science Laboratory after an unexplained delay of about 28 days. During this period, there is no material on record to show where or in what condition the exhibits were kept. He submits that the unexplained delay, coupled with the absence of a complete chain of custody, raises serious doubts regarding the integrity of the samples. He further submits that unless the Prosecution establishes that the seals remained intact from the time of seizure till examination by the FSL, the FSL report cannot be safely relied upon.

Submissions on Behalf of the Respondent

21. Mr. Bahri, Id. APP for the State, submits that the age of the Prosecutrix on the date of the incident, i.e., 7th June, 2017, stands duly established in accordance with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter '*JJ Act*'), read with Section 34 of the Indian Evidence Act. He places reliance upon the testimony of Ms. Neelam Arora (PW-2), School In-Charge, who proved the original school certificate, admission form, extracts of the admission register and the attested copies of affidavits of mother and father of the Prosecutrix. He places reliance upon the Supreme Court's decision in '*State of Uttar Pradesh v. Anurudh*', 2026 INSC 47, to submit that determination of age has to be undertaken in accordance with the hierarchy prescribed under Section 94 of the JJ Act.

22. He further submits that the school records and the date of birth reflected therein were never disputed during the trial. PW-2 was also not cross-examined on these documents. In these circumstances, he submits that the school records remained unchallenged and establish that the Prosecutrix was a minor, aged about 14 years, 1 month and 2 days, on the date of the incident.



Analysis

23. The Court has considered the matter.

24. Two questions arise for determination in the present appeal. The first relates to the determination of the age of the Prosecutrix and the applicability of the provisions of the POCSO Act. The second concerns whether the commission of the offence stands established on the basis of the ocular, medical and scientific evidence led by the Prosecution.

25. Since the conviction under the POCSO Act is founded upon the prosecution establishing that the Prosecutrix was a “child” within the meaning of Section 2(d) of the POCSO Act on the date of the incident, the question of age assumes considerable significance. Section 2 (d) reads as under:

2. Definitions.—*(1) In this Act, unless the context otherwise requires, —*

xxx

(d) “child” means any person below the age of eighteen years;”

26. Further, the determination of age is governed by Section 94 of the JJ Act. The relevant portion of Section 94(2) reads as under:

S. 94 Presumption and determination of age:

xxx

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall



undertake the process of age determination, by seeking evidence by obtaining—

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

(ii) the birth certificate given by a Corporation or a Municipal Authority or a Panchayat;

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

27. Thus, the statutory scheme gives primacy to documentary evidence for determination of age, while medical opinion is resorted to only where the prescribed documentary evidence is unavailable. However, the presumption attached to such documents is not irrebuttable and their evidentiary value is ultimately to be assessed on the basis of the evidence led before the Court.

28. In the present case, the prosecution examined PW-2/Ms. Neelam Arora, the School In-Charge, who proved the school admission form, the relevant extract of the admission register, the school certificate and the affidavits furnished by the parents of the Prosecutrix at the time of her admission. The said documents were duly exhibited during trial and formed the basis of the finding recorded by the Id. Trial Court regarding the age of the Prosecutrix.

29. Significantly, the testimony of PW-2 remained unchallenged on the aspect of age. No suggestion was put to the witness disputing the date of birth recorded in the school records. The authenticity of the admission register, admission form or the documents produced by PW-2 was also not questioned.



Equally, no evidence was led by the defence to establish any different date of birth of the Prosecutrix.

30. It is further clear that the Appellant did not dispute that the Prosecutrix was a minor before the Id. Trial Court. The defense throughout the trial was one of false implication and not that the Prosecutrix was a major. The plea challenging the age of the Prosecutrix has been urged for the first time during the hearing of the present appeal.

31. The Supreme Court in *Anurudh(supra)*, while considering the significance of determination of the victim's age, observed that unlike an offender, who can claim the benefit of juvenility at any stage in view of the beneficial nature of the Juvenile Justice Act, a victim of a crime cannot claim to be a juvenile at any point in time, as the charges against the offender are intrinsically tied to the age of the victim. The Court observed that if a victim of a sexual offence is subsequently found to be below eighteen years of age, the offence would fall under the provisions of the POCSO Act, where consent is irrelevant and the punishment is different. Consequently, the earlier trial, framing of charges and recording of evidence under an incorrect legal framework could stand vitiated, necessitating reframing of charges and a fresh trial under the correct statute.

32. In the present case, the Prosecution proved the age of the Prosecutrix through PW-2 by producing the school admission form, admission register, school certificate and the affidavits furnished by her parents. The testimony of PW-2 remained unchallenged and no suggestion disputing the date of birth was put to the witness. No evidence was led by the Appellant to establish a different date of birth. The minor status of the Prosecutrix was never disputed before the Id. Trial Court. In these circumstances, the challenge to the age of



the Prosecutrix raised for the first time in the present appeal deserves to be rejected. This Court, therefore, finds no infirmity in the finding of the Id. Trial Court that the Prosecutrix was a minor on the date of the incident.

33. The next issue which arises for consideration is whether the prosecution has been able to establish the commission of the offence beyond reasonable doubt. The Appellant has assailed the prosecution case principally on the ground that there was a delay in forwarding the biological exhibits to the Forensic Science Laboratory and that the MLC does not record any external injury on the person of the Prosecutrix.

34. This contention does not merit acceptance. The conviction is not founded solely on the scientific evidence but on the consistent testimony of the Prosecutrix, which stands corroborated by PW-3/Sister, the medical evidence and the FSL report. The absence of external injuries, by itself, cannot discredit an otherwise reliable prosecution case.

35. The evidence on record shows that the sealed exhibits were duly seized and forwarded to the FSL. The FSL report records no discrepancy regarding the condition of the seals. On the contrary, semen of the Appellant was found on the anus of the Prosecutrix and the DNA profile generated from the exhibits matched the DNA profile of the Appellant. The Appellant has not been able to demonstrate that any prejudice was caused on account of the delay in forwarding the exhibits.

36. At this stage, reference is made to the statement tendered by PW 9- Ms. Saumya Kulsreshtha, who deposed before the Id. Trial Court in place of Dr. Aprajita Kumari, who had prepared the MLC in this case.

37. In her statement tendered before the Id. Trial Court, PW 9, while confirming that the MLC was drawn by Dr. Aprajita Kumari and bears her



signature has stated that the victim's samples were taken by Dr Aprajita Kumari and were given to the police lady Ct Anita in sealed condition alongwith sample seal. Relevant portion of the MLC with respect to the handing over of victim's sample to Ct. Anita, along with her signature is extracted hereinbelow:

39

ALL INDIA INSTITUTE OF MEDICAL SCIENCES, NEW DELHI
REQUEST FORM FOR FORENSIC SCIENCE LABORATORY

To: The Director, Forensic Science Laboratory

Date: 7/6/17

Sub: Request for laboratory examination of material evidence collected

Sir/Madam,

Submitted herewith material evidence collected from: [REDACTED]

Age: 13 yrs Sex: F MLC No. 4891/20

Dated: 7/6/17

Police Station: Jaitpur

Please examine the following sealed contents and opine on

1. Dried Swab for evidence or Y/N
2. Anus & Outer for evidence of
3. Vaginal Swab & Inner for evidence of
4. Vaginal Swab & Inner for evidence of
5. Pubic hair Combing for evidence of
6. Pubic hair Combing for evidence of
7. Scalp hair Combing for evidence of
8. " " Combing for evidence of
9. Nail Combing for evidence of
10. Nail Combing for evidence of
11. Cloth (beaded leggings red coloured) (Aprajita Kumar) Yours Sinc

Intact, Sealed and labelled samples along with sample of seal received by

Signature, Name and Designation of Police Officer with Belt No.

Signature: HLT Anita 1167/SE

Police Station: P.S. Jaitpur

Date: 7/6/2017

Signature of Doctor with Dept. of Emergency Medicine, All India Institute of Medical Sciences, New Delhi

Signature: Aprajita Kumar

[11]

38. Further, the statement tendered before the Id. Trial Court by PW 11- Constable Naresh Kumar, who had deposited the exhibits to the office of the FSL has also been considered by the Court, which clearly state that till the time he was in possession of the exhibits, they were not tampered with in any manner. The relevant portion of statement tendered by PW 11- Constable Naresh Kumar before the Id. Trial Court is as under:



“Statement of Constable Naresh Kumar, No.3544, South East, District Line, Sukhdev Vihar, New Delhi. On SA

On 30.06.2017, I was posted in police station Jaitpur. On that day, I had collected sealed exhibits alongwith sample seal of this case vide road certificate No.116/21/17 and I deposited the exhibits in the office of FSL, Rohini. I had obtained acknowledgement from the office of FSL which I had give to MHCM on my return in police station. Till, exhibits remained in my custody, they were not tampered with in any manner.”

39. In addition to this, the statement of PW 15- Mr. Suresh Kumar Singla, who conducted the forensic analysis in this case was also recorded by the Id. Trial Court. In his statement, PW 15 testified to having received the samples with their seals intact. Relevant portions of the statement tendered by PW 15 before the Id. Trial Court are extracted below:

“Statement of Sh. Suresh Kumar Singla, Retd. Sr. Scientific Officer, Grade-I & HOD Serology, CFSL CBI, New Delhi, R/o 185, Pocket 23, Sector-24, Rohini-SS.

On SA.

On 30.06.2017, I was working as Jr. Chemical Forensic Examiner in FSL, NCT of Delhi. On that day, 18 sealed parcels were received in the office of FSL Delhi which were marked to me for examination and opinion thereon, the parcels were duly sealed and seals were intact and tallied with the specimen seals forwarded, I examined the exhibits and did biological analysis and DNA examination of the exhibits. Thereafter, I prepared my report which is on court



record bearing my signature at point A. The report is now exhibits as Ex.PW15/A.

On DNA analysis, the allele from the source of exhibit 15 which is gauge cloth piece of the accused is accounted in the exhibits No.6 which is cotton wool swab which is defined as anal inner of the victim.

XXXXXXX by Sh.Avinash Kumar,Ld Counsel for the accused.

It is correct that no DNA traces of the accused was found on Sample 7, 8, 13 & 14. It is correct that allele is the basis unit to define as DNA. It is wrong to say that the DNA profile of the two brother would be the same except in the case of identical twins. It is wrong to suggest that the allele of two brothers can match even if the DNA profile is different.

*It is impossible to find out whether the allele of the accused in private parts of the victim is due to the sexual assault or due to insertion by way of any foreign article such as injection. **I received the sealed parcels and the seals were intact.***

40. Furthermore, the FSL report prepared by PW 15, which has been marked as PW 15/A before the Id. Trial Court also concludes as under:

“RESULTS OF DNA ANALYSIS

Alleles from the source of exhibit '15'(Gauze cloth piece) of accused is accounted in the alleles from the source of exhibit '6' (Anal inner) of victim.”

41. In light of the testimonies and evidence discussed above, it is clear that the fact regarding the samples having been delivered to the Forensic Science Laboratory with their seal intact has been proven by the prosecution before



the Id. Trial Court. Further, the FSL report also clearly reveals that the sample from the cloth recovered from the Appellant matches with the sample obtained from the inner anal lining of the Prosecutrix. Hence, the contentions raised by the Appellant at this stage do not merit acceptance of this Court.

42. In ***Edakkandi Dineshan @ P. Dineshan v. State of Kerala, (2025) 3 SCC 273***, the Supreme Court reiterated that on account of defective investigation the benefit will not inure to the accused persons on the ground alone. The relevant portion of the same reads as under:

“27. Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report, etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency.”

43. In the present case, the ocular, medical and scientific evidence forms a consistent chain pointing towards the guilt of the Appellant. This Court, therefore, finds no infirmity in the finding recorded by the Id. Trial Court that the prosecution has proved the commission of the offence beyond reasonable doubt.

44. The next question which arises for consideration is whether the conviction of the Appellant under Section 6 of the POCSO Act is sustainable.

45. Section 4 of the POCSO Act prescribes the punishment for penetrative sexual assault as defined under Section 3 of the Act. Section 6, on the other hand, is attracted only where the offence amounts to aggravated penetrative



sexual assault as defined under Section 5. Thus, before a conviction can be recorded under Section 6, the prosecution must establish that the case falls within one or more of the aggravating circumstances enumerated under Section 5.

46. Section 4 of the POCSO Act, underwent certain amendments under the Protection of Children from Sexual Offences (Amendment) Act, 2019. The said provision, before and after the Protection of Children from Sexual Offences (Amendment) Act, 2019 reads as under:

BEFORE AMENDMENT i.e., prior to 16th August, 2019

Section 4 of the Protection of Children from Sexual Offences Act, 2012 -

“4. Punishment for penetrative sexual assault.—
Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.”

AFTER AMENDMENT i.e., post 16th August, 2019

Section 4 of the Protection of Children from Sexual Offences Act, 2012 -

“4. Punishment for penetrative sexual assault.—
(1)Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to



imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”

As per the above amendment in Section 4 of the POCSO Act, it becomes clear that the punishment for committing penetrative sexual assault under Section 3 of the POCSO Act pre-amendment was seven years which was then increased to ten years.

47. Further, in the present case, the evidence led by the prosecution establishes, at best, the commission of penetrative sexual assault. However, there is no material on record to show that the offence was committed in any of the circumstances contemplated under Section 5 of the POCSO Act.

48. The Prosecutrix was not below 12 years of age at the time of the incident and, under the statutory provisions applicable on the date of the offence, the present case would not fall within the category of aggravated penetrative sexual assault so as to attract Section 6 of the Act. The conviction of the Appellant under Section 6, therefore, cannot be sustained and is liable to be modified to one under Section 4 of the POCSO Act. It is also pertinent to mention that the offence in the present case was committed prior to the coming into force of the Protection of Children from Sexual Offences (Amendment) Act, 2019.

49. Under the unamended Section 4 of the POCSO Act, as applicable on the date of the offence, the prescribed minimum sentence was seven years’



imprisonment, which was enhanced to ten years only by virtue of the 2019 Amendment. Accordingly, the Appellant is liable to be sentenced in terms of the provision as it stood on the date of the commission of the offence.

50. As per the Nominal Roll dated 22nd April, 2026, the Appellant has already undergone incarceration for 8 years, 9 months and 20 days, which is now approximately nine years. The Appellant was about 32 years of age at the time of the incident and is presently about 41 years of age. The Nominal Roll further reflects that his jail conduct has remained satisfactory throughout his incarceration.

51. It is also seen from the record that the Appellant belongs to an economically weaker section of society and is an illiterate person. He is married and has two minor children. His wife, who is employed as a daily-wage labourer, has been maintaining the family in his absence. The family also comprises his aged parents, who are dependent upon the limited income earned by his wife. The prolonged incarceration of the Appellant has placed considerable financial hardship upon the family.

Conclusion

52. Having regard to the nature of the offence established, the modification of the conviction from Section 6 to Section 4 of the POCSO Act, the period of incarceration already undergone by the Appellant, his satisfactory jail conduct and the mitigating circumstances placed on record, this Court is of the view that that a sentence of the period already undergone would be adequate and appropriate.

53. In view of the aforesaid facts and circumstances, the present appeal is allowed in part. Pending applications, if any, are disposed of.



54. The sentence of the Appellant is modified to the period of imprisonment already undergone.

55. The fine imposed by the Id. Trial Court shall remain. The directions regarding payment of compensation to the Prosecutrix shall remain in force.

56. The Appellant is directed to be released forthwith, if not required in any other case.

57. Copy of this order be sent to the Jail Superintendent, for information and compliance.

58. Let the copy of this order be communicated to the Secretary, DLSA (South-East) for necessary information and compliance.

MADHU JAIN
JUDGE

PRATHIBA M. SINGH
JUDGE

JULY 14, 2026/Av