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

% Reserved on : 04.08.2025
Pronounced on : 06.08.2025

\+ **CRL.A. 815/2024**

FAISAL .....Appellant
Through: Mr. Sunil Chaudhary, Advocate.

versus

STATE OF NCT OF DELHI AND ANR. .....Respondents
Through: Ms. Shubhi Gupta, APP for State with SI Shivali and SI Anita, P.S. Keshav Puram.
Ms. Gayatri Nandwani, Ms. Mudita Sharda and Mr. Adrian Abbi, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal filed under Section 415(2) r/w Section 424 of BNSS, 2023 has been instituted seeking to assail judgment dated 24.02.2024 and order of sentence dated 09.05.2024 in Sessions Case No. 265/2021 arising out of FIR No. 50/2021 registered under Sections 376/506 IPC & Section 6 POCSO Act at P.S. Keshav Puram , Delhi.

Vide the impugned judgment and order on sentence, the appellant was convicted for the offences punishable under Sections 5(j)(ii) &(l) punishable under Section 6 of the POCSO Act and for the offences under Sections 376(2)(n)/376(3)/506 IPC and he was sentenced to undergo rigorous imprisonment RI for 20 years in addition to the payment of fine of

Rs.5,000/- and in default of payment of fine, he was directed to undergo simple imprisonment for 1 month for each of the abovementioned convictions. Additionally, he was also convicted under Section 506 IPC and sentenced to undergo RI for 2 years in addition to the payment of fine of Rs. 1,000/- and in default of payment of fine, he was directed to undergo simple imprisonment for 15 days. All sentences were directed to run concurrently. The benefit of Section 428 Cr.P.C. was also extended to the appellant.

2. The brief facts of the case as noted by the Trial Court in the impugned judgment are as under :

> *"In brief, as per charge-sheet, information regarding DD no. 6A dated 07.02.2021 was received by the IO. On receiving the information, she reached Lok Nayak hospital. There she met SI Sukhbir and NGO counselor Ms. Ranju. There SI Sukhbir produced MLC No. 113949719 CR. No. 863141 dated 07/02/2021 of victim N D/o Late JPS to her. At 11:12 AM, the victim gave birth to a female child. In MLC the doctor had given history of sexual intercourse 2-3 times, 8-9 months back. After some hours of delivery when the victim was in good condition, IO recorded statement of victim in presence of NGO counselor. In her statement, victim stated that, "that from last about one year, she is residing with her mausi 'N' and mausa 'MS'. Her sister and her husband were also residing with them on rent. Her parents had died in her childhood. She has studied up to 8th standard. Near about one year ago, she went to Jahaj Park to ride on swings. There she met one girl namely 'SU' and they became friends. After about 10-15 days, her friend 'SU' took the victim to Jahaj park and got met with accused Faisal and said that you both also become friends. Thereafter, they all three roam around in the park. Next week 'SU' told her in her street that today is Sunday and today the accused Faisal would come to the park. She asked her to go to the park to meet Faisal. She also told that accused Faisal does the work of electrician. Thereafter, she went to the park to meet accused Faisal. There the accused Faisal told her that today is his*

holiday and further asked her to roam around. Thereafter, accused Faisal took her to another park in auto. There he scolded her and threatened her to kill. Thereafter, he made sexual relations with her and told her that he loves her and he would solemnize marriage with her. Then he said that he would meet her next week. He asked her to meet him in said park on Sunday. She was frightened. Due to fear, she did not tell to anyone and again went to the park. Accused Faisal again made sexual relations with her in said park. Accused Faisal did this act 2-3 times. Thereafter, accused Faisal met her in said park on Sunday and again told her that he would solemnize marriage with her. But thereafter, for about 8 months he did not meet her. She did not know that she is pregnant. On 06.02.2021, she felt some pain in her stomach. On 07.02.2021 at about 4:00 AM, her sister P and mausi 'N' took her to LNJP hospital and get her admitted in the hospital. There she came to know that she is pregnant. She gave birth to a female child on 07.02.2021 at 11:12 AM. Thereafter, FIR was registered for offences under Section 376/506 IPC and under Section 6 of the Protection of Children from Sexual Act 2012 (hereinafter referred as POCSO Act). The matter was investigated. Statement under Section 161 Cr.PC and 164 Cr.PC of witnesses were recorded. The victim had reiterated the allegation in her statement recorded under Section 164 Cr. PC. Accused was arrested. The scientific evidences were also collected. After completion of investigation, charge sheet was filed for under Section 376/506 IPC and under Section 6 of POCSO Act."

3. The charge was framed under Section 5(j)(ii) &(l) of POCSO Act punishable under Section 6 of the POCSO Act and in the alternative under Sections 376(2)(n)/376(3)/506 IPC to which the appellant pleaded not guilty and claimed trial. In trial, the prosecution examined a total of 13 witnesses. The child victim was examined as PW1. To establish the age of the child victim, the prosecution examined the sister of the child victim as PW12. The prosecution also examined the Principal of the school where the child victim

has studied, as PW4 and one Ms. 'P', who had exhibited the original record and certificate issued by her on the letter head of the school, as PW13. As the parents of the child victim had already passed away, her aunt and uncle with whom the child victim was residing at the time of the incident, were examined as PW5 and PW6 respectively. The prosecution also examined Dr. *Reetu Yadav*, Sr. Resident, LNJP Hospital as PW10 who proved the MLC of the child victim and Dr. Ruchi, Assistant Professor, Department of Forensic Science, Himachal Pradesh University, Shimla, HP who proved the DNA examination report was examined as PW9.

4. The judgment is assailed on the ground that the testimony of the child victim does not inspire confidence as a reading of the same would show that though the victim stated that she used to play in the nearby park where she befriended one girl namely 'SU', who introduced her to the appellant, however, the said girl 'SU' was not even cited as a prosecution witness. Further, though the child victim had deposed that she met the appellant couple of times, however, she admitted in her cross-examination that no contact details of each other were shared between them. It is also contended that though the prosecution relied on the site plan Ex. PW1/B, the same cannot be the place of incident as the child victim had stated in her earlier statements that the accused took her to another park, the location of which she was not aware of. It is further contended that there are material inconsistencies and improvements in the testimony of the child victim, which make her testimony unreliable. Lastly, it is contended that the age of the child victim has not been conclusively established by the prosecution.

5. Learned APP, who is duly assisted by the learned counsel for the child victim appointed by DHCLSC, defended the impugned judgment and

contended that testimony of the child victim is credible and reliable as the appellant did not even confront the victim with her statements recorded under Section 161 and 164 CrPC.

6. I have heard the learned counsels for the parties and perused the Trial Court record.

7. As per the case of the prosecution, at the time of incident, the child victim was about 15 years of age, her date of birth being 15.07.2004. The child victim was examined on 31.05.2022 when her age was recorded as 17 years. She stated that the incident had occurred two years prior to recording of the deposition. Prosecution had examined the principal of the first attended school where the child victim had studied, as PW4 who deposed that child victim was admitted in the school in nursery on 20.07.2009 vide Entry No. 1613. As per the school record, the date of birth of the child victim was recorded as 15.07.2004. Relevant pages of the Admission and Withdrawal Register were exhibited as Ex. PW4/A and Admission Form as PW4/B and PW4/C. The admission was done on the basis of the sworn affidavit furnished by the mother of the child victim in the year 2009, which was exhibited as Ex.PW4/D.

8. A perusal of the testimony of the child victim would show that during her cross-examination, no suggestion was put to her on the aspect of her age. Moreover, no such suggestion was given either to her elder sister (PW12) or to the uncle (PW6) and aunt (PW5). In absence of any doubt raised during the trial, the Trial Court rightly held that the victim was minor being 15 years of age at the time of the incident.

9. The testimony of the child victim has also remained un-shattered on the aspect of identification of appellant as the perpetrator of the crime as she

categorically stated that when the appellant had called her to the park 2/3 times, he forcibly established relations and did "*galat kaam*". She clarified that by "*galat kaam*" she meant establishment of physical relations. She further deposed that after some time she used to have stomach pain and when she informed about the same to her aunt, she was taken to a hospital, where she became aware of her pregnancy. In the hospital, she gave birth to a girl child. Pertinently, the Trial Court noted the demeanour of the child victim as she constantly cried during her cross-examination. In her cross-examination, she admitted that the offence was committed by the appellant in the park but she clarified that there was also some forest cover.

10. The prosecution had proved the DNA Forensic Report through Dr. Ruchi, who was examined as PW9. The witness had conducted the biological and DNA examination in the present case and as per the results of the examination, one set of alleles from the blood sample of victim and one set of alleles from the blood sample of the appellant were accounted in the blood sample of the baby. The witness further deposed that on the basis of DNA profiling, she had concluded that the victim is the biological mother of the baby and appellant is the biological father. Notably, proceedings relating to the discharge summary of the baby, discharge summary of the victim as well as potency test and MLC of the accused, were not in dispute and their formal proof was dispensed with as recorded by the Trial Court in the order dated 13.05.2022.

11. The competence of a child witness and the evaluation of their testimony by the Court has been the subject matter of many decisions. In a

recent decision of State of Madhya Pradesh vs. Balveer Singh[1], the Supreme Court has examined the principles governing the testimony of a child-witness and summarized the legal position in the following manner :

> *"58. We summarize our conclusion as under:—*
> *(I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.*
> *(II) As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*
> *(III) Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*
> *(IV) The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.*
> *(V) The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*
> *(VI) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*
> *(VII) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not*

[1] 2025 SCC OnLine SC 390

require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

(X) The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under:—

- *Opportunity of Tutoring of the Child Witness in question whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such*

witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

• Reasonable likelihood of tutoring wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

(XI) Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.

(XII) Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness."

12. Though, the testimony of the sister, uncle and aunt of the child victim are hearsay, the testimony of the child victim being consistent, credible and reliable, is sufficient to uphold the impugned judgment. As noted above, the testimony also finds corroboration from the biological and DNA

examination report. The child victim had stated that the offence was repeated 2/3 times. In view of above clinching evidence, the contention relating to non-examination of girl 'Su' or doubt on the place of incident, pales into insignificance. As noted above, the child victim was not even confronted with her earlier statements made during investigation and no inconsistency or contradiction or improvement was suggested.

13. No other contention having been raised, I find no merit in the appeal. Consequently, the appeal is dismissed and the impugned judgment and conviction are upheld.

14. Copy of the judgment be communicated to the Trial Court, as well as concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 06, 2025
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