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

% Reserved on : 25.09.2025
Pronounced on : 06.10.2025

\+ **CRL.A. 1105/2019**

AADIL @ NAUSERWA .....Appellant
Through: Mr. Harsh Prabhakar, Advocate (DHCLSC) with Mr. Dhruv Chaudhary, Mr. Shubham Sourav and Mr. Vijit Singh, Advocates

versus

STATE .....Respondent
Through: Ms. Shubhi Gupta, APP for State.
Mr. Arunav Patnaik, Advocate (Amicus Curiae) for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. Being convicted and sentenced by the Sessions Court, the appellant has approached this Court seeking setting aside of the judgment of conviction dated 17.05.2019, vide which he was convicted for offences punishable under Sections 377/34 IPC, 506/34 IPC, and Section 6 POCSO; and the order on sentence dated 24.05.2019, vide which he was directed to undergo rigorous imprisonment for a period of 1 year for the offence punishable under Section 506 IPC along with payment of fine of Rs.5,000/-, in default whereof he was directed to further undergo simple imprisonment for a period of 15 days; and rigorous imprisonment for a period of 10 years

for the offence punishable under Section 6 POCSO along with payment of fine of Rs.20,000/-, in default whereof he was directed to further undergo simple imprisonment for a period of 3 months. The benefit of Section 428 Cr.P.C. was extended to the appellant, and all the sentences were directed to run concurrently.

2. The victim, aged about 13 years, stated that sometime in October 2015, while he was playing in a ground, CCL 'G' and CCL 'E' (referred to as CCL 'A' by the Trial Court at various places) came to him and asked him to accompany them for an outing. On his refusal, he was forcibly taken to a godown in Khajuri, where they made him consume liquor and thereafter committed wrong acts with him. He did not disclose the incident to anyone as he was afraid. He further stated that on 23.03.2016 at about 2:00 P.M., while he was standing in the street behind his house, CCL 'G' and CCL 'E' again asked him to accompany them. On his refusal, he was once again forcibly taken to a godown in Khajuri, where he was forced to drink liquor. When he resisted, he was beaten. At that point, a third person, i.e., the appellant herein, arrived with a cigarette joint filled with *ganja* and asked the child victim to smoke it. When he refused, while CCL 'E' slapped him, CCL 'G' took an iron rod and threatened to hit him with the same. Thereafter, they removed the victim's jeans. First, CCL 'E' committed the wrong act. When the victim cried in pain, he was beaten again. Thereafter, the appellant committed the same offence, followed by CCL 'G'. It was alleged that CCL 'E' again committed the wrong act for the second time, after which CCL 'G' left the victim near his house. At that time, the victim's mother was searching for him, and upon seeing her, the victim started crying and disclosed the entire incident to her. The victim's mother made a PCR

call, which came to be recorded as DD No. 83B at about 8:06 P.M., stating that a wrong act had been committed with a 15-year-old boy by boys living on the same street. Upon registration of the FIR, the medical examination of the victim was carried out, and his statement under Section 164 Cr.P.C. was recorded. Thereafter, charges under Sections 363/34 IPC, 377/34 IPC (alternatively under Section 6 POCSO), and 506/34 IPC were framed against the appellant, to which he pleaded not guilty and claimed trial. The charges were framed only against the appellant as the two other accused were CCLs, who were tried separately before the concerned Court.

3. The prosecution examined a total of 14 witnesses. The primary witnesses were the victim, examined as PW-3; the victim's mother, examined as PW-8; the NGO counsellor, examined as PW-9; and the teacher from the victim's school, examined as PW-1, who proved his age. Dr. *Siddharth*, who proved the MLC of the child victim, was examined as PW-4, and Ms. *Monika Chakravarty*, who proved the FSL report, was examined as PW-14. The appellant, denying the prosecution case, examined his mother in defence.

4. Multiple contentions have been raised by learned counsel for the appellant. The first pertains to the inconsistency regarding the place of arrest, as some witnesses stated that the appellant was arrested from the godown, while others deposed that he was called to the police station, where he came to be arrested. It is further contended that the allegations are doubtful in view of the MLC, as despite the act allegedly being committed twice by CCL 'E' and once each by CCL 'G' and the appellant, no injury was noted on the person of the victim. It is next submitted that since the appellant was previously unknown to the victim, it remains unclear how his

identity was ascertained leading to his arrest. Lastly, it is argued that although the victim claimed he was forced to consume liquor and smoke a cigarette filled with *ganja*, no signs of intoxication were noted in the MLC, which was conducted within 12 hours of the alleged incident.

5. Learned APP for the State, on the other hand, defended the impugned judgment by contending that the statement of the victim finds support in the FSL report, as per which the complicity of the appellant stands proved.

6. Learned *Amicus Curiae* appointed to represent the victim submitted that the appellant was arrested on the identification of the child victim. The MLC of the child victim was exhibited through Dr. *Siddharth*, who was not cross-examined despite opportunity. Further, the appellant did not question the sanctity of the samples, which were duly proved during the prosecution case. He also drew the Court's attention to the fact that the testimony of the victim remained consistent throughout the investigation and during trial. Lastly, the alleged motive for false implication was found to be weak and insignificant, with no evidence led in its support.

7. The age of the child victim was neither disputed during trial nor in the present appeal. In the absence of any contest and in view of the testimony of the concerned school teacher, the conclusion rendered by the Trial Court holding victim to be a "child" within the meaning of Section 2(d) POCSO Act, is upheld.

8. The Trial Court satisfied itself to the competence of the child victim to depose. In his deposition, the child victim stated that he was taken to a godown by two CCLs, where he was made to consume liquor and subjected to wrongful acts after his jeans were removed. He further deposed that the appellant arrived there with a cigarette containing *ganja*, and CCL 'E'

forced him to smoke it. He also stated that CCL 'G' picked up an iron rod and threatened to beat him. The victim deposed that all three of them committed the wrongful act, and that the CCL 'E' did it twice. He further stated that earlier, in October 2015, the same two CCLs had committed a similar act with him, which he had not disclosed to anyone out of fear. He deposed that after committing the offence, he was dropped near his house, where he met his mother and disclosed the incident to her. In response to a Court question as to what he meant by "*galat kaam*", the victim stated that his jeans were removed and that he was raped, with the appellant and the two CCLs inserting their penis into his rectum.

In cross-examination, the victim stated that it was the CCLs who were apprehended first and brought to the police station. He stated that the appellant was called to the police station by the brother of CCL 'E' over the phone. He added that the appellant had arrived at the godown about 30 minutes later and that he had not known or seen the appellant before that day. He became aware of the appellant's name only at the police station, as disclosed by CCL 'E' when questioned by the police. He denied the suggestions that he was not asked to smoke a cigarette filled with *ganja* and that the appellant had not committed sodomy. He also denied the suggestion that the appellant was not present at the spot. Further, he denied the suggestion that the appellant, who was working with one *Ikram* (brother of CCL 'E'), was arrested at *Ikram*'s behest due to a salary dispute. The suggestion of tutoring or false implication was also denied.

9. The mother of the child victim, during her examination, stated that on 23.03.2016, she found her son missing and began making enquiries from the boys in the neighbourhood. After some time, when she reached *gali* no. 6,

she saw her son standing there. He appeared uncomfortable, and upon seeing her, he began to cry. He narrated that he had been forcibly taken to a godown, where he was forced to consume alcohol, beaten, and subjected to sodomy by all the accused persons. She immediately called the PCR. CCL 'G' and CCL 'E' were apprehended in front of her house while they were passing by on their bike.

In cross-examination, she stated that she had earlier seen her son intoxicated in 2015 when the same two CCLs had made him drink alcohol. At that time, she had not lodged a complaint because her son was scared. On the day of the incident, she went to the police station, where her statement was recorded. She also saw the present appellant there, who had been called to the police station by the brother of CCL 'E' over the phone.

10. The child victim was medically examined, and his MLC was exhibited through the testimony of Dr. *Siddharth*. He deposed that, as per the alleged history, the victim was sexually assaulted by three persons. On local examination, he found that the skin around the anal opening was normal, with no signs of injury, bleeding, or mucosal tear. The laxity of the sphincter was also found to be normal. He collected the rectal swab and handed it over to the police along with the sample seal.

11. The forensic examination report (PW-14/1) was exhibited through PW-14/Ms. *Monika Chakravarty*. She stated that, in her opinion, the DNA profiling performed on the exhibits was sufficient to conclude that the DNA profiles generated from the source of Exhibit '2' (blood sample on gauze) of the appellant and Exhibit '5' (blood sample on gauze) of CCL 'G' were accounted for in the mixed DNA profiles generated from the source of Exhibit '1' (rectal swab) of the victim. She further stated that similar male

DNA profiles were generated from the source of Exhibit '8' (blood sample on gauze) of CCL 'E' and Exhibit '11' (underwear) of CCL 'E'. In cross-examination, when asked if she recalled the colour of the underwear, she answered in the negative.

12. The first information about the incident, recorded through DD No. 83B, pertained to an allegation of *galat kaam* with a 15-year-old boy. In his statement recorded under Section 313 Cr.P.C., the appellant claimed false implication. He examined his mother as DW-1, who stated that on 23.03.2016, the appellant was at home, and around 7:00–8:00 P.M., his employer had called him to the police station. She further stated that she later came to know that the appellant had been arrested.

13. The *rukka* was prepared on the statement of the child victim, and the time of *tehrir* is noted as 10:00 P.M. In the said statement, the child victim named the appellant. The child victim was medically examined on the intervening night of 23/24.03.2016 at about 1:15 A.M., and the MLC records a history of sexual assault by three persons. In his statement recorded under Section 164 Cr.P.C., the child victim again mentioned that the offence was committed by three persons. To the same extent is his Court deposition.

14. Not only the Trial Court but also this Court takes note of the fact that the appellant's arrest has been described differently by the witnesses. The victim, his mother, and SI *Kuldeep*, the Juvenile Officer, stated that initially, two CCLs were apprehended. While the victim and his mother further stated that the appellant came to the police station where he was apprehended, other police officials stated that all the offenders were apprehended from the godown itself. Though learned counsel for the appellant has pointed out that

some witnesses stated the arrest took place from the *gali* and others from the godown, it is worthwhile to note that the godown was located in *gali* no. 1 itself.

15. Insofar as the contention of learned counsel for the appellant that the child victim had stated he had never seen the appellant prior to that day and that the appellant was a stranger to him, making it unclear how his name came to be mentioned in the statement recorded under Section 161 Cr.P.C., it is pertinent to note that the child victim stated he became aware of the appellant's name when it was disclosed to him by CCL 'E'.

16. Coming to the allegations concerned, the child victim has deposed that the incident in question occurred on the afternoon of 23.03.2016 around 2-3 PM. As per him, 3 persons, the appellant, CCL 'E', and CCL 'G', committed rape upon him 4 times. However, the MLC of the child victim, prepared on the intervening night of 23/24.03.2016, records no injuries. PW-4, who conducted medical examination of the child victim, deposed that in the local examination, the skin around the anal opening was normal and there were no signs of any injury and there was no bleeding and no mucosal tear. The laxity of sphincter was found normal. At the same time, sight cannot be lost of the FSL report. It records that human semen was detected on the rectal swab of the victim. Moreover, the alleles from the blood sample of the appellant and CCL 'G' were accounted from the rectal swab of the victim. No suggestions have been given to any witness as to the mishandling, improper custody or tampering of samples. The FSL report itself records that the samples were received in a sealed condition.

17. Thus, at one hand, the MLC does not indicate commission of penetrative sexual assault multiple times within a short span of time, on the

other hand as per the FSL report the appellant's semen is detected in the rectal swab of the victim. The Supreme Court in Rahul v State[1] has held that DNA evidence is in nature of opinion evidence as envisaged under Section 45 of the Evidence Act and its probative value varies from case to case. In Manoj v State of M.P.[2], the Supreme Court held that the value of such evidence was corroborative. The child victim has deposed that the appellant and others did 'wrong act' with him. He has described 'wrong act' as the appellant and others raping him, by inserting their penis in his rectum. Though, it is settled law that to establish the offence of rape, penetration, no matter how slight, is sufficient and injuries would not be present on the private parts of the victim in every case, however, the factual matrix in the present case, as per which 3 accused persons have committed penetrative rape 4 times in a short duration, the MLC not recording a single injury or sign of penetrative sexual assault assumes importance. Moreover, the child victim has deposed that he was forced to consume liquor and ganja, the MLC does not record any sort of inebriation, In such a scenario, the act of penetration, in view of the starkly opposing MLC, cannot be said to be conclusively proved. Hence, benefit of the doubt ought to be extended to the appellant in so far as the offences under Section 377 IPC and Section 6 POCSO are concerned. However, keeping in view the consistent testimony of the child victim on the other aspects, as well as the FSL report recording the presence of the appellant's semen in the rectal swab of the victim, the offence of gang sexual assault under Section 9 (g) punishable under Section 10 of the POCSO Act is made out against the appellant. In view of the

[1] (2023) 1 SCC 83
[2] (2023) 2 SCC 353

consistent statement of the victim on the aspect of threats being given by the accused persons, no ground is made out to interfere with the conclusion arrived at by the Trial Court for the offence under Section 506 read with Section 34 IPC.

18. In view of the above, while upholding the conviction of appellant under Section 506 IPC, his conviction under Section 377 read with Section 34 IPC and Section 6 of the POCSO Act is set aside and he is instead convicted of the offence punishable under Section 10 of the POCSO Act.

19. As per the nominal roll on record, the appellant has already undergone around 8 years and two months, including remission. The Section provides for a maximum sentence of seven years. Thus, the appellant has already undergone more than the maximum sentence that can be imposed under Section 10 POCSO Act and also the default sentence for non-payment of fine. The appellant is directed to be released forthwith, if not found involved in any other case.

20. The appeal is partly allowed to the aforesaid extent.

21. This Court also appreciates the valuable assistance provided by Mr. Arunav Patnaik, Advocate, learned *Amicus Curiae* appointed to represent the victim.

22. A copy of this judgment be communicated to the Trial Court, as well as to the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 06, 2025
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