



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

% Reserved on : 23.09.2025
Pronounced on : 06.10.2025

+ **CRL.A. 1332/2019**

SH. JALAUDDIN @ PAPPUAppellant
Through: Ms. Kanhaiya Singhal, Advocate
(DHCLSC) with Mr. Ajay, Advocate

versus

STATERespondent
Through: Mr. Pradeep Gahalot, APP for State
Mr. Sarthak Karol, Advocate (Amicus
Curiae) with Ms. Neelakshi
Bhadauria and Ms. Tanishka Panwar,
Advocates for victim

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. Being convicted and sentenced by the Sessions Court, the appellant has preferred the present appeal seeking setting aside of the judgment of conviction dated 26.07.2019 vide which he has been convicted for offences punishable under Section 6 POCSO and Section 376 IPC, and the order on sentence dated 29.07.2019 vide which he has been directed to undergo 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 6 months. The benefit of Section 428 Cr.P.C. was provided to the appellant.



2. The FIR in the present case came to be registered in connection with an incident dated 21.09.2014, when DD No. 27-A was recorded at 9:23 P.M. on the basis of a call made by the father of the victim. The statement of the victim was recorded, wherein she stated that in the evening of 21.09.2014, she, her brother, and another child were playing on the roof of A's house. After some time, A's father, i.e., the appellant, came there and sent the child victim's brother and the other child downstairs. The victim alleged that when she was going downstairs, the appellant stopped her, removed her underwear, and inserted his finger into her vagina. When she cried in pain, he gagged her mouth and again inserted his finger into her vagina. Thereafter, A's father went away after telling her not to disclose the incident to anyone. The statement of the child victim under Section 164 Cr.P.C. was subsequently recorded, and her medical examination was conducted. She was first taken to JPC Hospital at around 10:30 P.M., from where she was referred to GTB Hospital. On the same day, at about 11:15 P.M., she was examined at GTB Hospital, and an MLC (Ex. PW-10/A) was prepared. In the history of assault recorded in the MLC, insertion of a finger into the vagina and anus was noted. The Trial Court framed charges under Sections 377/376 IPC and Section 6 POCSO against the appellant, to which he pleaded not guilty and claimed trial.

3. In trial, the prosecution examined a total of 20 witnesses, the material witnesses being the child victim, her mother, her father, and her grandfather, who were examined as PW-1, PW-2, PW-5, and PW-3 respectively. The MLC of the child victim was proved through Dr. *Garima Vats*, examined as PW-10, and the age of the child victim was proved through the Principal of



her school, examined as PW-11.

4. Learned counsel for the appellant submitted that the Trial Court had overlooked the delay in reporting the incident and that the prosecution had failed to prove even the PCR form. It was contended that the child victim, in her statement recorded under Section 164 Cr.P.C., did not clearly mention the factum of insertion of a finger. Though the prosecution claimed the incident had happened around the time the victim was playing with other children, no other child was examined as a witness. It was also contended that the appellant had been falsely implicated at the instance of the child victim's mother and another neighbour, and in this regard, two defence witnesses were examined; however, their testimony was not appreciated by the Trial Court in the right earnest.

5. The aforesaid submissions are contested by the learned APP for the State, duly assisted by the learned *Amicus Curiae* appointed to represent the child victim. The learned APP contended that the *rukka* and the FIR were registered on the basis of the statement of the child victim. None of the defence witnesses stated that the mother of the child victim, or any of her family members, had any quarrel with the appellant. The learned *Amicus Curiae* submitted, based on the record, that there is no delay in reporting as the incident took place around 6:00 P.M. The child victim thereafter informed her mother, who confided in her family members, and the PCR was then called. DD No. 27-A was recorded at 9:23 P.M., the child victim was medically examined at the first hospital at about 10:30 P.M., and then at the second hospital at about 11:15 P.M. on the same day. The MLC recorded a history of sexual assault, and the child victim clearly stated that after



unclothing her, the appellant had inserted his finger into her vagina. On strength of above, learned *Amicus Curiae* seeks dismissal of the appeal.

6. At the time of recording her deposition, the age of the child victim was recorded as 4 ½ years. The prosecution examined the Principal of the school where the child victim was studying. As per the school records, her date of birth was recorded as 01.12.2009. The age of the child victim was not disputed by the defence either during trial or in the present appeal. Hence, the Court concurs with the finding of the Trial Court holding the victim to be a “child” within the meaning of Section 2(d) POCSO. Before being examined, her competency to understand the questions put to her and to give rational answers was also duly recorded by the Trial Court.

7. In her testimony, the child victim stated that she was studying in UKG. She knew ‘A’ as well as her father, i.e., the appellant. On the day of the incident, after returning from tuition, she went to play on the roof of ‘A’s house with her brother and another child. The father of ‘A’ came there, removed her underwear, and inserted his finger into her vagina. She cried, but the appellant shut her mouth with his hand and threatened her not to disclose the incident to anyone. After returning home, she narrated the incident to her mother. When asked where the appellant had put his finger, the child victim answered that it was in her vagina and anus. She correctly identified the appellant and stated that he was the father of ‘A’. In her cross-examination, she reiterated that the appellant had inserted his finger into her vagina.

8. The mother of the child victim deposed that on the day of the incident, the child victim returned from tuition and, at that time, her son along with



his friends was playing in front of the house. The child victim joined them, and at that time, the appellant came, stated that it was dark, and took all the children to the roof of his house. After 30-45 minutes, her son and his friends came down. Thereafter, when her daughter came down the stairs, she was weeping. Initially, she cried continuously and did not give any reason, but upon consistent probing, she disclosed that the appellant, after removing her underwear, had put his hand on her private parts and also inserted his finger into her vagina and anus. When the witness inspected the private parts of her daughter, she found redness on both private parts, and the child cried due to burning and itching and was feeling pain on simply being touched. After some time, her husband and father-in-law also came to the house and were informed of the incident. Thereafter, all of them went over to the appellant's house, apprehended him, and made a call to the police.

In cross-examination, she was confronted with her statement where she had not mentioned that the children were earlier playing in front of the house and were then taken to the roof by the appellant. She was also confronted with the fact that she had not previously stated that the appellant had put his hand on the child victim's private parts before inserting his finger. The police did not record the statements of the other children since they were all about 2½-3 years old. A suggestion was put to the witness that a dispute had taken place between the appellant and one *Savita* regarding seepage in the common wall between their flats. The witness admitted that there was a common wall between the two flats but denied having any knowledge of such a dispute. She also denied the suggestion that, prior to the incident, she and *Savita* had quarrelled with the appellant over the



spilling of water.

9. The testimonies of the father and grandfather of the child victim were also recorded. They broadly stated the same facts as those deposed by the mother of the child victim.

10. The child victim was first examined at JPC Hospital, and the report was proved through Dr. *Neelu Singh* (PW-18) as Ex. PW-18/1. She stated that on 21.09.2014, a 5-year-old child was brought to her by her mother for medical examination with an alleged history of sexual assault by a neighbour. She examined the child victim and observed that there were no signs of external injury; however, the labia majora was swollen and red, the labia minora was also swollen and red, the hymen was torn, and mild spotting of blood was also present. She referred the child victim to GTB Hospital for further examination. In response to a Court question, she stated that her observations indicated recent sexual activity, specifically due to the swelling and spotting of blood near the hymen.

11. Dr. *Garima Vats*, S.R., Obs. and Gynae Department, GTB Hospital, Delhi (PW-10), during her deposition stated that the MLC was prepared by Dr. *Smita* and that she was acquainted with Dr. *Smita*'s handwriting and signatures, having seen her write and sign. As per the MLC, on local examination, redness was found around the vulva (around the labia minora and fourchette), and slight redness was noted around the anus, though without bleeding. In cross-examination, when a suggestion was put to her as to whether the injuries were suggestive of recent assault, she replied in the affirmative.

12. The appellant is a neighbour of the child victim, and the incident took



place on the roof of his house. In her initial statement recorded during investigation, the child victim stated about insertion of finger by the appellant, who is none other than the father of her friend, and as such, there is no dispute regarding identification. Though during the medical examination of the child victim and in the statement of her mother, it was alleged that the appellant had also inserted his finger into the child victim's anus, the Trial Court rightly discounted this allegation since it was not mentioned by the child victim in her initial statements, and the appellant was consequently acquitted of the charge under Section 377 IPC. However, the allegations pertaining to insertion of a finger in the vagina has been stated consistently and find corroboration in the medical examination of the child victim, as noted hereinabove.

13. As regards the contention of delay, this Court finds that the delay of 1-2 hours is not only insignificant but also stands explained by the deposition of the child victim's mother, who waited for her husband and father-in-law to arrive before confronting the appellant and calling the police.

14. Insofar as the PCR form not being exhibited is concerned, the same has no significance in light of the other evidence that has come on record and the incident reported within no time of its occurrence.

15. As to the contention that the other children were not examined, it is noted that the mother of the child victim stated that the other children were about 2 ½ to 3 years old, and according to the child victim, they had been sent downstairs by the appellant before the offence was committed.

16. With respect to the contention that the appellant's counsel was not



allowed to conduct a very detailed cross-examination, this Court finds that, keeping in view the aim and object of the POCSO Act, and in particular the age of the child victim, who was only 4 ½ years old, and the fact that her deposition before the Trial Court was consistent with her earlier statement, this Court has no hesitation in upholding the conviction and dismissing the present appeal

17. This Court also puts on record its appreciation for the valuable assistance provided by the learned *Amicus Curiae* appointed to represent the child victim.

18. The personal bond furnished by the appellant stands cancelled and the surety bond is discharged.

19. 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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