



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

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Reserved on: 07.11.2025

Pronounced on: 10.11.2025

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CRL.A. 572/2023

MD

.....Appellant

Through: Mr. Aman Panwar, Advocate
(DHCLSC) with Mr. Abhinav Kumar, Mr. Manav
Kaushik, Ms. Rishika Choudhary, Advocates

versus

STATE (NCT) OF DELHI & ANR

.....Respondents

Through: Ms. Shubhi Gupta, APP for State with
SI Vishnu Singh PS Badarpur, Delhi
Mr. Kumar Shailabh, Advocate for victim

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The appellant vide the present appeal, filed under Section 374(2) read with Section 482 Cr.P.C., seeks to challenge the impugned judgment dated 05.07.2022 and order on sentence dated 28.04.2023 passed by learned ASJ-01, Special Court (POCSO Act), South-East District, Saket Courts, Delhi in FIR No. 188/2018 dated 24.05.2018 registered under Sections 376/506 IPC and Section 6 of POCSO Act at P.S. Badarpur, Delhi.
2. The appellant has been convicted under Sections 376(2)(f) and (n) and 506 IPC and Section 6 POCSO Act and sentenced to undergo Rigorous Imprisonment for a period of 10 years for the offence punishable under Section 6 POCSO Act along with fine of Rs. 5,000/- and in default of



payment of fine, to undergo simple imprisonment for 2 months and to undergo Rigorous Imprisonment for a period of 6 months for the offence punishable under Section 506 IPC. The sentences were to run concurrently. Benefit of Section 468 CrPC was extended to the appellant.

3. The wheels of investigation were put in motion when on 24.05.2018, the child victim, who was 13 years old, accompanied by her mother came to the police station and gave her complaint (Ex. PW1/A). The complaint disclosed that the appellant, who was the real father of the child victim, had been for the last 6-7 months doing *zabardasti* with her by establishing physical relations with her and threatening to kill her and saying that no one would believe her. When her health worsened and her mother asked her about it, she disclosed the entire incident to her. On basis of her complaint, the FIR came to be registered. The child victim was medically examined on 25.05.2018 around 2.36 a.m. as reflected in the MLC (Ex. PW5/A). In the clinical notes (Ex. PW5/D) , history of the sexual assault multiple times over 6-7 months and attempts to have forceful sexual intercourse by the appellant were recorded. internal examination was refused, but MTP was advised since the victim was pregnant.

4. Her statement under Section 164 CrPC was recorded on 25.05.2018, wherein she stated that her father (the appellant) used to touch her inappropriately since last 5-6 months by biting her neck and touching her chest, and her 'main part', to describe which she pointed at her vaginal region. Sometime back, her father had taken an off due to ill health. She also had an holiday. In the afternoon, the appellant sent her sister away to her *nani's* house by giving her money. He turned the volume full on the TV and removed his lower clothes and the salwar of the victim, shut her mouth by



his hand and committed *zabardasti* with her. The victim was asked to explain what she meant by *zabardasti*. Magistrate noted that she was nervous and hesitant. She said that he put his *susu* in her *susu* (i.e., his penis into her vagina). When she said that she would tell this to her mother he let her go and promised to not do it again. She said he did it 4-5 times afterwards as well, when they were alone and he used to say that her mom would not believe her and she would send them to prison and leave their home. Day before yesterday, she vomited and when her mother took her to the doctor who prescribed a test which turned out positive. Then her mother asked her, and she finally disclosed the incident.

5. On completion of investigation, charge was framed against the appellant under Sections 6 POCSO Act and 376(2)(i)/506 IPC to which the appellant pleaded not guilty and claimed trial. The prosecution examined 12 witnesses in support of its case. The victim was examined as PW1, her mother as PW3, the IO W/SI *Sarita Rathi* was examined as PW5, FSL report was proved by Dr. *Manoj Kumar*, examined as PW2. The rest of the witnesses were formal in nature who deposed to various aspects of the investigation. In his statement under Section 313 IPC, the appellant claimed false implication on account of him quarrelling with his wife due to his drinking habits, as well as him objecting to the victim's friendship with one boy *Tushar @sahil*, who he claimed was responsible for her pregnancy.

6. Learned counsel for the appellant submits that the appellant is innocent and the Trial Court has erred in convicting him. It is submitted that the sanctity of appellant's samples in doubt as the storeroom keeper does not state about deposit of appellant's samples. In any case, DNA is not conclusive proof and cannot be the sole basis of conviction. The younger



sister and *nani* (Maternal grandmother) of the child victim were not made witnesses. The internal medical examination was also refused initially and there is a delay in the registration of the FIR.

7. Learned APP for the State, duly assisted by learned counsel for the child victim, opposes the present appeal. She submits that the testimony of the child victim is consistent and reliable and finds due corroboration in the testimony of her mother as well as the FSL report which indicates the appellant to be the father of the aborted foetus. It is further submitted that the child victim is entitled to enhanced compensation, considering that she suffered from not just rape, but also pregnancy on account of it, in terms of the Delhi Victim Compensation Scheme.

8. The age of child victim was 13 years at the time of incident. Her birth certificate was placed on record as Ex. P4, as per which her D.O.B. was 10.07.2004. Before proceed further, it has to be noted that there was no contest on the age of the child victim before the Trial Court. No contention has been raised on the aspect of the age of the child victim in the present appeal as well. As such, this Court concurs with the Trial Court's conclusion that the victim was a minor at the time of the commission of offence and is covered under the definition of a 'Child' within the meaning of Section 2(d) of POCSO Act.

9. At the time of recording of statement, the Trial Court had ensured that the child victim was a competent witness, having capacity to understand questions and give rational answers. In her deposition, she reiterated the versions recorded in her earlier statements. She said one day in March 2017, when her mother was at work and her sister was at her *nani's* house, she was present at home with appellant. He was consuming liquor. He did



zabardasti, and *galat kaam* with her. He inserted his penis in her vagina. The victim got scared and cried. The appellant apologized and promised to not do it again, however, he repeated the incident 5-6 times later as well. She did not tell anyone because he threatened her. He repeated the act in February 2018 when no one was present at home. He bolted the door and did *galat kaam*; he inserted his *susu* in her *susu*. She missed her menstrual cycle thereafter, and her health deteriorated in May 2018 and she started vomiting and having stomach ache. Her mother took her to the doctor who advised her to take a pregnancy test. When the pregnancy test result came positive, her mother asked her how she was pregnant and she disclosed the incident. She said though she initially had refused medical examination, but thereafter she was examined in detail and a fresh pregnancy test was conducted in the hospital. On a leading question by the APP, she admitted that before march 2017, her father had misbehaved with her on earlier occasions. He used to touch her chest, inserted his hands in her vagina, bitten her on the neck. She stated that her pregnancy was medically terminated in June 2018.

10. In her cross examination, she was questioned about the details of her *nani*'s house. She admitted that there was periodic quarrel between her parents due to appellant's drinking habit as he used to beat her mother. She denied the suggestion that the appellant asked them to keep away from bad people and due to this there was a quarrel. The victim was unable to tell exact dates of the incidents. She said she did not disclose the incident because the appellant threatened her that her mother would send them both to jail. She denied the suggestion that she had a boyfriend named *Tushar/Sahil* or that she became pregnant due to intercourse with him. She denied that she falsely implicated appellant because he opposed her relation,



she stated that she had no boyfriend.

11. The mother of the child victim was examined as PW3. She deposed that the victim was her eldest daughter. On 23.05.2018, she informed her that she wasn't well. When they went to see a doctor, initially they were told she was ill due to change in weather. When they returned home, the victim vomited and upon being asked by PW3, told her that the appellant was committing wrong acts with her since the last 6-7 months. She also told him that he used to beat her, and threatened to kill her. He did *zabardasti* with her by removing their clothes and having sex with her, and it happened multiple times. PW3 bought a pregnancy kit, and the result came out positive. Thereafter she informed the police. She refused medical examination initially due to fear.

In her cross examination, she admitted that there were altercations with the appellant due to his drinking problem. She denied that the child victim was friends with any *Tushar @ Sahil* or that her husband had a problem with it and that is why he was falsely implicated.

12. The victim was admitted at AIIMS hospital on 31.05.2018 for MTP, which was done on 04.06.2018, and was discharged on 06.06.2018. The fetus, placenta and maternal blood-soaked gauzes were sent to FSL along with blood sample of the appellant. One set of alleles from the DNA Profile generated from the blood gauze of the appellant and one set of alleles from the blood gauze of the child victim were accounted for in the DNA profile generated from the fleshy material, leading to the conclusion that the appellant was the father and the child victim was the mother of the aborted child.

13. A perusal of the evidence would show that the child victim has



remained consistent and categorical in her description of the incident, as is reflected from her complaint to the police, the history recorded in the MLC, her statement under Section 164 CrPC and finally her deposition before Court. She has continuously maintained that the appellant had committed penetrative rape on her 5-6 times over the span of months, even causing her to become pregnant. The testimony of her mother is corroboratory to the extent that she told her about the incident, and they took a pregnancy test which came out to be positive. In view of the clear testimony of the child victim and her mother, the non-examination of the sister or *nani* of the child victim does not make any difference to the prosecution case. In any case, they were never stated to be the eyewitnesses to the incident.

14. Moreover, the FSL report is also corroboratory to the child victim's account as the appellant was found to be the father of the child which was aborted by the child victim. The Supreme Court in Rahul v State¹ has held that the 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 appellant has raised certain doubts on the handling of the samples. The report (Ex.PW2/A) records that the exhibits were received in a sealed condition. The FSL was proved by Dr *Manoj Kumar*, Junior Forensic/Chemical Examiner (Biology), FSL. Anything could not be elicited in his testimony which would discredit the report. Ct. *Karamveer* (PW8), who had collected the samples of the appellant states that the same were handed over to the IO *Sarita Rathi* (PW5). Pertinently,

¹ (2023) 1 SCC 83

² (2023) 2 SCC 353



the examination and cross-examination of the I.O. and the Store keeper HC *Arun Sharma*, (PW9) is silent on aspect of deposit of appellant's sample in the Store room. However, the Road Certificate vide which the samples were drawn from the Store room and taken to FSL was exhibited as Ex.PW9/B and the same mentions the description of all the exhibits including the sample of appellant. Even if the appellant's contention on this aspect is taken at its face value, the testimony of the child victim is found to be consistent, credible and reliable which is held to be sufficient to be the sole basis to uphold appellant's conviction.

15. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts. [Ref: *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat*.³]

16. Though the appellant has taken the defence that he was falsely implicated due to quarrels with his wife and his objection to the victim's relationship with one *Tushar @ Sahil*, the same has been denied consistently and no evidence has been led by the appellant to substantiate his defence. The contention that the victim, merely because her father disapproved of her choices, would go on to false accuse him of committing rape upon her, appears to be farfetched.

17. On an overall view of the facts and circumstances, this Court finds no ground to interfere with the conviction of the appellant and the same is upheld.

18. Coming to the aspect of compensation, the Trial Court, while noting

³ (2025) 2 SCC 399



that the victim had earlier received interim compensation of Rs. 75,000/-, had directed payment of Rs. 9,75,000/- by the Secretary, DLSA, South East district. As recorded in the order dated 15.10.2025, this amount already stands received. Keeping the Delhi Victim Compensation Scheme as a guideline, it is seen that as per the Schedule to Part II of the Scheme, titled as "Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes", the victim is entitled for compensation under two heads, 'rape' as well as 'pregnancy on account of rape'. The maximum compensation provided for these categories is Rs. 7 lacs and Rs. 4 lacs respectively. Considering that POCSO is a beneficial legislation aimed to ameliorate the suffering of child victims of sexual abuse, the import of judgements given by the Co-ordinate Benches of this Court in X (Through Mother and Natural Guardian v. State and ors)⁴, and X v. State of NCT of Delhi (Acting through its Secretary)⁵ and further considering the fact and circumstances of the present case, this Court is of the opinion that the maximum compensation is to be treated as the minimum compensation which can be given. Since the victim was a 'minor' for whom Clause 9 (Part-II) of the DVC Scheme 2018 says that the minimum and maximum limits of compensation would be deemed to be 50% higher than those mentioned in the Schedule, leading to a maximum compensation for the two categories to be Rs. 10.5 lacs and Rs. 6 lacs respectively. Thus, the victim is entitled to total compensation of Rs. 16.5 lacs. Since compensation of Rs. 10.5 lacs already stands received, the victim is now entitled to receive a further sum of Rs. 6,00,000/-.

⁴ 2021 SCC Online Del 2061

⁵ CRL.A. 63/2022 decided on 20.10.2022



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19. Thus, keeping in mind the facts and circumstances of the case and the legal framework within which it is to be decided, the DSLSA is hereby directed to disburse and pay further compensation in the sum of Rs.6,00,000/- (Rupees Six lacs Only) to the victim forthwith and in any event within 04 weeks of receipt of this order through demand draft.
20. The appeal is dismissed in the above terms.
21. A copy of this judgment be communicated to the concerned Trial Court and Member Secretary, DSLSA (Rouse Avenue) and Secretary, DLSA, South-East .
22. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 10, 2025/ry