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

% Reserved on : 02.09.2025
Pronounced on : 13.11.2025

\+ **CRL.A. 174/2023**

RAM SNEHI .....Appellant
Through: Ms. Supriya Juneja and Shreya Lamba, Advocates.

versus

STATE (NCT OF DELHI) & ANR .....Respondents
Through: Mr. Pradeep Gahalot, APP for State with WSI Bimla and SI Lal Chand PS S.B. Dairy, Delhi.
Ms. Gayatri Nandwani, Advocate (DHCLSC) with Ms. Mudita Sharda and Mr. Adrian Abbi, Advocates for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 374(2) Cr.P.C. read with Section 482 Cr.P.C., seeking setting aside of the impugned judgment dated 13.09.2022 and the order on sentence dated 03.11.2022 passed by the learned ASJ, FTSC (POCSO), North District, Rohini Courts, New Delhi, in SC No. 58481/2016 arising out of FIR No. 1306/2014 registered under Sections 376 IPC and 6 POCSO at P.S. Shahbad Dairy.

Vide the impugned order on sentence, the appellant was directed to undergo RI for a period of 12 years alongwith fine of Rs.8,000/-, in default

whereof he would undergo SI for 15 days, for the offence punishable under Section 6 POCSO; and RI for a period of 6 months for the offence punishable under Section 342 IPC. Both sentences were directed to run concurrently and the benefit under Section 428 Cr.P.C. was extended to the appellant.

FACTS AND OVERVIEW

2. On 15.11.2014, DD No. 18A came to be recorded at P.S. Shahbad Dairy, wherein the caller informed that an offence had been committed against a girl. The statement of the mother of the child victim was recorded to the effect that the victim was a girl child aged 8 years studying in 4th standard. The mother, who was working as a house helper, stated that while she was at work, she received a phone call from a neighbour informing her that the appellant had committed a wrong act with her daughter. When she reached the hospital, her daughter told her that on that day, the lady living above the house of the appellant had asked her to bring a slipper which had fallen down. When she was returning after giving the slipper, the appellant pulled her inside his room and closed the door. Thereafter, the appellant removed his pants and her *pyjami*, and made her hold his penis. The accused then attempted to insert his urinating part into her urinating part and, when she started crying and screaming, he gagged her mouth. At that moment, the victim's sister arrived, and the appellant left her. The sister raised an alarm, upon which people from the neighbourhood gathered and apprehended the appellant, later handing him over to the police. The FIR was registered, the victim was medically examined, and her statement under Section 164 Cr.P.C. was recorded. The Trial Court initially framed charges against the

appellant under Sections 6/8 POCSO; however, the same were later amended and charges under Sections 376/354/342 IPC and Sections 6/10 POCSO were framed, to which the appellant pleaded not guilty and claimed trial.

3. The prosecution examined 16 witnesses in all, the material witnesses being the child victim (PW-1), the mother of the child victim (PW-14), the *jaithani* of the child victim's mother (PW-3), and the cousin sister of the victim (PW-15). The date of birth of the child victim was proved through a Clerk from the Office of the Sub-Registrar (Birth and Death), who was examined as PW-2. The MLC of the victim was proved through Dr. *Nisha Kumari* (PW-4) and Dr. *Amit Shokeen* (PW-6). The other prosecution witnesses deposed as to different aspects of the investigation. The appellant did not lead any evidence in his defence.

CONTENTIONS

4. Learned counsel for the appellant contends that the testimony of the child victim does not inspire confidence and is liable to be discarded, as part of her testimony wherein she stated that the appellant had applied oil on her private part was disbelieved by the Trial Court. Further, the child was medically examined twice, and in neither of the MLCs was any injury noted. It was also urged that the Trial Court permitted only limited cross-examination, as no suggestions were allowed to be put in view of her tender age, with an observation that all contradictions would be considered at the relevant stage.

5. The contentions were refuted by learned APP for the State, who submitted that in both the MLCs of the victim, the history of assault was

narrated by the aunt as well as the child victim. He further submitted that the initial DD was also about the offence of rape and the version of the victim finds support in the testimony of her cousin sister as well as her aunt.

AGE OF THE VICTIM

6. The prosecution has claimed the child victim to be aged about 8 years, and her date of birth was proved from the municipal records as 13.04.2006, which was exhibited through the deposition of *Mukesh Kumar*, Record Clerk from the Office of the Sub-Registrar (Birth and Death), examined as PW-2.

7. No contest was made to the said record before the Trial Court or even in the present appeal. Hence, the victim is held to be a "child" within the meaning of Section 2 POCSO.

PROSECUTION EVIDENCE

8. The child victim was examined as PW-1, and before proceeding to record her deposition, the Trial Court recorded its satisfaction as to her ability to understand the questions put to her and give rational answers. The child victim stated that though she did not remember the date and month, the time was about 1:30 P.M. She was sitting on a cot when an aunty residing in the neighbourhood, above the house of the appellant, called out to her and asked her to hand over the slipper of her son that was lying on the ground. She took the slipper, went upstairs, and returned it. While returning from the lady's house, the appellant caught hold of her and took her inside his room. She tried to raise alarm, but he gagged her mouth, made her lie on the bed, removed her *pyjami* and his pant, and applied oil on her urinating part as well as on his own. He then inserted his urinating part into her urinating part. At that time, her cousin arrived and saw the appellant committing the

wrong act. When the appellant saw her cousin, he left the child victim. Police was called, and the victim was taken for medical examination. Her statement under Section 164 Cr.P.C. was recorded, and she identified the same as Ex. PW-1/A.

In her cross-examination, she stated that she informed her *taiji* (aunty) about the incident after coming out of the appellant's room. She stated that her sister might have seen her from the space underneath the door of the appellant's room. Her elder sister's daughter had noticed the appellant taking her inside his room and told her sister about it. She reiterated that she tried to raise an alarm but the appellant had gagged her mouth. While she stated that the I.O. as well as her mother had told her what to depose in Court, she categorically stated that when her statement under Section 164 Cr.P.C. was recorded, she told the Magistrate what had actually happened and not as per the instructions of her mother. On a Court question being put to the child victim, she stated that she had deposed about what had happened with her and not as per the instructions of her mother. She denied there being a quarrel between the appellant and her mother, and stated that she did not know whether her mother had a dispute with the appellant regarding a plot in front of their house. In view of the tender age of the witness, no suggestions were given to her.

9. The aunt of the child victim, aged about 60 years, was examined as PW-3. She deposed that she worked as a domestic helper and, on the day of the incident, had returned home around noon after finishing work, when a girl from the neighbourhood informed her that the child victim was inside the appellant's room. The mother of the victim was not at home at that time.

PW-3 stated that upon reaching the spot, she heard the cries of the child victim and, on looking through a gap in the door, saw that the appellant had lowered the underwear of her niece and was lying over her completely naked. The appellant had applied oil on the private parts of the victim and a bowl containing oil was lying nearby. The witness broke open the door and pulled the appellant off. Someone had called the police and the officials arrived thereafter. She went to the hospital along with her niece, where the niece's medical examination was conducted.

In her cross-examination, she stated that she had informed her neighbours upon learning of the incident, and by the time she reached the spot, several people from the locality had already gathered there. She reiterated that whatever she had deposed before the Court had also been stated by her to the police. However, she was confronted with her statement recorded under Section 161 Cr.P.C., where the same did not find mention. She stated that she could not tell the names of the public persons who had gathered at the spot and that they were not her neighbours, though they were from the same locality and she had seen them before. She denied the suggestions that the victim had already been removed to the hospital by the time she reached the spot, that she did not see the appellant on the date of the incident and that his name was later told to her by the police. She also denied the suggestion that she had no personal knowledge of the incident and had deposed on the basis of hearsay.

10. The mother of the child victim was examined as PW-14. She deposed that she worked as a domestic helper and stated that on the day of occurrence, she received a call from her nephew at around 1:00-2:00 p.m.

informing her that the appellant had done a wrong act to her daughter. She immediately returned home and, on the way, learnt that the police had taken her daughter to the hospital along with her *jethani* and her niece. When she reached MV Hospital, she was informed that her daughter had been referred to BSA Hospital, where the medical examination of the child was conducted. She refused permission for internal medical examination. She further deposed that on inquiring from her daughter, the latter told her that an aunty residing above the appellant's house had asked her to return slippers that had fallen down, and that while she was returning after doing so, the appellant caught hold of her, pulled her inside his room, and tried to commit wrong act with her. When the child screamed, her cousin sister 'R' arrived at the spot, upon which the appellant left the child. Public persons apprehended the appellant and handed him over to the police.

In her cross-examination, PW-14 stated that the appellant had been residing in their locality for about 10-11 years and that, at the time of the incident, he was living alone on the ground floor of his house, while a tenant family resided on the first floor. She denied the suggestions that she had any altercation with the appellant prior to the incident or that her *jeth-jethani* were pressurizing the appellant to sell of his property and leave from there. She also denied the suggestions that her daughter had been tutored to depose against the appellant, that the appellant had been falsely implicated due to his enmity with her *jeth* and *jethani*, or that she was deposing falsely at the instance of her *jeth* and *jethani*.

11. The victim's elder sister, 'R', aged about 30 years, was examined as PW-15. She deposed that at about 1:00 p.m. on the day of the incident, she

returned home from work and noticed that her younger sister was missing. On making inquiries, she was informed that the child was inside the appellant's room. She went to the appellant's house and knocked on the door, but it was not opened. She then looked through a gap in the door and saw her sister, unclothed below the waist, with the appellant, who was completely naked. The appellant had gagged her sister's mouth with a piece of cloth. She immediately raised an alarm, upon which the appellant wore his clothes and tried to escape from there, but he was apprehended by the public persons gathered at the spot. Someone from the locality informed the police, who arrived shortly thereafter. The child was taken to the hospital for medical examination, and the statement of the witness was recorded by the police.

In her cross-examination, PW-15 denied the suggestions that she was not present at the spot on the day of the incident and that she had deposed falsely at the instance of her family members to falsely implicate the appellant.

MEDICAL AND FORENSIC EVIDENCE

12. The medical evidence comprises two MLCs of the child victim (Ex. PW-4/A and Ex. PW-6/A). In both, the child is noted to be conscious and oriented, and to have been brought with an alleged history of sexual assault. No external injury was noted in either MLC. The mother of the child victim declined permission for internal examination. Neither MLC records any sign of injury or tenderness. No FSL report is on record, as no samples were seized by the examining doctors.

STATEMENT OF THE ACCUSED UNDER SECTION 313 CR.P.C.

13. In his statement under Section 313 Cr.P.C., the appellant denied the allegations and claimed false implication. He stated that there was a dispute between him and the tenant of the child victim's mother regarding water, and that the tenant's family had threatened to implicate him falsely. He maintained that he had no quarrel with the child's mother herself. No defence evidence was led.

ANALYSIS AND FINDINGS

14. I have heard the learned counsels for the parties and carefully examined the record. Notably, the age of the child victim is not in dispute and notwithstanding, stands proved from the municipal records exhibited by PW-2.

15. On a perusal of the testimonies of the key prosecution witnesses, namely the child victim (PW-1), the mother of the child victim (PW-14), the *jaithani* of the child victim's mother (PW-3), and the cousin sister of the victim (PW-15), it emerges that their depositions on the aspect of the child victim having been taken inside the appellant's room and restrained there until a relative arrived and raised an alarm are clear, cogent, and consistent. The testimony of the aforesaid witnesses proves beyond reasonable doubt the ingredients of wrongful confinement under Section 342 IPC. The conviction of the appellant under the said provision stands satisfied and is accordingly upheld.

16. The remaining key question arising for consideration is whether the prosecution has proved the charge of aggravated penetrative sexual assault under Section 6 POCSO beyond reasonable doubt, or whether the evidence on record instead makes out a case of attempted commission of such an

offence, punishable under Section 18 read with Section 6 POCSO.

17. Firstly, the earliest version forming the basis of the FIR, namely the statement of the mother of the child victim, attributes only an attempt, and even in her Court deposition, the mother of the child victim has stated that the appellant "*tried to commit*" the wrong act upon her daughter.

18. Secondly, both the MLCs of the child victim record no external injury and no signs of tenderness. No internal medical examination was carried out as the mother refused permission for the same. No exhibits were collected and sent for analysis, because of which no forensic evidence is on record.

19. Thirdly, material improvements and contradictions exist in the depositions of the aunt of the child victim/PW-3 and the sister of the child victim/PW-15. PW-3 deposed that she heard the cries of the child victim, looked through a gap in the door, saw the appellant lying naked over the child with her underwear lowered, and broke open the door to pull him away. PW-15, on the other hand, stated that she was told the child was inside the appellant's room, that the door was not opened when she knocked, and that when she peeped through the gap she saw her sister unclothed below the waist with the appellant, who had gagged her mouth with a cloth and tried to escape after she raised an alarm. Significantly, neither PW-3 nor PW-15 refers to the presence or actions of the other, despite both claiming to have witnessed the same critical moment.

Nothing stated by PW-3 in her Court deposition regarding having seen the appellant completely naked lying over the half-undressed child victim, or having broken open the door, finds mention in her statement under Section 161 Cr.P.C. The testimony of PW-15, therefore, does not

inspire confidence and is disbelieved in its entirety. Further, PW-15 also does not state that she saw penetration.

20. The allegation of penetration emerges for the first time in the child's statement under Section 164 Cr.P.C. recorded on 17.11.2014, and later in her Court deposition. Ordinarily, the testimony of a child victim, if truthful and consistent, can form the sole basis of conviction. However, here, certain features introduce reasonable doubt. The child's deposition contains the allegation that the appellant applied oil on her private part, but this assertion was disbelieved by the Trial Court in the impugned judgment. The fact that one significant portion of her testimony has already been rejected weakens her reliability on the further and graver assertion of penetration.

21. During cross-examination, the child victim also stated that the I.O. and her mother had told her what to depose in Court, though she added that her Section 164 statement reflected the truth. The child's Section 161 Cr.P.C. statement, although not exhibited, is a part of the record and it is observed that the term mentioned therein is *"daalne laga"*. Considering that no suggestions were allowed to be put to the child victim in view of her tender age and it was stated that *"all contradictions shall be considered at the relevant stage"*, the reliability of the version introducing penetration becomes uncertain.

22. Certain contentions put forth by the learned counsel for the appellant also assume significance in view of all of the aforesaid. The nephew who is stated to have first informed the mother of the incident and whose information triggered the mother's return home, was not examined. The tenant family, with whom the appellant admittedly had a dispute regarding

water supply, was also not examined despite the appellant's statement under Section 313 Cr.P.C. that they had threatened to falsely implicate him. No effort was made to collect or seize the cloth allegedly used to gag the child victim, nor the bedsheet from the room, as confirmed by the I.O./PW-16. While these omissions may not be individually fatal to the case of the prosecution, this Court is of the considered view that they become material when the prosecution presses the charge of completed penetrative sexual assault.

23. As noted, there are inconsistencies between the mother's version (attempt), the FIR (attempt), the earliest medical record (sexual assault as told by the aunt), and the allegation of penetration emerges only at the Section 164 stage and thereafter.

24. Having independently considered the testimonies of PW-1, PW-3, PW-14, and PW-15, this Court finds that the appellant performed overt acts with clear sexual intent and had taken steps directly tending to the commission of aggravated penetrative sexual assault on a child under 12 years of age, thereby satisfying the legal standard for attempt under Section 18 read with Section 6 of the POCSO Act. However, the prosecution has not proved the fact of penetration beyond reasonable doubt. The consistent allegation of attempt in the mother's versions, the absence of medical corroboration, the emergence of penetration only at the Section 164 stage, together create a reasonable doubt about whether the act in question crossed the threshold of penetration. The conviction for the completed offence under Section 6 POCSO and Section 376 IPC cannot, therefore, be sustained.

25. Consequently, the conviction of the appellant under Section 376 IPC

and Section 6 POCSO is set aside and is substituted by a conviction for the offence of attempt under Section 18 read with Section 6 POCSO. As stated before, the conviction under Section 342 IPC is upheld.

SENTENCE

26. Now, the matter turns to the question of sentencing. The latest nominal roll on record dated 27.08.2025 reflects that that the appellant, as on date, has remained in custody for about 9 ½ years. Considering that the conviction has now been altered to an attempt, the appellant's sentence for the offence under Section 18 read with Section 6 POCSO is reduced to the period already undergone by him. The sentence under Section 342 IPC shall also be treated as already undergone.

The sentence of fine imposed upon the appellant, however, is maintained. In default of payment, the appellant shall undergo the sentence in default of payment of fine as directed by the Trial Court.

Subject to payment of fine, the appellant shall be released from jail forthwith, if not required in connection with any other case.

27. The present appeal is partly allowed in the above terms.

28. A copy of this judgment be communicated to the Trial Court, and to the concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 13, 2025
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