



2025:DHC:11463



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

% Reserved on : 11.12.2025
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+ **CRL.A. 409/2016**

AJAY @ GANGA RAMAppellant
Through: Ms. Inderjeet Sidhu, Advocate
(DHCLSC) with Mr. Lalit
Choudhary, Advocate

versus

STATERespondent
Through: Ms. Shubhi Gupta, APP for State with
Ms. Yusra, Advocate with WSI
Bimla, P.S. Shahbad Dairy.
Ms. Gayatri Nandwani, Advocate
(DHCLSC) for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 29.10.2014 and order on sentence dated 31.10.2014 in proceedings arising out of FIR No. 33/2013 registered under Sections 363/376/511 IPC and Section 10 POCSO at P.S. Shahbad Dairy.

Vide the impugned order on sentence, the appellant was sentenced to undergo RI for a period of 3 years alongwith payment of fine of Rs.5,000/-, in default whereof he would undergo SI for 1 month, for the offence



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punishable under Section 363 IPC; and RI for a period of 5 years alongwith payment of fine of Rs.5,000/-, in default whereof he would undergo SI for 1 month, for the offence punishable under Section 10 POCSO. Both sentences were directed to run concurrently and the benefit under Section 428 Cr.P.C. was granted to the appellant.

2. The case of the prosecution is that on 27.01.2013 at about 10:45 AM, the police received information about a girl aged around 3-4 years having been sexually molested by a boy in Sector 24, Rohini. The same was recorded as DD No. 17B and assigned to HC *Sanjay Shinde* for necessary action. Upon his reaching the concerned spot along with Ct. *Mahesh*, they discovered that public persons had already apprehended a boy (the appellant herein), who, being accused of having committed rape, was handed over to the police. The matter was thereafter entrusted to W/SI *Anju Dahiya* for investigation. She arrived at the spot, and the appellant was sent to a hospital for his medical examination through Ct. *Mahesh*. The child victim, on the other hand, was taken to the hospital for medical examination by W/Ct. *Nancy*, accompanied by the child's mother and uncle. The I.O. recorded the statement of the child victim's mother. She stated that her daughter, aged 4 years, was playing outside the godown near their house, but at about 10:00 AM, she discovered that her child was not present there. She searched for her daughter here and there, but to no avail. Upon returning to the godown, she saw that one boy had her daughter lying naked on a cot inside a room in the godown and was removing his pants to try and do "galat kaam" with her. Upon seeing this, she immediately pushed the said boy and saved her daughter, and in the meantime, several neighbours gathered at the spot and



started beating the said boy. On inquiry, the said boy's name was revealed to be *Ajay Kumar @ Ganga Ram*; he had been living on rent in the neighbourhood. Based on this statement of the child victim's mother, the I.O. got the FIR registered through HC *Sanjay Shinde*, prepared the site plan at the complainant's instance, and formally arrested the accused. After the respective medical examinations of the child victim and the appellant, the doctor handed over the sealed *pullandas* to the police, which were deposited in the *Malkhana* by the I.O.; and the statements of the child victim and her mother were recorded under Section 164 Cr.P.C. The appellant was medically examined to ascertain his age, and his age was opined to be between 18 to 20 years. After completion of the investigation, the chargesheet was filed. Charges under Section 363 IPC and Section 10 POCSO were framed against the appellant, to which he pleaded not guilty and claimed trial.

3. The prosecution examined 12 witnesses in support of its case, with the most material witnesses being the complainant, i.e., the child victim's mother, examined as PW-1; and the child victim herself, examined as PW-2. PW-3 is the *devar* of the complainant who reached the spot after the incident in question and called the police. PW-4 deposed as to his ignorance about the present case and therefore did not support the case of the prosecution. PW-5 is the learned MM who recorded the statements of the child victim and her mother under Section 164 Cr.P.C., and she proved the same during her testimony. PW-6 is the NGO counsellor who counselled the child victim on being called by the police. The remaining witnesses are police officials who deposed as to various aspects of the investigation. The appellant



admitted certain documents under Section 294 Cr.P.C., and the witnesses regarding formal proof of the said documents were not examined.

4. The appellant's statement under Section 313 Cr.P.C. was recorded, wherein he denied all the allegations put to him. He set up a defence of *alibi* and false implication, stating that on the relevant day he had gone to collect payment from Anshul Caterers at A-240, Deep Vihar, Panshali, Delhi, where he was working. He stated that he was slightly intoxicated at the time and, when the owner asked him to wait, he insisted on payment. In the meantime, 4-5 boys working for the owner came, beat him up, and he was picked up by the police thereafter. He stated that he has been falsely implicated him in the present case; however, he did not lead any evidence in his defence.

5. The mother of the child victim, deposing as PW-1, stated that on 27.01.2013, all three of her children, including the child victim herein (her daughter, aged around 4 years), had gone to play outside their godown situated near their house. After some time, her son 'A' came back and told her that the child victim had been lifted by one boy and taken to the godown. The witness hurriedly reached there and found her daughter laid down on the cot lying inside the godown and saw that the boy (identified in Court as the appellant herein) had already removed her underwear, that he was in the process of pulling off his own pants, that he had put his mouth on the child victim's, and that he had strongly embraced her, with the intention of committing wrong act upon her. The witness caught hold of the appellant's vest from the back, separated him from her daughter, and rescued her. She later pushed him outside the godown onto the street, where a lot of public



persons had gathered, and they started beating him. She stated that her daughter's face was covered with the appellant's saliva. She made a call to her *devar*, who came at the spot and made a call to the police.

6. The child victim, aged about 4 years, was examined as PW-2. The Trial Court after making the preliminary inquiry before recording her deposition noted that the child was understanding the question put to her. On being asked whether the appellant had done anything to her and whether she had met him before, the child victim replied in the affirmative by nodding her head. On being asked what the appellant had done to her, she kept mum. Despite repeating the question, she kept mum, and hence the victim's examination was terminated, stating that there was no purpose to the same. The child victim was not cross-examined despite opportunity being given.

7. I have heard the learned counsels for the parties and gone through the record. The question arising for consideration is whether or not it has been proven beyond reasonable doubt that the appellant kidnapped the child victim from the lawful guardianship of her parents and committed aggravated sexual assault upon her.

8. It is pertinent to note at the outset that the age of the child victim, stated to be 4 years at the time of the incident by her mother (PW-1), is not under dispute. The same was not challenged before the Trial Court and no arguments regarding the same have been agitated in the present appeal. The victim is accordingly held to be a "child" under Section 2 POCSO.

9. It has been contended that the appellant was convicted based on the testimony of the child victim's mother, and that the various statements given by her are not in consonance with each other. The victim's mother stated in



her complaint (Ex. PW-1/X) that she saw that the appellant had made the child victim lie naked on the cot and, taking off his pants, was attempting to commit “*galat kaam*” upon her; whereas in her statement recorded under Section 164 Cr.P.C. she has stated that she witnessed the appellant taking off the child victim’s underwear, that the victim’s face had saliva all over it, and that the victim was crying loudly; and in her Court deposition she has stated that the appellant had already removed the child victim’s underwear, made her lie naked on the cot, and that he had the child victim in a strong embrace with his mouth on her’s, and that he was in the process of further sexually assaulting the victim.

10. Notwithstanding the above, upon a careful consideration of all the evidence on record, it is observed that the mother of the child victim has remained categorical insofar as the core allegations against the appellant are concerned. The prosecution case proceeds on the foundational facts that when the child victim’s mother came back to the godown after searching for her daughter and not finding her, she saw her daughter naked and in the custody of the appellant. The appellant stands convicted under Sections 363 IPC and Section 10 POCSO in the present case; the core allegations against him are of taking the child victim out of the keeping of her lawful guardians without consent and committing aggravated sexual assault as he sexually assaulted a child below 12 years of age.

11. This Court is of the considered view that the inconsistencies pointed out by the learned counsel for the appellant do not affect the substratum of the prosecution case as the core allegations against the appellant are consistently borne out by the record.



12. Further, despite the minor inconsistencies in her versions, the child victim's mother in the present case cannot be said to be a false witness or her testimony held to be unreliable. The prosecution case is also supported by PW-3, the brother-in-law of the complainant. He deposed to receiving a call informing him that his sister-in-law was calling him, seeing people gathered outside the godown, being informed that appellant tried to commit rape on the child victim, and public persons catching hold of him and beating him. He called the PCR.

13. Even the defence taken by the appellant in his statement under Section 313 Cr.P.C. has failed to establish his plea of *alibi* and false implication. As stated earlier, the appellant has claimed that at the time of the incident, he had gone to his place of employment, Anshul Caterers, to collect his payment, but 4-5 boys working for the owner of the said establishment beat him up and he was then falsely implicated in the present case. However, the appellant has failed to establish any connection between Anshul Caterers, his alleged place of employment, and the victim/victim's mother. Not even a hint of motivation to falsely implicate the appellant, insofar as the child victim and her family are concerned, is borne out from the record. In view of the same, no credibility can be bestowed upon the appellant's plea of false implication.

14. Furthermore, it is trite law that once the foundational facts of the prosecution case are proved, Section 29 POCSO raises a statutory presumption against the accused¹. The foundational facts in the present case certainly stand proved in view of the discussion above, and the appellant has

¹ Sambhubhai Raisangbhai Padhiyar Vs. State of Gujarat, (2025) 2 SCC 399



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failed to rebut the following presumption under Section 29.

15. Considering all the above, this Court is of the considered view that the well-reasoned impugned judgment and order on sentence passed by the Trial Court do not warrant interference. The same are accordingly upheld and the present appeal is dismissed.

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

17. A copy of this order be communicated to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 16, 2025

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