



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

% Date of Decision: 18.09.2025

+ **CRL.A. 289/2018**

MEHARBAN

.....Appellant

Through: Mr. Ravi Nayak, Advocate for  
DHCLSC.

versus

STATE

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with  
SI Harish, P.S. Lahori Gate.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT (ORAL)**

1. A perusal of the record shows that the appellant has completed his entire sentence and was released from jail on 19.08.2019 after completion of sentence and payment of fine. Despite efforts, the appellant remains untraceable. Accordingly, the Court proceeds to hear the appeal on merits in terms of the decision of the Supreme Court in Bani Singh & Ors. v. State of U.P., reported as **(1996) 4 SCC 720**.

2. The present appeal filed under Section 374(2) Cr.P.C. has been preferred against the judgment of conviction dated 04.01.2018 and the order on sentence dated 06.01.2018 passed in the context of FIR No. 14/2015 registered under Section 10 POCSO at P.S. Lahori Gate. Vide the aforesaid order on sentence, the appellant was sentenced to undergo RI for a period of 5 years in addition to payment of fine of Rs.2,000/-, in default whereof he



would undergo SI for 1 year, for the offence punishable under Section 10 POCSO. The benefit of Section 428 Cr.P.C. was granted to the appellant.

3. The facts as narrated in the charge-sheet are that the present FIR came to be registered on the complaint of the mother of the child victim, alleging that her minor son used to commute by rickshaw to school and the appellant, being the rickshaw-puller, used to take her son to school in the morning and bring him back in the afternoon. On 13.01.2015, when her son returned home from school, he expressed his reluctance to go back and appeared frightened and worried. On inquiry, he told the complainant that the *rickshawwala* who used to bring him from school used to kiss his lips and touch his private parts. He stated that the said act was committed on the stairs below his house after all the other children had been dropped off. He also stated that he had been committing the said act for a considerable period of time. On the next day, the mother of the child victim, along with her son and her brothers, went to the school, where the appellant was identified by the child victim as the concerned rickshaw-puller. The appellant was thereafter given beatings by the public, and a PCR call was made, resulting in the recording of DD No. 19A, subsequent to which the FIR in the present case came to be registered.

4. The Trial Court framed a charge under Section 10 POSCO against the appellant, to which he pleaded not guilty and claimed trial.

5. The prosecution examined 12 witnesses in all, the material witnesses being the child victim's mother and the victim's uncle.

6. The appellant denied the case of the prosecution; however, in his statement recorded under Section 313 Cr.P.C., he admitted to kissing the lips of the child victim under the influence of alcohol.



7. Learned counsel for the appellant contends that there was a delay in reporting the incident, as the child victim himself stated at the time of disclosure that the incident had been occurring for a considerable amount of time. He further argued that, the testimony of the child victim is not corroborated by his medical examination.

8. On the other hand, the learned APP for the State defends the impugned judgment by contending that there was no delay in reporting the incident as the child victim informed his mother after the occurrence of the latest incident, and the concerned FIR came to be registered the very next day.

9. The child victim was aged eight years at the relevant time. His date of birth was proved through the testimony of the principal of the school, examined as PW-6. She deposed that the school admission was done on the basis of the birth certificate issued by the Sub-Registrar of Births and Deaths, a copy of which was placed on record and exhibited as Ex. PW-6/C. No contest has been made as to the age of the child victim either during trial or in the present appeal. The victim is a “child” within the meaning of Section 2(d) POCSO.

10. The child victim was examined as PW-5. The Trial Court recorded its satisfaction as to the competency of the child victim to depose.

11. In his statement (without oath), the child victim stated that he used to travel to his school in a rickshaw. The rickshaw-puller used to take him near the stairs of his house and kiss him on his lips and press/rub his *susu*. On being asked as to what he meant by “*susu*”, he replied that “*susu*” is used to urinate. He further explained that the said “*galat kaam*” was done when he was brought back from school to home. He further stated that he was the last



child to be dropped off when being brought back from school. The child victim correctly identified the appellant as the concerned rickshaw-puller. In cross-examination, a suggestion was given that the appellant never took the child victim from school to home, which was denied. Another suggestion was put that the child victim's mother used to drop him near the rickshaw and also pick him up when the rickshaw reached near his home. The suggestion was denied. The child victim stated that his mother was not coming down to leave him near the rickshaw or pick him up in the afternoon. The victim also denied that there was no swelling or injury on his lips after the wrong act was committed by the appellant and that he was deposing falsely at the instance of his parents and police officials.

12. The child victim's mother, examined as PW-4, stated that her son expressed his unwillingness to go to school and that she noticed some swelling on the lips of her son. On inquiry, her son told her that the *rickshawala* who used to drop him home from school used to suck his lips and also rub his penis. He stated that the said act was done on the stairs leading to their house and that the same had been happening over the last 2-3 months. The witness narrated the facts to her brothers, namely, *Suman*, *Deepak*, and *Ajay*. Next day, she along with her son and her brothers went to the school and upon identification by her son, the said rickshaw-puller was apprehended. The witness was cross-examined. She stated that at the time of the incident, her husband was out of Delhi. The incident was told to her by her son at around 12:00 midnight. She admitted that payment for the rickshaw was made to one *Mahesh*, who owned a number of rickshaws, including the one driven by the appellant, and provided the service of transporting children to and from the school. She stated that different



rickshaw-pullers used to take her child to school in the morning, but only the appellant used to bring her son back from school in the afternoon. She clarified that it was a private conveyance. She was confronted with her prior statement where the factum of noticing of swelling was not stated by her. She was also confronted with her initial complaint where she had not stated that on being told by her son, she had informed the same to her brothers.

The child victim's uncle, *Deepak*, was examined as PW-9. He deposed that on being informed of the incident by his sister, he and his brother *Ajay* accompanied her and her son to the school of the child victim, where on the pointing out of the child victim, the appellant was apprehended.

13. The MLC of the child victim was exhibited through Dr. *Manju Chugh*. The MLC did not note any external injuries over the genital area.

14. The appellant, in his statement recorded under Section 313 Cr.P.C., while answering Q. No. 14, stated that he used to ply a rickshaw for picking up and dropping students to and from school, and there was not a single other complaint against him. He further stated that somebody had mixed alcohol in his cold drink, after drinking which he lost consciousness, and that he had only kissed the lips of the child victim. Regardless of that, the appellant has not set up any defence as to why he would be falsely implicated.

15. At this stage, it is appropriate to state the position of law regarding the appreciation of the testimony of a child victim, as recently analysed by the Supreme Court in State of Madhya Pradesh vs. Balveer Singh, reported as **2025 SCC OnLine SC 390**:

*“58. We summarize our conclusion as under:-*



- (I) *The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.*
- (II) *As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*
- (III) *Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*
- (IV) *The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.*
- (V) *The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*
- (VI) *The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*
- (VII) *There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for*



*conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.*

*(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.*

*(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.*

16. In State of Punjab Vs. Gurmit Singh, reported as (1996) 2 SCC 384, the Supreme Court, while dealing with the case of rape of a minor, had held that the evidence of the victim of sexual assault is sufficient for conviction and does not require any corroboration unless there are compelling reasons for seeking the same.

17. Further, in Ganesan Vs. State, reported as (2020) 10 SCC 573, the Supreme Court, dealing with a case of sexual assault of a minor, held that the sole testimony of the victim, if found worthy of credence and reliable, requires no corroboration and may be sufficient to invite conviction of the accused.



18. In view of the above, the settled position of law is that even if the victim is the sole witness to the incident, a conviction can be sustained if his testimony is found to be credible and reliable. Further, Section 29 POCSO creates a presumption of guilt against the accused once the foundational facts of the case stand established. A three-Judge Bench of the Supreme Court in Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, reported as **(2025) 2 SCC 399**, has held that Section 29 comes into play once such foundational facts are proved. It holds as follows:-

*“35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the Pocso Act. Section 5 of the Pocso Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the Pocso Act defines what penetrative sexual assault is...”*

19. A gainful reference in this regard may also be made to the decision of a co-ordinate Bench of this Court in Veerpal v. State, reported as **2024 SCC OnLine Del 2686**, wherein it was held as under:-

*“20. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability.”*

20. From a perusal of the above, it is evident that if the testimony of the child victim is reliable, the conviction can rest upon it. In the present case, the deposition of the child victim is categorical about the appellant kissing him and inappropriately touching his penis. The child victim has stated so





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consistently, both in his statement recorded during investigation and in his deposition before the Court. His deposition is without any embellishment and is found to be both cogent and credible. Though the child victim stated that the incident had occurred on earlier occasions, considering that he was only eight years old at the relevant time, the delay in reporting cannot be held to be fatal. The prosecution has successfully established the foundational facts of the case and the presumption under Section 29 POCSO is attracted.

21. In view of the aforesaid discussion, the present appeal is dismissed, and the conviction of the appellant is upheld.

22. The present appeal is disposed of in the above terms.

23. A copy of this judgment be communicated to the Trial Court.

**MANOJ KUMAR OHRI**  
**(JUDGE)**

**SEPTEMBER 18, 2025/rd**