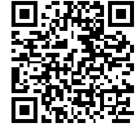


*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 15.09.2025
Pronounced on : 19.09.2025

\+ **CRL.A. 1030/2024**

XXXXX .....Appellant
Through: Mr. Anubhav Singh, Mr. Karan Ahuja, Mr. Nitin Kumar and Ms. Maria Mary, Advocates

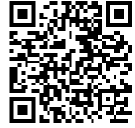
versus

STATE NCT OF DELHI .....Respondent
Through: Mr. Pradeep Gahalot, APP for State with SI Vipin.
Mr. Zeeshan Diwan, Advocate (DHCLSC) with Mr. Harsha, Advocate for survivor.

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 22.07.2024 passed by the learned Addl. Sessions Judge (FTSC) (POCSO), New Delhi in SC No. 757/2018 arising out of FIR No. 359/2018 registered under Section 6 POCSO at P.S. Keshav Puram, whereby he has been convicted for the offences punishable under Sections 5(m) & (p) POCSO punishable under Section 6 POCSO and Section 377 IPC. Vide order on sentence dated 09.09.2024, the appellant was sentenced to undergo RI for 10 years for the offence punishable under Section 377 IPC; and further sentenced to undergo RI for 10 years for the

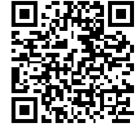


offence punishable under Sections 5(m) & (p) POCSO punishable under Section 6 POCSO. All the sentences were directed to run concurrently and benefit under Section 428 Cr.P.C. was given to the appellant.

2. The Appellant is real uncle of the victim. The facts in a nutshell, as noted by the Trial Court, are extracted hereunder:

> *"In brief, as per charge-sheet, the case was registered through WSI Tulika on 08.09.2018. The statement of victim 'G' was recorded in question answer form before his mother 'S' and he was counseled by the counselor. The victim was medically examined at BJRM Hospital. As per the MLC and his statement, the victim had gone to park with his chacha to roam around his dog. During his statement, the victim stated that the accused i.e. his chacha did "galat kaam" with him. On asking that what "galat kaam" was done by his chacha to him, then he answered that "chacha ne meri kachhi utari aur apni bhi aur apni susu meri potty wali jagah pichhe dali". On inquiry, he disclosed the name of chacha as 'A' i.e. the accused. On perusal of MLC and statement of the victim, the FIR for offence U/s 6 POCSO Act was registered. The further investigation was marked to SI Bachchu Singh. The further investigation was done. The accused was arrested, his disclosure statement was recorded. He was medically examined. The exhibits of accused and victim were sent to FSL. The site plan was prepared. The statement of victim was got recorded U/s 164 CrPC wherein he deposed similar facts as stated in his statement. The age documents of the victim were collected and his date of birth was verified as 27.08.2011. After completion of investigation, the charge-sheet was filed for offence U/s 6 POCSO Act. During trial, the FSL result was filed on record by moving application by SI Shivali. As per the result of DNA analysis, the alleles from the source of exhibit '4a' (blood collection of accused, A) are accounted (matching) in the alleles from the source of exhibit '2' (cotton wool swab of anul swab of victim G)."*

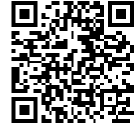
3. After completion of investigation, the charge-sheet was filed and charges were framed against the appellant for the offences punishable under Sections 5(m) & (p) POCSO punishable under Section 6 POCSO and Section 377 IPC. The prosecution examined 18 witnesses in total out of which the primary witnesses were examined as follows- the victim as PW-1; the mother of the victim, i.e. 'S', as PW-3; independent witness, namely



"*Prem*", as PW-7; 'A', the cousin of the victim, as PW-9; and other independent witnesses, namely *Chetan Swaroop* and *Sonu*, were examined as PW-10 and PW-11 respectively. The date of birth of the victim was proved by one *Ghazala Parvez*, who was examined as PW-12. The remaining witnesses were police officials, doctors, or officers who deposed as to various aspects of the investigation.

4. The victim was proved to be 7 years old at the time of the incident in question. Neither in trial nor in the present appeal was any contest made with respect to the age of the victim; accordingly, the victim is held to be a "child" under Section 2(d) POCSO. The child victim was examined as PW-1. The Trial Court, after putting initial questions to him, recorded its satisfaction as to his competency to understand the questions and answer them. Being under 7 years of age, his statement was recorded without oath. He deposed that the accused is his real uncle. On the day of the incident, he had gone with him to a park for walking the dog, where the accused lowered his shorts and thereafter inserted his penis into the child victim's anus. An extract from the child victim's statement as recorded by the Trial Court is reproduced hereunder:-

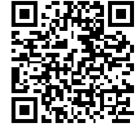
> *"From the answers given by him I am satisfied that he is capable of giving rational answers to the questions put to him. However, considering his tender age he is not being administered the Oath.*
>
> *Q. Beta kya aap A* ko jante ho?*
> *Ans. Haan wo mere chacha hain.*
> *Q. Beta aap chacha ke saath kahan gaye the?*
> *Ans. Mein chacha ke saath kutte (dog) ko ghumane ke liye park main gaya tha.*
> *Q. Beta wo park kahan par hai?*
> *Ans. Park ghar se door hai par mein uska naam nahin janta.*
> *Q. Beta fir park main kya hua?*



Ans. Chacha ne nicker utari thi aur fir jahan se potty karte hain wahan par shu shu karne wala daal diya tha."

In cross-examination, the child victim stated that in the park, other children were also playing and some persons were either sitting or walking. He denied the suggestion that there was no grass in the park and that stones were lying there. He stated that the dog taken for a walk was a small dog. A suggestion was put to him that he was not allowed by his parents to go with the appellant alone, which he admitted. He denied the suggestion that his mother had complained to his father that the appellant would come late to their house. He admitted that, on account of the appellant coming home drunk, there was an altercation between his mother and father. He admitted to be correct that his mother had told his father that in case the appellant came, she would leave the house, and she had further told his father to ask the appellant not to come to their house. He denied the suggestion that his father told his mother that he would do something to make sure the appellant doesn't come to their house. He also admitted it to be correct that he was told by his parents not to go with the appellant as he was a drunkard. He denied the suggestion that the injuries suffered by him were on account of being dragged by the dog and that for that reason the appellant had been falsely implicated. He also denied the suggestion that no wrongful act was committed by the appellant. He further denied the suggestion that the injuries on his hip were on account of being dragged over a stone.

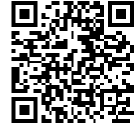
5. The victim's mother, examined as PW-3, stated in her deposition that the appellant used to reside with his family in the same locality as them and was working with her father-in-law, who was a fruit *chaat* seller. About a



year prior to her deposition, the appellant had come to their house and taken her son for walking the pet dog. On that day, she was informed that someone had committed wrong act with her son after removing his underwear and that her son was weeping. She was informed that her son as well as the assailant had been taken to the police station and she immediately rushed to the police station. In cross-examination, she admitted the suggestion put to her that she did not know as to what act was committed with her son and who had done it.

6. Independent witness *Prem*, examined as PW-7, deposed that on 08.09.2018 at about 3:30 PM, he, alongwith one *Chetan Swaroop*, was sitting on the *patri* outside the park when they heard the sound of crying from inside the park. They both went inside and saw that a boy was doing "*galat kaam*" with a minor boy. On seeing them, the accused/appellant zipped up his pant. The younger boy was crying. They apprehended the accused. They identified the accused as the person apprehended at the spot. Both, the victim as well as the accused, were brought out of the park. The police reached and arrested the appellant. In cross-examination, he denied the suggestion that he had not seen the appellant committing "*galat kaam*" with the child victim. He also denied the suggestion that, upon reaching the spot, he saw the accused crying and shouting that some other person had committed the wrong act with the child.

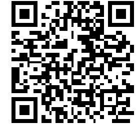
7. The prosecution examined *Chetan Swaroop* as PW-10, who stated that he, along with *Prem*, was present outside the park when they heard the crying sound of a child. He saw that some persons had brought one person out and that he was being given beatings. At that time, the police had come.



As he had not stuck to his earlier statement recorded under Section 161 Cr.P.C., he was cross-examined by the learned PP, wherein he denied the suggestion that he had gone inside the park and seen the incident. On being asked if he identified the appellant, the witness stated that he could not say with surety that the appellant is the same person, as the incident had occurred four years ago.

8. Another witness, *Sonu*, was examined as PW-11. He deposed that one day, when he was returning from work in the afternoon, he was standing outside the park when he heard the sound of crying from inside the park. Two/three young boys were also standing there. He, along with those boys, went inside the park where he saw one young boy and a little child. The clothes of the little child were removed and the zip of the pant of the young boy was open. The boy was apprehended by them. He, however, could not identify the said boy as the same person. The witness was cross-examined by the learned PP, wherein he admitted the presence of *Chetan Swaroop* and *Prem* at the time of the incident. He denied the suggestion that he saw the accused committing "*galat kaam*" with the victim or that he saw the victim bleeding from his anus. He, however, admitted that the accused was handed over to the police. He also stated that as four years had passed, he could not say with surety that the appellant was the same accused person who had been apprehended. In cross-examination, the witness stated that he had not seen the accused committing any "*galat kaam*" and was only told so by others.

9. Learned counsel for the appellant has contended that the prosecution case is not conclusively established, as the independent witnesses have not

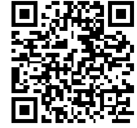


supported it and have also not identified the appellant. The testimony of the child victim, it is urged, cannot be relied upon as he is neither credible nor reliable, having admitted that his parents did not like the presence of the appellant in their house. He contends that the child victim had been tutored to falsely implicate the appellant. Insofar as the testimony of the independent witness *Prem* is concerned, it is pointed out that while he stated that he, along with *Chetan Swaroop*, went inside the park and saw the appellant committing "*galat kaam*" with the victim, *Chetan Swaroop* in his testimony did not corroborate the same. Further, the testimony of *Sonu* is also to the same effect. It is also contended that the mother had stated that the appellant was not arrested in her presence; however, her signature appears on the arrest memo.

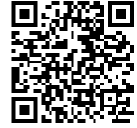
10. Learned APP for the State, on the other hand, has refuted the contentions of learned counsel for the appellant by submitting that the child victim has been clear and cogent in his statement. His statement further draws strength from the MLC and FSL Reports.

11. I have heard the learned counsels for the parties and perused the Trial Court Record.

12. Concededly, the appellant is the uncle of the child victim and, as such, his identification is not in doubt. The child victim stated that on the day of the incident he was taken by the appellant to the park for walking the dog. He has categorically stated that the appellant put his male organ in his anus. The prosecution has examined independent witnesses who have all stated that they heard the cries of a young boy coming from inside the park. Independent witness *Prem* stuck to his statement recorded during



investigation and not only did he depose that he saw the appellant doing "*galat kaam*" with the victim, he also identified him as the same person. He also stated that the appellant was apprehended by him along with others and handed over to the police. The others, though not identifying the appellant as the person, admitted their presence at the spot and also the fact that they heard the cries of a young boy coming from inside the park. While examining the child victim, it was the stand of the appellant himself that he was present along with the child victim and that the injuries had occurred as the dog taken for the walk had dragged him, causing the victim to be dragged over stones resulting in injuries. The MLC of the child victim was proved by PW-2/Dr. *Avanish Tripathy*, CMO, BGRM Hospital, who stated that the child victim was examined under his supervision and a rectal tear was found during examination. The child victim was sent for further examination. The said witness was not cross-examined despite opportunity. The samples seized during medical examination were sent to the FSL, and as per the report, the alleles from source of exhibit "4a" (blood collection of the accused) were accounted (Matching) in the alleles from the source of exhibit "2" (cotton wool swab of anal swab of victim G). In cross-examination, it was put to the witness (PW-17) whether it was possible that the alleles of the accused and victim matched because they were blood relatives, being uncle-nephew. The witness answered that the DNA profile was generated in "Identifiler Kit", and the profiles generated through such Kit give the profile of an individual. Such profiles are unique with respect to every person. While it is possible that the allele on Y chromosome might be the same



between uncle-nephew, the alleles as examined through "Identifiler Kit" and the results are unique to all individuals.

13. 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:-

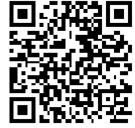
(I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.

(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.



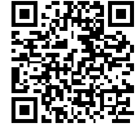
(VI) *The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*

(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.*

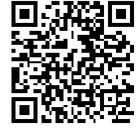
(X) *The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.*



(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under:-

- *Opportunity of Tutoring of the Child Witness in question whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.*
- *Reasonable likelihood of tutoring wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and*



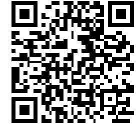
was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

(XI) Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.

(XII) Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness."

14. 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.

15. 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.



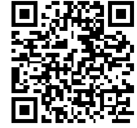
16. In view of the above, the settled position of law is that even if the victim is the sole witness to the incident, a conviction can be sustained if his testimony is found to be credible and reliable. Further, Section 29 POCSO creates a presumption of guilt against the accused once the foundational 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…"*

17. 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."*

18. 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 testimony of the child victim inspires confidence and the incident stands proved through his testimony, as well as through that of independent witness



Prem. Even though the other witnesses have not supported the prosecution on the aspect of identification, the testimony of the child victim and *Prem*, along with the MLC and FSL Reports, taken together, establish the foundational facts of the prosecution case, thereby attracting the presumption under Section 29 POCSO. The evidence on record is sufficient to uphold the conviction as well as the sentence of the appellant. Accordingly, the present appeal is dismissed along with pending applications, if any.

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

20. A copy of this judgment be communicated to the concerned Jail Superintendent for information and serving it upon the appellant.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 19, 2025
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