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

% Reserved on : 18.08.2025
Pronounced on : 20.08.2025

\+ **CRL.A. 964/2017**

BHANU PRATAP .....Appellant
Through: Mr. Kanhaiya Singhal, Ms. Vani Singhal, Mr. Binwant Singh, Mr. Rahul Bhaskar, Mr. Prasanna, Mr. Ajay and Mr. Pulkit, Advocates

versus

STATE .....Respondent
Through: Mr. Pradeep Gahalot, APP for State
Mr. Vinayak Bhandari and Ms. Teesta Mishra, Advocates for complainant

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 24.08.2017 and the order on sentence dated 31.08.2017 passed by the learned Additional Sessions Judge-01 (North-East), Special Court (POCSO Act), Karkardooma Courts, Delhi in SC No. 162/2016 arising out of FIR No. 480/2016 registered under Sections 376/377/506 IPC and Section 6 POCSO at P.S. Khajuri Khas, Delhi.

Vide the impugned judgment, the appellant was convicted for the offence punishable under Section 6 POCSO; and vide the impugned order on sentence, he was sentenced to undergo RI for 10 years alongwith fine of Rs.40,000/-, in default whereof he was directed to undergo SI for 3 months.

The benefit of Section 428 Cr.P.C. was also given to the appellant.

2. The facts as noted by the Trial Court are as under:-

> *"Briefly stated the case of the prosecution is, that on 16.06.2016, victim aged about 06 years alongwith her mother had come to the police station. She alleged that on 06.06.2016, she alongwith her mother had gone to the house of her maternal grandparents at XXX, Delhi. She further alleged that in the evening of 07.06.2016, her mother had left her at the house of her maternal aunt. Thereafter, her mother had gone to market. She further alleged that her maternal uncle Bhanu Pratap came there and on the pretext of giving something, he took her to the bathroom. In the bathroom, he made her lie on a bench and then he took off her panty. He also removed his underwear and then inserted his urinary organ in her urinary organ. She further alleged that he also inserted his penis in her anus and threatened her not to disclose about it otherwise he would kill her brother and father. She further alleged that earlier also accused used to kiss her and used to touch her vagina. On 15.06.2016, while playing, she informed about these acts of accused to her cousin 'M', who informed about it to her mother. On being asked, she informed about the acts of accused to her mother. Hence, the present FIR was registered. After completion of investigation, charge sheet u/s 376/377/506 IPC and Section 6 POCSO Act was filed against the accused."*

3. On the completion of investigation, a chargesheet came to be filed and, vide order dated 13.10.2016, the Trial Court framed charges under Section 6 POCSO, or in the alternative under Sections 376/377 IPC, and additionally under Section 506(II) IPC, against the appellant, who pleaded not guilty and claimed trial. The prosecution, to prove its case, examined a total of 13 witnesses. The material witnesses being the child victim, examined as PW-2; her mother, examined as PW-3; Dr. *Neelu Singh*, who proved the MLC of the child victim, examined as PW-6; and the cousin of

the child victim, examined as PW-7. The others, being official witnesses, testified as to the age of the child victim as well as other aspects of the investigation.

The appellant denied the prosecution's case at the time of recording of his statement under Section 313 Cr.P.C., and also produced his aunt 'S' as DW-1. The child victim, at the relevant time, was less than 7 years old and a "child" under the POCSO Act.

4. Concededly, neither the age of the child victim nor her competence to depose was disputed during the trial or in the present appeal. The learned counsel for the appellant, however, contends that there was a delay in registration of the FIR, as according to the child victim the incident had last occurred on 07.06.2016, whereas the FIR was registered on 16.06.2016. It is further stated that the statement of the child victim does not inspire confidence as her deposition before the Court contains material improvements over her previous statements. The said deposition is also challenged on the ground that it materially contradicts the statements of other witnesses. In this regard, it is contended that while in her statement recorded under Section 164 Cr.P.C., the child victim did not allege penetration and only stated that her private parts were pressed, in her testimony before the Court she alleged both vaginal and anal penetration. The place of the incident is also alleged to be in doubt, as in her prior statement the child victim stated it was the bathroom, whereas in her deposition before the Court she stated it to be a bed. The learned counsel has further referred to the MLC, which notes no injury on the anal region. The FSL report is also stated to be inconclusive. Lastly, it is contended that the

child victim was tutored, regarding which, appropriate suggestion was also given during the cross-examination.

5. The submissions made on behalf of the appellant are refuted by the learned APP for the State, as well as the learned counsel for the complainant. It is submitted that the delay in the registration of the FIR was duly explained, as the incident had occurred at the house of the child victim's *nani*, and upon her return to her parent's house, the victim disclosed it to her cousin, through whom it reached the victim's mother. On merits and contradictions, learned APP submitted that the same are minor and do not in any manner weaken the prosecution's case.

6. The child victim was examined as PW-2. She stated that the appellant is her maternal uncle. During summer vacations, she had gone to the house of her maternal grandparents and one day, when she, alongwith the children of her *mausi* and *mama*, were playing in the ground floor room, the appellant came and asked the other children to go upstairs, after which he made her lie on the bed, took off her underwear as well as his own, and inserted his urinating organ into her urinating place. She cried with pain, whereafter he again inserted his urinating organ into her rectum. He threatened her to not disclose his actions to anyone, else he would flee. She further stated that the appellant used to do such acts whenever she visited her grandparents. She testified that she first informed her cousin/PW-7, who then told these facts to her mother, upon which the police was called. The child victim was cross-examined in which she stated that PW-7 was the daughter of her elder uncle and resides 2-3 houses away from her house.

7. The mother of the child victim, examined as PW-3, deposed that on 06.06.2016, she, alongwith her children, went to the house of her *bhabhi* to

celebrate the birthday of her *bhabhi*'s daughter. After two days, they returned back to their house. She stated that three days later, her *jethani* and mother-in-law informed her that her daughter was raped by her uncle, i.e., the appellant, in the house of her *bhabhi*. On being confronted, the child victim also confided in her about the incident that took place on 07.06.2016 at the time when the witness had gone to the market and the child victim had stayed back in the house. She deposed that the child victim narrated as to how the appellant had committed the offence of rape as well as carnal intercourse in the bathroom of the house of 'P', the *bhabhi* of the witness. The child victim also narrated the acts of molestation done by the appellant on previous occasions when he had kissed her and touched her chest portion as well as her private parts. She stated that the appellant was given beatings by family members and a police complaint was also lodged. On further examination by the learned APP before the Trial Court, the witness deposed about the threats extended by the appellant to the child victim. In cross examination, the witness clarified that the appellant is her cousin. She deposed that instead of calling the police they had directly gone to the police station to lodge the complaint. She denied the suggestion of tutoring the child victim. She admitted that the parents of the appellant have looked after her since she was a child. She denied the suggestion that she had demanded her share in the property and, when refused, made false accusations against the appellant.

8. The cousin of the child victim, in whom the child victim confided, was examined as PW-7. She deposed that on 15.06.2016, the child victim disclosed that when she had visited her grandparents' house during the summer vacations, in the bathroom, the appellant touched her private parts

with his male organ after taking off her clothes. In cross-examination, she stated that on coming to know of the said facts she had informed her own mother, who in turn, told the same to the mother of the child victim. She denied the suggestion that she was tutored by her mother.

9. The MLC of the child victim was exhibited by Dr. *Neelu Singh* (PW-6), who deposed that she had examined the child victim. She recorded the history of assault noted in the MLC. She stated that in the local examination, the hymen of the child victim was found torn and erythema (redness) was found present. She deposed that the child victim was not allowing insertion of even one finger, and that samples for the sexual assault evidence kit were not collected as the incident was alleged to have taken place more than 96 hours prior to the medical examination. In the cross-examination, she denied the suggestion that the child victim did not narrate any facts to her. She admitted that the redness present was possible as a result of wearing tight clothes, having a fall, or an insect bite. On a question being put to her by the Court regarding what the injuries on the person of the victim suggested, she replied that the same suggested possible sexual assault. Further, she admitted the suggestion that the hymen can tear because of strenuous exercise and sports activities. She also answered in affirmative to the suggestion that no injuries were found on the anal portion of the child victim.

10. Now, coming to the first contention raised by the appellant on the aspect of delay in registration of the case. It is to be kept in mind that the child victim was less than 7 years of age at the time of the incident. Before appreciating the contentions in the light of the evidence that has come on

record, it is deemed apposite to refresh the position of law on the appreciation of evidence of a child victim of sexual assault.

11. 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, held that minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground to throw out an otherwise reliable prosecution case. It was observed 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. The Court further held that the delay in filing the FIR for a sexual offence may not even be properly explained, but if found natural, the accused cannot be given any benefit thereof.

12. In Ganesan Vs. State, reported as **(2020) 10 SCC 573**, the Supreme Court 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.

13. In State of Madhya Pradesh Vs. Balveer Singh, reported as **2025 SCC OnLine SC 390**, the Supreme Court has examined the principles governing the testimony of a child-witness and summarized the legal position in the following manner:-

> *"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 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 her testimony is found to be credible and reliable. However, the testimony of

child witness has to be carefully scrutinised on afore-extracted parameters.

15. In the present case, the Court had put questions to the child witness and recorded its satisfaction that the child witness was able to understand the questions and give rational answers to them. Though suggestions of tutoring were put to her in cross-examination, as discussed in the subsequent paragraphs, the allegation of tutoring could not be established and no material contradiction was pointed out which would render her testimony untrustworthy.

16. During the cross-examination of the child victim, a suggestion was given to her as to whether she had been told what kind of statement was to be made by her, to which she replied that her mother had told her in the morning what was to be stated in Court on that day. She further stated that her mother had not told her that if anyone asked whether she was telling a lie or telling the truth, she should say that she was telling the truth. On a Court question, she further clarified that it was an incorrect statement that she had deposed on the tutoring of her mother. A suggestion to this effect was also given to her mother, who denied the same. A similar suggestion was also given to the cousin of the child victim, examined as PW-7, who also denied it. It would be apt to note that the child victim had narrated the incident first to her cousin, who then told her own mother, and thereafter the same was informed to the victim's mother. The victim and witnesses are related to the appellant, and though suggestions qua demand of share in property were given to the victim's mother, the appellant has failed to point out the motive of the other relatives.

17. It was strenuously contended on behalf of learned counsel for the appellant that there were inconsistencies and material improvements in the

statements of the child victim, pointing out variations not only with respect to the house but also the place of the incident. However, a perusal of the statements made during investigation and her testimony before the Court shows that the child victim reiterated her allegations of vaginal and anal penetration against the appellant. Though it is contended that in the Court deposition the place is stated to be a bed, it is pertinent to note that it has come on record that there was a wooden bench in the bathroom of the concerned house as also reflected in the site plan of the incident. In fact, the wooden bench was seized and sent to the FSL; however, as the examination was conducted after a few days, no semen could be detected on it. The testimony of the child victim cannot be doubted merely on account of the mention of the word 'bed' instead of 'bathroom'. The contention raised with respect to the Court deposition is meritless. As regards the contention with respect to the change of house, i.e., whether it was the house of 'P' or that of the appellant, it is pertinent to note that the child victim clarified that though she had gone with her mother to the house of 'P', her aunt, the appellant's house was one house away. As to the next contention regarding the timelines not matching, it is not to be forgotten that the child victim was less than 7 years of age, and that her testimony finds corroboration in her MLC, which mentioned that her hymen was found torn and redness was found present. The concerned doctor clarified that the same could be the result of sexual assault.

18. Section 29 POCSO provides that the 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. 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 POCSO comes into play once the foundational facts are established. 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. In the present case, the prosecution has been able to lay the foundation of the facts and thus brought into play Section 29 POCSO, the presumption of which the appellant has failed to rebut. The appellant failed to discredit the prosecution witnesses or demonstrate any fatal flaws or gaps in the prosecution's case. In view of the same, the impugned judgment and order on sentence are upheld and the present appeal is dismissed.

21. A copy of this judgment be communicated to the concerned Trial Court, as well as to the concerned Jail Superintendent.

22. A copy of this judgment also be uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 20, 2025
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