



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

% Date of Decision: 21.11.2025

+ **CRL.A.675/2018**

HALDAR RAJBHAR

.....Appellant

Through: Mr. Anil Kaushik, Sr. Advocate
(Amicus Curiae) with Mr. Mayank
Gautam, Mr. Rajat Rana, and Mr.
Sanyam Mann, Advocates.

Versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Snehlata
Mr. Amit Saxena, Advocate (Amicus
Curiae) with Mr. Brijesh Sharma and
Mr. Sachin Hitkari, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal arises in the context of judgment of conviction dated 24.02.2018 and order on sentence dated 01.03.2018, whereby the appellant was held guilty for the offences punishable under Sections 363/506 IPC and Section 6 read with Section 5(m) POCSO. He was directed to undergo sentences as under:

Section	Sentence
363 IPC	RI for a period of 3 years alongwith fine of Rs.1,000/-, in default whereof he would further



	undergo SI for 1 month.
506 IPC	RI for a period of 2 years alongwith fine of Rs.1,000/-, in default whereof he would further undergo SI for 1 month.
6 POCSO	RI for a period of 10 years, alongwith fine of Rs.5,000/-, in default whereof he would further undergo SI for 3 months.

The aforesaid findings were rendered in the context of FIR No. 1179/2015 registered under Sections 363/376/506/511 IPC & Section 6 POCSO at P.S. Aman Vihar.

The sentence of the appellant was suspended during pendency of the present appeal vide order dated 16.12.2019.

2. As per the prosecution, the investigation commenced on receipt of DD No. 27PP dated 21.09.2015, whereby a PCR call with respect to kidnapping of a girl aged 8 years, on a cycle, was recorded. The present FIR came to be registered on the statement of the mother of the victim, who stated that she had been residing at her address for the last 15 years with her 3 children, and her husband ran a grocery shop. She alleged that on 21.09.2025, her youngest daughter, 'V', the victim, came back home around 12.00 noon on account of examinations going on in her school and at about 12.30 P.M., when she went to bring *chhole* from a nearby vendor, she did not return. The mother of the victim sent her other two children to look for her, however, neither of them was able to locate her. Thereafter, she herself, her husband, and both their sons, went to look for the victim. The *chhole* vendor informed that one boy claiming that the family of the victim was known to him had taken the victim on a cycle towards *Mubarakpur*. At



about 1.30 PM, the complainant's younger son saw that one boy was coming on a cycle alongwith the victim. The boy disclosed his name as *Haldar*. The victim started crying and disclosed that the said boy had removed his pant and put his urinating part on her urinating part after removing her underwear and when she started crying, the said boy had also threatened her with a knife. The public gathered at the spot apprehended the boy and gave beatings to him. The victim was taken for her medical examination, whereafter her statements under Sections 161 and 164 Cr.P.C. were recorded.

3. On completion of investigation, the chargesheet came to be filed and the exhibits seized during medical examination were sent to the FSL Charges for the offences punishable under Sections 363/366/506 IPC and Section 5(m) punishable under Section 6 POCSO were framed against the appellant, to which he pleaded not guilty and claimed trial.

4. Mr. Anil Kaushik, learned Sr. Counsel, was appointed as *Amicus Curiae* to represent the appellant as all efforts to serve him after suspension of his sentence remained futile. Learned *Amicus* contended that the ingredients of the offence punishable under Section 6 POCSO are not made out as the first narration of the incident recorded in the MLC at the instance of the victim mentions no history of oral sex or physical assault. He fairly submits that the allegations even if assumed to be true, could make out a case only under Section 10 of the POCSO Act. In this regard, he has also referred to the MLC of the victim, where her hymen was found to be intact; and the forensic examination reports, wherein no semen was detected on the vulval swab of the victim.

5. Learned APP for the State, as well as Mr. Amit Saxena, learned



Amicus Curiae appointed to represent the victim, submit that the impugned judgment calls for no interference. It is submitted that the victim, who was about 8 years old at the time of the incident, gave a coherent account of the incident in question at all relevant stages including her statements under Sections 161 and 164 Cr.P.C., as well as her Court deposition. They contend that minor variations in expression are natural for a child witness and do not detract from the core allegation that the appellant kidnapped the victim, removed her clothes, threatened her with a knife, and committed forcible penetrative sexual assault upon her. They argue that the proximity in timing of the incident in question, the recovery of the child victim, the PCR call, and the medical examination strengthens the reliability of the prosecution case. They further submit that the FSL examination reflects that the DNA profile generated from the victim's underwear matches the profile generated from the blood of the appellant.

6. The prosecution examined 19 witnesses in support of its case. Amongst them, the most material witnesses are the child victim (PW-3) and her mother (PW-6). The child victim's father and two brothers were also examined as PW-7, PW-8 and PW-10 respectively. Their testimonies were cumulative to those of the child victim and her mother, and nothing to undermine the credibility of the prosecution case was elicited in their respective cross-examinations. The date of birth of the child victim was proved through documents exhibited by PW-1 and the child victim's statement under Section 164 Cr.P.C. was exhibited by the learned MM deposing as PW-2. PW-9 prepared and proved the Biological and DNA examination report (Ex. PW-9/A) as well as the Data Allelic Chart (Ex. PW-9/B). A neighbour of the child victim's family was examined as PW-11. The



chhole-kulche vendor was examined as PW-12. The I.O. of the case, WSI *Manisha Sharma* was examined as PW-14. PW-17 and PW-19 are medical witnesses who respectively proved the MLC of the appellant (Ex. PW-17/A) and opined that he was capable of performing sexual intercourse. The signatures of the doctor who had examined the child victim and prepared her MLC (Ex. PW-6/B) were proved by medical witness PW-18. The remaining witnesses are largely formal in nature.

7. The child victim, aged about 8 years, was examined as PW-3 after the Trial Court recorded its satisfaction as to her competency to rationally answer the questions put to her. She identified the appellant in Court and stated that he took her on his cycle to a place with trees and soil, where he removed her clothes as well as his own, and then put his private part into her private part (“...*usne meri toilet wali jaghan per apni toilet wali jaghan daal di.*”). She also stated that she felt pain and screamed, whereupon the appellant threatened her by saying that he had a knife and that he would stab her if she screamed. She further stated that thereafter the appellant let her go, made her sit on his cycle, and decided to take her home. On their way back, her brother recognized her by her clothes and called for their mother, whereafter the appellant was beaten up by public persons.

In her cross-examination, she stated that she did not raise an alarm while the appellant was transporting her as she was scared. She denied the suggestions that she had falsely implicated the appellant at the instance of her mother, that she had been tutored by her mother and the police, and that she was deposing falsely before the Court.

8. The complainant/mother of the victim (PW-6) stated that the victim did not return after going to buy *chhole*, whereafter she, her husband, and



her sons searched for her. Upon reaching the *chhole* vendor, he told her that one boy had taken the child victim on his bicycle. She deposed that when she and her family members were searching for the child victim, she spotted one boy (the appellant herein) coming on a bicycle with the child victim sitting on the carrier. She further stated that the victim started weeping on being recovered and disclosed that the appellant had removed her underwear as well as his own pant, and thereafter touched her private parts with his own. The victim also disclosed to the witness that the appellant had threatened her with a knife. In cross examination, she clarified that her younger son had seen the appellant and the child victim on the bicycle first.

9. The appellant's statement under Section 313 Cr.P.C. was recorded, wherein he denied all the allegations put to him and stated that he had been falsely implicated in the present case by the child victim at the instance of her mother and the police. He stated that the police had obtained his signatures on blank papers and printed performa, which were later used against him. He did not lead any evidence in his defence. Notably, he did not put forth any possible motive as to why the complainant and/or the police would falsely implicate him in the present matter.

10. I have heard the learned counsels for the parties and carefully perused the record.

11. The age of the child victim is not in dispute as no arguments to cast doubt on the victim's age were advanced before this Court or before the Trial Court. Further, her date of birth stands proved through the relevant school record (Ex. PW-1/A) and the relevant entry in the MCD Birth Register (Ex. PW-1/B). The victim is, accordingly, held to be a "child" within the meaning of Section 2 of the POCSO Act.



12. The prosecution case proceeds on the foundational fact that the child victim, aged about 8 years at the time of the incident, went missing from near her house and was recovered within a short span while seated on a cycle with the appellant. The timings reflected in the PCR form, the relevant DD entry, and the MLC prepared upon medical examination of the child victim conducted immediately after her recovery, reflect that these events occurred in quick succession. The mother's account was given right after finding the child, and therefore, she is to be treated as a *res gestae* witness insofar as she narrates about the alleged offence as disclosed by the victim to her.

13. The complaint lodged by the mother narrates that the victim was taken by the appellant on the pretext that he knew her family and that the victim, upon recovery, started crying and stated that the appellant had removed her underwear and touched her urinating part with his urinating part, and had also threatened her with a knife. At this point, the allegation was confined to removal of clothing, touching of private parts, and issuance of threats.

14. The first uninfluenced narration regarding the incident in question by the victim, recorded in the MLC prepared on the day of the incident at about 5.30 PM, assumes significance. The MLC records that the child victim, in her own words, disclosed only that the appellant had "*fidgeted with her private parts*". The history recorded is categorical insofar as the fact that no allegation of oral sex or anal sex or physical assault were made. It is pertinent to note that this is the earliest account of the incident in question emerging from the child victim herself at a time when her mother and other relatives had not yet interacted with her for long and before any detailed



police questioning had occurred.

15. Though the child victim has deposed about penetration, the mother, who is a *res gestae* witness, has consistently stated that the victim disclosed to her that the appellant had only touched her private parts with his own.

16. Further, the MLC of the child victim (Ex. PW-6/B) does not record any injury on her genitalia and records her hymen as intact. The FSL report on record (Ex. PW-9/A) reflects that no semen was detected on the vulval swab of the child victim. The alleged penetrative sexual assault, as stated in the later versions, would normally be expected to leave some medical or forensic trace. The absence of any corroborative medical or forensic evidence, coupled with the MLC history stating only “fidgeting”, and the mother consistently putting forth a version of only touch, casts a shadow of doubt as to whether any penetrative assault actually occurred.

17. Notwithstanding these infirmities, the consistent part of the victim’s version, corroborated by her mother as well as by the surrounding circumstances as detailed above, clearly establishes that the appellant enticed the child victim out of the keeping of her lawful guardian without consent, threatened to stab her with a knife if she screamed, and touched her private parts with a sexual intent. However, the material inconsistencies between the child victim’s own earliest uninfluenced version (as recorded in the MLC) and the subsequent statements, the intact hymen, the absence of any injuries, and the inconclusive medical as well as forensic evidence render it unsafe to sustain the conviction for aggravated penetrative sexual assault under Section 5(m) punishable under Section 6 POCSO.

18. In view of the above discussion, this Court is of the considered view that the offence made out against the appellant falls under the ambit of



aggravated sexual assault punishable under Section 10 of the POCSO Act.

19. Insofar as the convictions of the appellant under Sections 363 and 506 IPC are concerned, the same are upheld, as are the sentences imposed thereunder. However, the conviction of the appellant under Section 6 POCSO is modified to one under Section 10 POCSO.

20. Section 10 POCSO provides for a minimum sentence of 5 years. Consequently, the sentence of 10 years RI imposed upon the appellant under Section 6 POCSO by the Trial Court is modified to RI for a period of 5 years under Section 10 POCSO. The fine amount and the sentence in default of payment of the same remain unchanged. All other conditions imposed by the Trial Court also remain unaltered. The sentences to run concurrently.

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

22. The personal bond furnished by the appellant stands cancelled and his surety is discharged. The appellant be taken into custody to serve the remaining sentence.

23. Before parting, this Court places on record its appreciation for the fair and valuable assistance rendered by Mr. Anil Kaushik, learned Senior Counsel appointed as *Amicus Curiae* for the appellant, and by Mr. Amit Saxena, learned counsel appointed as *Amicus Curiae* for the victim. Their efforts greatly aided the Court in the adjudication of the present appeal.

24. A copy of this judgment be communicated to the Trial Court and the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 21, 2025/nb