



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

% Reserved on : 11.09.2025
Pronounced on : 23.09.2025

+ **CRL.A.348/2020**

MD. MURSHID

.....Appellant

Through: Mr Kanhaiya Singhal, Advocate
(DHCLSC)

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms Shubhi Gupta, APP for State
with Inspector Satbir Singh PS
Jaitpur, Delhi.
Ms Gayatri Nandwani, Advocate
(DHCLSC) for the victim with Ms.
Mudita Sharda and Mr Adrian Abbi,
Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred to assail and set aside the impugned judgment of conviction dated 11.02.2020 and order on sentence dated 20.02.2020. *Vide* the impugned judgment, the appellant stands convicted for the offence punishable under Section 6 of POCSO Act, 2012 and Section 376(2)(i) IPC. He was sentenced to undergo Rigorous Imprisonment (RI) for 10 years and fine of Rs.1500/- for offence punishable under Section 6 of POCSO Act and in default whereof, he was to undergo Simple Imprisonment (SI) for a period of two months. The benefit of Section 428 was also extended to the appellant.



2. The criminal investigation proceeded in the context of an incident that statedly occurred on 31.08.2013 at about 12.30 P.M. The first information about the incident came to be recorded through DD no.27A (Ex. PW11A) regarding commission of rape of a minor girl. FIR No. 327/2013 (Ex. PW4/A) under Sections 376/377/342 IPC came to be registered at PS. Jait Pur on the statement of the mother of the child victim, who stated that her daughter was playing in the *gali* when she heard her crying. She came outside the house to find the child victim weeping and saw blood on her left leg. On further probe, she found blood coming out of her anus. On being inquired, her daughter disclosed that one *bhaiya* had called her inside his room, bolted the door and thereafter removed his undergarment as well as her undergarment. He inserted his penis into her anus on which she felt pain and started crying. Thereafter, the said *bhaiya* had left. The name of that accused *bhaiya* was later revealed as *Murshid* i.e., the present appellant.

3. On chargesheet being filed, charges were framed against the appellant under Section 6 of POCSO Act read with Section 376(2)(i) IPC to which he pleaded not guilty and claimed trial.

4. The prosecution has examined 17 witnesses in total, the primary being the child victim, her mother and father as PW-6, 7 & 8 respectively. MLC of the child victim was exhibited as Ex.PW-2/A through Dr *Vinod Bhivsane*, Senior Resident, Department of Obstetrics & Gynecology, AIIMS Hospital. The FSL report was exhibited as Ex.PW-13/A through Ms. Seema Nain, Assistant Director (Biology), FSL, Rohini. The age of the child victim was proved through the Primary Teacher (PW15) at the school where the child victim was studying. In his statement under Section



313 CrPC, the appellant claimed false implication. He, however, did not lead any evidence in his defence.

5. Learned counsel for the appellant, while assailing the impugned judgment, contended that though the prosecution has relied on the FSL report and in particular, on the undergarment of the child victim but the testimony of the mother would reveal that the child was not wearing the underwear, which the mother saw in the child victim's hand. Further, the said underwear was not even put to the child victim for identification.

It is next contended that the identity of the appellant could not be conclusively established as neither of the parents of the child victim identified the appellant during their deposition. In this backdrop, the appellant's arrest also becomes doubtful as he was arrested at the instance of the father of the child victim, according to the deposition of Ex. SI Narender Kumar (PW10).

It was further contended that on the day when both the parents of the child victim were examined, the accused was not even represented through the legal counsel appointed on his behalf which has resulted in miscarriage of justice.

6. Learned APP for the State, duly assisted by the learned counsel appointed by DHCLSC to represent the victim, on the other hand, defended the impugned judgment. It is submitted that the incident statedly took place on 31.08.2013 at about 12.15 PM, *rukka* was prepared at 2.30 PM and the child victim was medically examined at 03.02 PM and at which time the underwear of the victim was seized as noted in the MLC. Attention is drawn to the testimony of WSI Priyanka, IO of the case, examined as PW-14, who deposed that she had reached the spot and met



the victim. She further deposed that the child victim was wearing a frock and undergarment (underwear). FSL report also records that the underwear was received in a sealed condition. During their deposition, the underwear was identified by both the parents and hence, solely because the underwear was not shown to the victim, the same would not make any material difference to the prosecution case.

Age of Child Victim:

7. The prosecution has claimed the child victim to be 8 years old. The age of the child victim was proved using the Admission Register and Pasting File exhibited through the statement of the Primary Teacher of the child victim (PW15). The prosecution has claimed the date of birth to be 05.06.2004, as per which, on the date of incident, she was little above 9 years of age (though at some place, it has been statedly recorded as either 5 years or 8 years). There was no contest on this aspect before the trial court and even in the present proceedings. Consequently, the Trial Court's finding that the victim is held to be a child within the meaning of Section 2(d) of POCSO Act requires no further deliberation.

8. Before recording the statement of the child victim (PW6), the Trial Court had ensured that the child victim was a competent witness having capacity to understand questions and give rational answers. The child victim's statement was recorded without oath. When the accused was produced through video link, the child victim identified him as uncle, who was residing near her house. The child victim stated that she had gone to the police to ask them to arrest the uncle. She further stated that the said uncle had taken her to his house, whereafter he had opened her pant and then did '*ganda baat*' with her. She stated that it was done forcefully. In



her words, she stated that *“mai police me gayi thi aur kaha tha ki is police me band kar do. Ye uncle mujhe apne ghar le gaya the aur mera pant khol diya tha aur isne ganda ganda baat kiya tha. Isne jor jor se kiya tha. Isne choda chodi kiya tha. Phir mera pait kaat diya”*. On being asked as to what she meant by *“choda chodi kiya tha”*, she stated that *“ye tej tej kar raha tha mere yahaan par”* (while stating so, she pointed towards her vagina). She stated that *“vo haath se kar raha tha”*. She further deposed that her father then brought her back to her house.

With the permission of Court, a leading question was put to her by the Id. APP to which while answering, the child victim admitted to be correct that the accused had done wrong act after which blood came out from her private part. The child victim also stated that the said uncle /appellant was also known as *Takla*.

9. In cross-examination, she stated that when the incident took place, the appellant had taken her to his room, and nobody else was present around at that time. She was wearing a frock and underwear when the accused had taken her inside the room. The accused had also bolted the door from inside. When her father came, the accused unbolted the door. At that time, the child victim also pointed to the accused and said *“inhone khol diya tha.”* She also stated that there was a knife lying on the floor in the room where the accused had taken her. A suggestion was given that she got cut mark on anal part due to knife lying on the floor, which was denied. She also denied the suggestion that she was falsely deposing at the instance of her parents.

10. Mother of the child victim (PW7) during her examination stated that she was residing at the said address for last five years and was having four



daughters and one son. She deposed that at the time of incident, the child victim was around 8 years old and a student of 7th Class. She further stated that on the day of incident, she was present in her house with her husband. The child victim was playing in the *gully* and PW7 heard her cries and when she went out, she found that the child victim was weeping. There was blood on the left leg of her daughter. She wiped the said blood. Though there was no injury on the leg, however, she found that blood was coming out from the victim's anus.

She further stated that when police inquired from her daughter, she had replied that one boy had committed wrong act from the side of anus. As the mother did not identify the accused, she was cross-examined by the learned APP. In her cross-examination, she stated that she did not know the accused personally, but he was a resident of the same locality. She further identified the appellant as *Murshid*. She denied the suggestion that along with her husband, she knocked the door on hearing her daughter's cries in *Murshid's* house. She was confronted with her complaint (Ex. PW7/A), wherein she had stated so. She admitted her signatures on the complaint. She also admitted it to be correct that her daughter was having her underwear in her hand when she saw her. She denied the suggestion that the appellant had told her that her daughter had sustained injury on her leg because of knife but she found no such injury. She was confronted with her complaint, where she stated otherwise. She also denied the suggestion that her daughter told her that the accused had called her inside his room and after removing her panty, inserted his penis into her anus. She was confronted with the complaint where she had stated so. She admitted to be



correct that she gave consent for internal examination of her daughter. She identified the undergarment of her daughter, which was exhibited as P-1.

11. The father of the child victim (PW8) in his deposition stated that on the day of incident, he saw her daughter weeping in the street and on being inquired, she failed to explain anything specific. He further stated that somebody called police and police reached there, thereafter police inquired from him about the incident, to which he said that he had not seen anything. He deposed that the police took his daughter and wife to the police station and he remained at home.

In the cross-examination, he stated that he did not know the appellant personally, but identified him as a resident of the same locality. Like his wife, he denied the suggestions pertaining to events as narrated in his statement to the police. He, however, also identified the underwear of the child victim.

12. Dr. Vinod Bhivsane (PW-2) stated that he had gynecologically examined the child victim on 31.08.2013 and found perianal redness and anus was patulous and slight bleeding per rectum. He found no evidence of external injury mark and the hymen was intact with no injury. He stated that during the medical examination of the child victim, he had collected three vaginal smears, one anal swab and one nicker (underwear), sealed the same with the seal of hospital and handed over the same to the police alongwith the sample seal.

13. Ms. Seema Nain (PW-13) proved the FSL report (Ex. PW13/A). She stated that human semen was detected on Ex.3 (undergarment of the child victim), Ex.4 (cotton wool penile swab of accused) and Ex.5 (undergarment of the accused). No semen was detected on vaginal smear, anus swab and



cotton wool control swab of the accused. As per the DNA examination, the conclusion was reported as under:

“DNA profiling (STR analysis) performed on the source of exhibits 3 (underwear of victim), 4 (cotton wool swab of accused), 5 (underwear of accused) and 7 (blood in gauze of accused) of is sufficient to conclude that DNA profile from the source of exhibit 7(blood in gauze of accused) is similar with the DNA profile from the source of exhibits 3 (underwear of victim), 4 (cotton wool swab of accused and 5 (underwear of accused)...”

14. Coming to the contention on the identity of the appellant being doubted in the light of the deposition of the mother and father of the child victim, who failed to name and identify him in their deposition. It is noted that the child victim, during her deposition recorded on 09.10.2015, had clearly in no uncertain terms, identified the appellant as the person who had committed the offence after taking her inside the room. She had not only identified the appellant during her examination-in-chief, but also during the cross-examination pointed towards the appellant and stated that when her father had come, he had unbolted the door. The appellant came to be arrested at the instance of the father of the child victim. The deposition of the mother and father of the child victim came to be recorded after about five months of her deposition where she identified the appellant.

15. The appellant has also doubted the reliance on the FSL report, which otherwise connects the appellant with the crime. It is contended that as per the testimony of the mother, she had seen the child victim holding her underwear in her hand, which was not even put to the child victim for identification and thus, even the positive DNA report will not link the appellant to this offence. In this regard, it is stated that even the road certificate qua which the sample was taken was not exhibited.



16. Indeed, in the initial information as recorded in the FIR, it was mentioned that when the mother of the victim discovered the child victim, she was wearing a frock, however, she was carrying her underwear in her hand. WSI (IO) had stated that when she reached the spot, she found the child wearing underwear. MLC records taking of samples and collection of vaginal and inner swab as well as underwear. As noted above, though the mother and father of the child victim have partly resiled on the identification of the accused, however, both of them identified the underwear of the child victim. Three sealed parcels, including the parcel containing underwear of the child victim, along with sample seal was handed over by the doctors to W/Ct. Seema, (PW9) which were taken into possession and seized vide Memo exhibited as Ex. PW9/A. She further handed the parcel over to WSI Priyanka (IO) (PW14) who then deposited the same in the concerned store-room. Similarly, four sealed exhibits seized at the time of medical examination of the appellant by HC Om Prakash vide Memo Ex. PW5/D were also deposited in the *Malkhana* by PW14. The said store-room register was exhibited as Ex.17/A. Even if the RC was not exhibited, the FSL report (Ex. PW13/A) records that exhibits were received in sealed condition. There is no contention that there was any tampering of the seal. Exhibits collected during the medical examination of the child victim were handed over to the WSI (IO) through seizure memo exhibited as Ex.9/A. These exhibits were then sent to FSL by WSI Priyanka on 17.10.2013.

17. Section 29 of POCSO Act provides that 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. [Ref: *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat*.¹]

18. In view of the clear and categorical testimony of the child victim that the appellant, duly identified in Court, had taken her to his house and committed anal rape on her, partial corroboration from the deposition of the parents as to occurrence of an incident with the child victim and identification of her underwear, the MLC recording ‘perianal redness and anus was patulous and slight bleeding per rectum’, semen being detected on the child victim’s underwear as well as the penile swab and underwear of the appellant, with the DNA profile matching that of the appellant, it is held that the prosecution has been able to lay the foundation of the facts and thus brought into play Section 29 of the POCSO Act and that presumption, the appellant has miserably failed to rebut. He has been unable to shake the credibility of any of the witnesses who supported the prosecution case by thorough examination or pointed any fatal gaps in the prosecution case.

19. Though it is an unfortunate state of affairs that the Trial Court has examined the mother and father of the child victim in the absence of counsel of the accused, however, both the witnesses have anyways not supported the prosecution case by failing to identify the accused as perpetrator of crime. Learned counsel has failed to prove that in the event of parents of the child victim turning hostile on the most crucial aspect, what prejudice has been caused to the appellant by their examination in absence of his counsel. Even if their testimony is discarded, the deposition of child victim along with MLC and DNA (FSL) reports is suffice to

¹ (2025) 2 SCC 399



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uphold the appellant's conviction under Section 6 of POCSO Act and Section 376(2)(i) IPC.

20. Resultantly, the appeal stands rejected and the impugned judgment as well as order on sentence are upheld.

21. A copy of this judgment be communicated to the appellant through the Jail Superintendant.

22. A copy of this judgment be also communicated to the trial court.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 23, 2025

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