



2026:DHC:1669



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

% Reserved on : 28.11.2025  
Pronounced on : 24.02.2026  
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+ **CRL.A. 396/2020**

AMIT KUMAR @ NINNU .....Appellant  
Through: Ms. Manika Tripathy, Mr. Gautam  
Yadav, and Mr. Aakash Mohar,  
Advocates.

versus

STATE OF NCT OF DELHI .....Respondent  
Through: Mr. Pradeep Gahalot, APP for State  
with SI Virender.  
Mr. Abhir Datt, Advocate (DHCLSC)  
with Mr. Debayan, Mr. Gangopadhyay,  
and Ms. Varnika Singh, Advocates for  
Victim.

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

### **JUDGMENT**

1. The present appeal has been preferred assailing the judgment of conviction dated 31.01.2020 and the order on sentence dated 04.02.2020 passed by the learned Special Judge (POCSO Act)/ASJ-05 (Central), Tis Hazari Courts, *Delhi*, in Sessions Case No. 628/2017 arising out of FIR No. 172/2017 registered at P.S. *Kamla Market*. By way of the impugned judgment, the appellant was convicted for the offences punishable under Section 6 POCSO and Sections 376/506 IPC. He was, however, acquitted of



the offence under Section 366 IPC.

*Vide* the impugned order on sentence, the appellant was sentenced to undergo RI for a period of 15 years along with payment of fine of Rs.5,000/-, in default whereof he would undergo SI for 6 months, for the offence punishable under Section 6 POCSO. Additionally, the appellant was sentenced to undergo RI for a period of 2 years along with payment of fine of Rs. 2,000/-, in default whereof he would undergo SI for 6 months, for the offence punishable under Section 506 IPC. Both sentences were directed to run concurrently and the benefit under Section 428 Cr.P.C. was extended to the appellant.

2. The case of the prosecution, as culled out from the complaint, is that the same was lodged on 08.07.2017 on the statement of the child victim, aged about 9 years. The child victim stated that on 07.07.2017 at about 8:00 p.m., she was going to the open gym park near her house to bring home her two younger sisters who had gone out to play. The appellant, whose kids were also playing in the park, was also going there to bring them back, and the child victim accompanied him. In the park, the appellant made the child victim sit on his lap, lowered her underwear, and inserted his finger into her private parts. When the child victim felt pain, she cried out; however, there was nobody immediately around them as the other children were playing at some distance. The appellant threatened the child victim not to tell anyone about the incident, otherwise he would burn her, and the child victim got scared. On returning home, when her parents asked why her underwear had blood spots on it, she initially stated that she had been hurt by a swing; however, she later told her mother that the appellant had inserted his finger into her vagina, and the mother thereafter informed the child victim's father.



The matter was then reported to the police, leading to registration of the subject FIR. Upon completion of the investigation, the chargesheet was filed, and charges were subsequently framed against the appellant under Section 6 POCSO and Sections 366/376/506 IPC, to which he pleaded not guilty and claimed trial.

3. The prosecution examined 11 witnesses in support of its case. The child victim herself was examined as PW-2. Her father and mother were examined as PW-4 and PW-5 respectively. The principal of the school that the child victim was attending at the time was examined as PW-6 to establish the child victim's age. Dr. *Neelam Yadav*, who conducted the medical examination of the child victim and proved her MLC, was examined as PW-3. Dr. *Rajkumar* (PW-7) medically examined the appellant, collected his samples, and prepared his MLC on 09.07.2017; he further conducted the appellant's potency test on 10.07.2017, wherein he opined that there was nothing to suggest that the appellant was incapable of performing sexual intercourse. Dr. *Sarabjit Singh*, Sr. Scientific Officer, FSL, *Rohini*, was examined as PW-8. The I.O. of the case, Inspector *Lalita Rawat* (PW-10), deposed as to various aspects of the investigation carried out by her. The remaining witnesses are police officials whose testimonies were largely formal in nature.

4. Learned counsel for the appellant, while assailing the impugned judgment, contended that there exists a variance between the statements of the child victim and the testimonies of other key witnesses regarding the nature of the offence; specifically, the allegation of penetration was introduced for the first time in the child victim's statement under Section 164 Cr.P.C. It was further argued that there are other material



inconsistencies, such as the child victim stating she met her mother on the way home, while the mother (PW-5) indicated that they met at the house. Learned counsel also contended that the case is one of false implication arising from a prior dispute between the victim's family and their landlord, who is a relative of the appellant. Lastly, the investigation was challenged by disputing the appellant's place of arrest and alleging that his semen was collected by police officials at the police station; it was also highlighted that the child victim's underwear was not seized during her medical examination but was handed over to the police by her father.

5. *Per contra*, the learned APP for the State, as well as the learned counsel representing the victim, vehemently opposed the said contentions, submitting that the judgment of conviction does not suffer from any perversity or illegality warranting interference. The learned APP submitted that the testimony of the victim has remained consistent on all material particulars and that minor variations or omissions are insufficient to discredit the otherwise reliable testimony of a child victim of sexual assault. Additionally, the learned counsel for the victim highlighted that the FSL report establishes the presence of the appellant's DNA on the child victim's underwear, submitting that the same constitutes strong corroborative evidence supporting the prosecution case.

6. The Trial Court, after putting preliminary questions to the child victim and being satisfied with her competency, permitted her examination as PW-2, which was recorded without oath. The child victim deposed that she knew the appellant because he lived in the same house as her. She stated that on the night of the incident, her two younger sisters had gone to the "gym" along with two children of the appellant. At 8:00 PM that night, she went to



pick up her siblings from the “gym” along with the appellant, who was going to pick up his own children. At the “gym”, the appellant made her sit on his lap, took off her underwear, and inserted his finger as well as his penis into her vagina. The child victim confronted him as to what he was doing and stated that she would tell her parents, on which the appellant threatened to burn her. On being asked whether any other person was nearby when the appellant did the said acts to her, she replied in the negative. She stated that after the incident, she came out, and there was blood on her underwear. On being asked where the blood had come from, she replied that it had come out of her private parts. She stated that she met her mother while returning home. She did not tell her parents about the acts committed by the appellant due to the threats extended by him, initially telling her mother that she had sustained an injury from a swing. However, she later told her mother about the incident on the same night. Her mother thereafter told her father, who informed the police. She identified her signatures and the signatures of her father on the complaint (Ex. PW-2/A). She also identified her signatures on the statement recorded under Section 164 Cr.P.C. and correctly identified the appellant. On a pink-coloured underwear being produced in Court (Ex. P-1), the child victim identified it as the underwear she was wearing at the time of the incident.

In her cross-examination, the child victim stated that the incident had taken place in the park and volunteered that the said place was also known as the “gym”. She stated that the appellant had taken her there with him and that she returned along with her sister and the appellant. She reiterated that no member of the public was present nearby when the appellant made her sit on his lap. She cried after the appellant committed the wrong act with her



and was crying when she reached home. On being asked whether her mother had applied any medicine to her private parts that day, she replied in the affirmative and stated that her mother had applied powder. She denied the suggestion that her father had a quarrel or dispute with the appellant prior to the incident. She denied the suggestion of tutoring. She admitted that she had not mentioned in her complaint that the appellant had inserted his private part into her private part and volunteered that she had forgotten to do so.

7. The father of the victim was examined as PW-4. He deposed that on returning home from his shop on 07.07.2017, he noticed the child victim appearing sad and nervous. Upon inquiring, the child victim told him that she was bleeding from her private parts. Further examination was deferred.

On being recalled for examination, the witness stated that he had noticed blood stains on the child victim's underwear. The following day, at around 5:00-6:00 p.m., he received a call from his wife, who informed him that the appellant (correctly identified by the witness in Court) had removed the child victim's underwear and inserted his finger into her vagina. He returned home and inquired about the same from the child victim, who confirmed the incident. She told him that the appellant had threatened to kill her by burning her and, out of fear, she had not disclosed the incident on 07.07.2017 itself. The witness informed the police, who reached the spot and inquired about the incident from the child victim, the witness, and his wife. The witness handed over the underwear the child victim was wearing at the time of the incident to the police officers, who prepared a *pullanda* of the same and took it into possession *vide* a seizure memo (Ex. PW-4/A) bearing the signature of the witness. The appellant was handed over to the police



officers, and the child victim was taken for her medical examination. The witness further stated that on 10.09.2017, when the child victim was produced before the learned MM for recording of her statement under Section 164 Cr.P.C., she informed him that the appellant had also inserted his penis into her vagina. On a pink-coloured underwear (Ex. P-1) being produced in Court, the witness identified it as the underwear the child victim was wearing at the time of the incident, which he had handed over to the police during the investigation.

During cross-examination, the witness stated that he had reached home after receiving a phone call from his wife, and that he called 100 number at about 8:30 p.m. on 08.07.2017. The police, along with a counsellor, reached the spot within 30 minutes, and he handed over the child victim's underwear to them. He stated that he had not bathed his daughter on 07.07.2017 or on 08.07.2017. The child victim had complained of pain in her private parts. They had applied [Betnovate] on her private parts at about 9:00-9:30 p.m. on 07.07.2017 as she was bleeding. The witness denied having any litigation with his landlord and volunteered that the landlord had been harassing him for some time and the witness along with his family had then shifted to another residence. He admitted it to be correct that the appellant was a relative of his landlord. He, however, denied the suggestion that he had any dispute with his landlord or that he had falsely implicated the appellant in the present case on account of such a dispute. Notably, no suggestion was put to the witness regarding any direct dispute or quarrel between him and the appellant, or between his family and the appellant.

8. The mother of the child victim was examined as PW-5. She deposed that on 07.07.2017, the child victim went to the park along with the



appellant (correctly identified) to call her sister. After about half an hour, her daughters returned home. She noticed blood stains on the *nikkar* (underwear) that the child victim was wearing. When she inquired about the same, the child victim did not give a proper reply, stating sometimes that she had sustained an injury from the swing and sometimes that it was because of a *phunsi* (pustule). The next day, upon the witness persistently asking what had happened, the child victim disclosed that the appellant had removed her *nikkar* and inserted his finger as well as his penis into her private parts. The child victim also disclosed to the witness that the appellant had threatened that if she told anyone about the incident, he would burn her. The witness stated that it was for this reason that the child victim did not disclose the incident on the day of the occurrence itself. Upon the child victim disclosing the above facts, the witness called her husband and asked him to come home. Her husband made a call at 100 number, and police officials came to their house thereafter. She, too, identified Ex. P-1 as the *nikkar* the child victim was wearing at the time of the incident.

During cross-examination, she stated that she had allowed the child victim to accompany the appellant to the park/gym to bring her other daughter back after the appellant had asked the child victim to accompany him. The appellant had also brought his children back from the park, and, at the time, the child victim was crying and appeared to be scared. The child victim did not tell the witness anything when she made inquiries of her. She stated that she had noticed the child victim's blood-stained *nikkar* at that time itself, while the appellant was also present. She stated that she did not make any inquiries of the appellant at the time and volunteered that, as her daughter had not said anything by then, she had no reason to suspect him.



She did not wash the child victim's *nikkar*. She had applied [Betnovate] on the child victim's private parts, but they did not go to the doctor at that time. The next day, she called her husband as soon as her daughter disclosed the incident to her. She stated that there was no dispute between her and their landlord but admitted that they had shifted houses recently.

9. To establish the age of the child victim, *Sh. Natiq Abbas*, the principal of the school she was attending at the time, was examined as PW-6. He deposed that as per the record, the date of birth of the child victim is 03.09.2008. In this regard, attested copies of the admission register and the admission form of the child victim were exhibited as Ex. PW-6/A and Ex. PW-6/B respectively. The date of birth certificate of the child victim, issued by the witness, was exhibited as Ex. PW-6/C.

10. *Dr. Neelam Yadav*, who conducted the gynaecological examination of the child victim, was examined as PW-3. She stated that on local examination of the child victim, the labia majora and minora appeared normal and there was no external injury mark on them. She further stated that posteriorly, there was a breach in continuity of the hymen, which appeared to be a fresh injury. She proved her report on the back of the casualty card as Ex. PW-3/A and the MLC of the child victim, prepared by her (the witness), as Ex. PW-3/B.

During cross-examination, she stated that it is not necessary for there to be injuries on labia majora and minora in case of fingering of genitalia of a child victim aged 8 years by a person aged 24 years. While she admitted that the breach in continuity of hymen may occur due to injury sustained after a fall or due to excessive physical activity, she also volunteered that the victim in the present case did not give any preceding history of injury due to



falling or any excessive physical activity like cycling etc.

11. Dr. *Rajkumar*, who medically examined the appellant on 09.07.2017, was examined as PW-7. He proved the MLC of the appellant as Ex. PW-7/A and deposed that he collected the samples of the appellant and handed over the same to the I.O. in a sealed envelope. On 10.07.2017, he again examined the appellant and rendered the potency report *vide* MLC (Ex. PW-7/B). Notably, he was not cross-examined on the aspect of the collection of the appellant's samples, despite opportunity.

12. Dr. *Sarabjit Singh*, Sr. Scientific Officer (Biology), FSL, *Rohini*, was examined as PW-8. He deposed that on 20.07.2017, one duly sealed parcel was received in the office of FSL *Rohini* and was marked to him for examination. After examining the exhibits, he prepared his report dated 28.03.2018 along with allelic data chart (Ex. PW-8/A).

13. The I.O of the case, Inspector *Lalita Rawat*, was examined as PW-10. She deposed that on 08.07.2017, she was informed of DD No. 31A and directed to reach the house of the child victim. The appellant was also found present there. The appellant was handed over to the witness by the father of the child victim, who stated that the appellant was the person who had committed "*galat harkat*" (wrong act) with the child victim. She stated that the father of the child victim also handed over a stained *nikkar* (underwear) of the child victim to her, informing her that it was the *nikkar* the child victim was wearing at the time of the incident. The witness prepared a *pullanda* of the same and sealed it with the seal of 'LR'. The said *pullanda* was taken into possession *vide* a seizure memo (Ex. PW-4/A) bearing the witness' signature. The appellant was arrested, his personal search conducted, and he was thereafter sent to the hospital for medical



examination through Ct. *Vikrant* and SI *Dinesh*. Following the medical examination, SI *Dinesh* handed over the appellant's MLC along with the samples received from the examining doctor. The witness took the same into possession *vide* seizure memo (Ex. PW-9/A). On the witness' directions, SI *Dinesh* also got the potency test of the appellant conducted. On 20.07.2017, the exhibits were sent to FSL *Rohini* through Ct. *Munshi Ram*. He returned to the police station after depositing the exhibits and handed over the RC with the FSL acknowledgment to the MHC(M). The witness recorded the statement of Ct. *Munshi Ram* in this regard.

During cross-examination, the witness stated that although some members of the public were present at the spot, their statements were not recorded as they were not eyewitnesses to the incident. She denied the suggestion that the appellant was called to the spot by the police at about 8:00 p.m. on 08.07.2017 and falsely implicated at the instance of the complainant. A suggestion was put to her that the appellant's semen was forcefully obtained with the help of male police officials and planted on the victim's clothes, which she denied. She further denied the suggestion that the appellant had informed her of quarrels between him and the child victim's parents over the preceding 8-10 days. She also denied that the public persons present at the spot had mentioned any such quarrels between the parties.

14. In his statement under Section 313 Cr.P.C., the appellant denied all allegations of wrongdoing and claimed false implication. He admitted that he and the child victim lived in the same house but categorically denied accompanying her to the park, stating he went there only to bring home his own children. When asked to comment on the evidence that the father of the child victim (PW-4) had produced him before the I.O. and handed him over



to SI *Sandeep* (PW-11), the appellant stated this was incorrect and that he was arrested from his own house. He admitted as correct that on 09.07.2017, his pubic hair, nail clippings, blood, and peril [sic] swab samples were collected *vide* MLC Ex. PW-7/A. He further stated it was a matter of record that these samples were sealed, handed over to the I.O., and seized *vide* memo Ex. PW-9/A. He admitted his medical examination by Dr. *Raj Kumar* (PW-7) and that his potency test was conducted on 10.07.2017. It was further put to him that the relevant exhibits were taken to FSL *Rohini* and deposited there by Ct. *Munshi Ram* on 20.07.2017, to which he stated that it was a matter of record. When confronted with the FSL report, which stated that his semen was detected on the underwear of the victim, and asked what he had to say about the same, the appellant stated that he did not know; and alleged that his semen was taken by the police at the police station. When asked why witnesses had deposed against him, he stated that he did not know. He chose not to lead any defence evidence, but put forth a version that the father of the child victim used to drink with him and would sometimes borrow money from him; when he asked for a refund of the same, the father allegedly quarrelled with him for about 4-5 days, threatening to teach him a lesson, and when the appellant returned from duty the next day, he was arrested at the instance of the child victim's father.

15. I have heard the learned counsels for the parties and carefully examined the record.

16. It is apposite to note at the outset that no arguments disputing the age of the child victim have been agitated before the Trial Court or before this Court. Notwithstanding, the age of the child victim stands established in view of the documents proved by PW-6. The same reflect her date of birth



as 03.09.2008, which brings the victim within the meaning of the term “child” as defined under Section 2(d) POCSO.

17. Now, coming to the first contention raised by the learned counsel for the appellant regarding the material improvements and variance in the statements of the child victim, it has been specifically argued that the allegation of insertion of penis was introduced belatedly, surfacing only during the recording of the child victim’s statement under Section 164 Cr.P.C. A perusal of the record shows that the child victim has categorically stated in her statement under Section 164 Cr.P.C. as well as in her Court deposition that the appellant made her sit on his lap, took off her underwear, and inserted his finger as well as his penis into her vagina. While the initial complaint (Ex. PW-2/A) may not have contained the specific detail of penile penetration, a fact the child victim herself addressed during her cross-examination by volunteering that she had forgotten to mention the same, the core allegation of sexual assault has been present from the outset. It is worth mentioning that even if the act were limited to digital penetration, the same would still fall within the ambit of “penetrative sexual assault” as defined under Section 3 POCSO; and if committed upon a child below 12 years of age, as stipulated under Section 5(n), it would constitute “aggravated penetrative sexual assault” punishable under Section 6 POCSO (Ref: *Nawabuddin Vs. State of Uttarakhand*<sup>1</sup>). It is also trite that the information given to the police cannot be pressed into service to reject the substantive evidence tendered by a witness before the Court (Ref: *Ram Swaroop Vs. State of Rajasthan*<sup>2</sup> and *State of Uttar Pradesh Vs. Krishna Master & Ors.*<sup>3</sup>).

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<sup>1</sup> (2022) 5 SCC 419

<sup>2</sup> (2004) 13 SCC 134

<sup>3</sup> (2010) 12 SCC 324



18. Furthermore, the testimony of the child victim finds significant corroboration in the depositions of her parents, PW-4 and PW-5. Although they are not eyewitnesses to the occurrence, their testimonies regarding the immediate conduct of the child and her subsequent disclosures are of vital importance. The father (PW-4) deposed that upon returning home, he found the child victim appearing sad and nervous, and she informed him that she was bleeding from her private parts. The mother (PW-5) similarly deposed that she noticed blood stains on the child victim's underwear immediately upon her return from the park in the company of the appellant, at which time the child was crying and appeared scared. The child victim was in such physical distress that her parents applied Betnovate to her private parts that very night. Upon persistent inquiry the following day, the child victim disclosed to her mother that the appellant had removed her underwear and inserted his finger as well as his penis into her vagina. The mother thereafter informed the father, who immediately reported the matter to the police. The fact that both parents have consistently put forth these versions in their respective Court depositions, mirroring the child victim's statement under Section 164 Cr.P.C. and her Court deposition, lends significant credence to the prosecution version. The initial hesitation of the child to disclose the full extent of the assault, initially attributing the injury to a swing or a "phunsi", cannot be viewed in a vacuum. She has explained that the appellant threatened to burn her if she told anyone, a threat which probably operated on her mind and caused her to remain silent initially.

19. Regarding the contention that a discrepancy exists as to the exact location where the child victim first met her mother, the learned counsel for the appellant has pointed out that while the child victim stated she met her



mother on her way home, the mother deposed that her daughters returned to the house. This variance, when viewed in the context of the entire evidence on record, does not affect the substratum of the prosecution's case. The mother has categorically deposed that she noticed the blood stains on the child victim's underwear immediately upon her return, at which time the appellant was also present. The core of the testimony, being the child victim returning in a state of distress with blood-stained clothing while in the company of the appellant, remains unshaken. Where exactly the physical meeting took place is a peripheral detail that does not go to the root of the matter.

20. As for the contention regarding false implication on account of a prior dispute, a perusal of the record reveals significant inconsistencies in the defence version itself. While the learned counsel for the appellant has suggested that the dispute existed between the child victim's family and their landlord, who is a relative of the appellant, the appellant in his statement under Section 313 Cr.P.C. has put forth a different narrative. He claimed that he and the father of the child victim used to consume alcohol together and that the father had borrowed money from him. According to the appellant, when he requested a refund, the father quarrelled with him and threatened to teach him a lesson. It is pertinent to note that despite these categorical claims in his Section 313 statement, no suggestion regarding the borrowing of money or the alleged drinking sessions was put to the father of the child victim during his cross-examination. Furthermore, the child victim, the mother, and the father have all categorically denied the existence of any dispute(s). In the absence of any documentary evidence to substantiate the claim of money being loaned, the version put forth by the appellant remains



a bald allegation and appears to be nothing more than moonshine.

21. Regarding the contention disputing the place of arrest, the appellant has claimed in his statement under Section 313 Cr.P.C. that he was arrested from his house, whereas the prosecution version is that he was produced before the police by the father of the child victim. A perusal of the testimony of the I.O. of the case (PW-10) reveals that upon reaching the child victim's house on 08.07.2017 with other police officials, she found the appellant already present there, at which point he was handed over to them by the father of the child victim. The father has corroborated this version, stating that he produced the appellant before the I.O. and informed her of the incident. It is pertinent to note that the appellant himself admitted in his Section 313 statement that he lived in the same house as the child victim. Therefore, his presence at the spot where the police arrived is entirely natural and consistent with the prosecution's narrative.

22. This Court is of the firm opinion that the ocular version of the child victim, as supported by her parents, is in itself sufficient to bring home the guilt of the appellant. The same stands corroborated by the medical evidence provided by PW-3, who noted a posterior breach in the continuity of the hymen, statedly appearing to be a fresh injury. While the defence argued that such an injury could result from a fall, the doctor specifically volunteered that the child victim had provided no such history.

23. A perusal of the record shows that the appellant's pubic hair, nail clippings, and blood samples were collected by the medical professional, PW-7, in a sealed envelope. This fact stands admitted by the appellant in his statement under Section 313 Cr.P.C. While no dispute is raised regarding the blood sample, the contest is limited to the semen sample. However, the FSL



report records the presence of both, i.e., the appellant's blood and semen, on the child victim's underwear. PW-8, who prepared the report and allelic data chart, deposed that the alleles from exhibit '3' (blood stained gauze cloth piece of the appellant) are accounted (matching) in the alleles generated from the source of exhibit '1' (underwear of the child victim), '4a' (cotton wool swab of the appellant), and '4b' (cotton wool swab of the appellant).

24. The allegation that the appellant's semen was forcefully collected and subsequently planted on the child victim's underwear lacks any evidentiary basis. Though a suggestion regarding the forceful collection and planting of semen was put to the I.O. and denied, it is pertinent to note that the child victim's underwear was handed over by her father to the I.O. (PW-10) on 08.07.2017. The I.O. prepared a *pullanda*, secured it with the seal 'LR', and took it into possession *vide* seizure memo (Ex. PW-4/A) on that same date. As per the arrest memo, the appellant was arrested only on 09.07.2017. The clothing was, therefore, already sealed before the appellant was even arrested. Furthermore, no specific particulars as to the date, time, or manner of the alleged forceful collection of semen were suggested. In the absence of foundational facts, the allegation remains entirely unsubstantiated.

25. Recently, in State of Madhya Pradesh vs. Balveer Singh<sup>4</sup>, the Supreme Court laid down various principles for assessing and appreciating the testimony of a child victim. Keeping the same in mind, this Court is of the view that the child victim in the present case has put forth a trustworthy and consistent version, and the same stands duly corroborated by the testimony of her parents. It is settled law that a conviction can rest upon even the sole testimony of a victim of sexual assault, if her testimony is

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<sup>4</sup> 2025 SCC OnLine SC 390



found to be credible and reliable (Ref: State of Punjab Vs. Gurmit Singh<sup>5</sup>; Ganesan Vs. State<sup>6</sup>).

26. Further, it is worthwhile to mention that 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 Vs. State of Gujarat<sup>7</sup> has held that Section 29 POCSO comes into play once such foundational facts are proved:-

*“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...”*

27. In the present case, this Court is of the considered view that the testimony of the child victim entirely inspires confidence. The prosecution case stands proved on the basis of the oral evidence of the child victim itself, which is further fortified by the medical and forensic evidence on record. Once the prosecution established the foundational facts regarding the age of the victim and the commission of the act, the statutory presumption under the POCSO Act was triggered, and the appellant has failed to provide any plausible explanation to rebut this presumption. The defence raised by the appellant, being contradictory and unsubstantiated, appears to be nothing more than moonshine. The core of the prosecution case stands proved beyond reasonable doubt; consequently, this Court finds no perversity or illegality in the impugned judgment of conviction and order on sentence.

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<sup>5</sup> (1996) 2 SCC 384

<sup>6</sup> (2020) 10 SCC 573



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The present appeal is, accordingly, dismissed.

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

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

**MANOJ KUMAR OHRI  
(JUDGE)**

**FEBRUARY 24, 2026**

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<sup>7</sup> (2025) 2 SCC 399