



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

% Reserved on : 25.08.2025
Pronounced on : 27.08.2025

+ **CRL.A. 372/2024**

JAGAT

.....Appellant

Through: Ms. Tanya Aggarwal (DHCLSC),
Advocate.

Versus

GOVT OF NCT OF DELHI AND ANRRespondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Meenakshi PS Neb Sarai,
Delhi.
Mr. Archit Upadhayay, Advocate for
victim.

**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 01.12.2023 and the order on sentence dated 06.02.2024, passed by the learned Additional Sessions Judge-01, Special Court (POCSO), South District, Saket Courts, Delhi, in SC No. 193/2017 arising out of FIR No. 117/2017 registered under Sections 376/366A IPC and Section 6 POCSO at P.S. Neb Sarai.

Vide the order on sentence, the appellant was sentenced to undergo RI for 10 years and to pay a fine of Rs.25,000/- for the offence under Section 376(2) IPC, and in default of payment of fine, to further undergo SI for 1 year. He was further sentenced to undergo RI for 4 years and to pay a fine of



Rs.10,000/- for the offence under Section 366A IPC, and in default of payment of fine, to further undergo SI for 4 months. Both the sentences were directed to run concurrently and the benefit of Section 428 Cr.P.C. was extended to him.

2. The facts, in a nutshell, as noted by the Trial Court are extracted hereunder:

“Succinctly, the facts of the case unfolded from the charge sheet filed u/s 173 of Criminal Procedure Code (for short CrPC) are that on receipt of DD No. 32A dated 14.03.2017, on the directions of SHO, IO W/SI Jitendra Negi alongwith W/Ct. Shanti and Ct. Harender reached at the spot at XXX, New Delhi where the victim 'R' alongwith her parents were found seated in a PCR van. After leaving Ct. Harender at the spot, IO alongwith W/Ct. Shanti went to AIIMS Hospital in the PCR van and the victim was got admitted there but her statement could not be obtained at that time. Thereafter, the statement of father of victim was recorded wherein he has stated that on the day of incident, he and his wife went for their work and their three children i.e. two daughter and one son were left at the house. He has further stated that due to some work, he returned to his house at about 1.00 PM and found that his victim daughter 'R' aged about five years was missing from the house. He has further stated that he searched for the victim but did not find her and when he was returning back to his house, he found his victim daughter weeping outside the door of the house of his neighbour Jagat and her clothes were stained with blood. He has further stated that on inquiry from the victim, she had told that the accused took her to his house on the pretext of giving toffee to her, made her to lie on the bed, inserted his finger in her vagina and also gave tooth bite on her cheeks. He has further stated that when the accused came outside of his room, he asked the accused as to what he had done with his daughter, upon which accused had started quarreling with him and ran away from the spot after slapping him. He has further stated that someone from the public had called the police at 100 number. Thereafter, IO had collected the MLC of victim. On these allegations, the present FIR No. 117/2017 was registered against the accused.”



3. On conclusion of investigation, a charge-sheet was filed, and the Trial Court framed charges under Sections 366A/376(2) IPC and Section 6 POCSO against the appellant, to which the appellant pleaded not guilty and claimed trial. The prosecution examined 9 witnesses in support of its case, with the material witnesses being (i) the child victim, aged about 5 years at the time, who was examined as PW-1; (ii) her mother, examined as PW-2; and (iii) her father, examined as PW-3. The MLC of the victim was proved through the examining doctor, who was examined as PW-5. The rest of the prosecution witnesses were police officials who deposed as to various aspects of the investigation. No defence evidence was led on behalf of the appellant.

4. Learned counsel for the appellant has called into question the impugned judgment, contending first, that the conviction rests solely on the testimony of the child victim without any independent corroboration. It is further contended that the appellant has been falsely implicated owing to a prior quarrel with the family of the victim, which had taken place on the day of Holi, a few days before the incident. He is stated to have refused to give water from his house to the family of the victim, which, according to him, led to animosity and the tutoring of the child victim to falsely depose against him. It is also stated that the FSL report is inconclusive and does not support the prosecution's case.

5. The contentions advanced on behalf of the appellant are refuted by the learned APP for the State, duly assisted by the learned counsel for the child victim. It is contended that the child victim has consistently and categorically described the manner in which the offence was committed and identified the appellant during trial. It is further stated that her version stands



corroborated by the immediate disclosure made to her parents (PW-2 and PW-3) and by the medical evidence on record, as the MLC notes injuries consistent with her account. It is also submitted that the inconclusive FSL report does not take away from the prosecution's case.

6. The events in question occurred on 14.03.2017, when the child victim was found weeping outside the appellant's house by her father at around 1:00 p.m., with bloodstains on her clothes. The first information about the incident was recorded the same day at about 1:50 p.m. through DD No. 32A (Ex.PW-8/A), which noted receipt of a call regarding rape upon a 3–4-year-old girl. As per the case of the prosecution, the inquiry was initially assigned to SI *Vinay Kumar*, and thereafter, on the directions of the concerned SHO, to W/SI *Jitendra Negi*, who, alongwith W/Ct. *Shanti* and Ct. *Harender*, reached the spot and met the child victim as well as her parents. She took the child victim to AIIMS hospital, where her medical examination was conducted. The statement of the child victim could not be recorded at this time, however the statement of her father was recorded (Ex. PW-3/A).

In her testimony, the I.O. stated that after the child victim's medical examination, she collected her MLC (Ex. PW-5/A). Thereafter, she and W/Ct. *Shanti* returned to the scene, and the I.O. made an endorsement on the statement of the father (Ex. PW-9/A) and *rukka* was handed over to Ct. *Harender* for registration of FIR. She deposed that the victim had shown the place of occurrence, identified the mattress, and stated that the accused had committed wrong with her, whereafter the mattress was sealed. The accused was later found sleeping in a DDA park near St. Mary's School and was arrested after identification by the father of the child victim.



7. Coming to the testimony of the child victim, it is noted that the learned counsel for the appellant has not contested her age, and thus she is held to come under the ambit of “children” as defined under POCSO. A statement of the Principal of the victim’s school, certifying her date of birth and that she is a student of Class I at the said school, is on record, exhibited as Ex. PX-1.

8. The victim, aged about 5 years at the time of the incident, was examined as PW-1. Before recording her statement, the Trial Court noted its satisfaction regarding her competence to depose. On the request of the learned SPP, she was first asked to identify the accused. When the face of the accused was shown on the screen placed in Court, she could not identify him, the image not being clear. On being shown the accused face-to-face, however, she identified him as the person who had committed wrong with her. She deposed that the accused, who was residing in their neighbourhood, took her to his house under the pretext of giving her toffees. There, he made her lie on the bed and inserted his finger into her vagina. He also slapped on her cheeks and bit her. She stated that blood came out of her vagina and she began to weep, whereafter the accused pushed her out of the house. Outside, she met her father and told him what had happened, following which her father beat the accused, during which the accused tore the shirt of her father. She further stated that she was taken to a doctor, and that she had given a statement under Section 164 Cr.P.C. before the Magistrate, which was read over to her in Court and admitted by her as correct. The same was exhibited as Ex. PW-1/A. She also identified the clothes she was wearing at the time of the incident, which were produced in Court and marked as MO-01 to MO-03.



In her cross-examination, she stated that it was in the morning that the accused took her to his house, and that she was not wearing underwear at that time. She denied the suggestions that the wife of the accused was present in the house, that the accused had not taken her under the pretext of giving her toffees, or that he had not done anything as deposed by her. She further stated that her younger brother was with her when the accused took her to his house. On a question being put to her, she confirmed that there was a tubewell at the house of the appellant. She denied that her parents ever went to the appellant's house for fetching water, clarifying that they used to go to the house of one *Anjali* for this purpose. She also denied that there had been any quarrel between her mother and the wife of the accused one day prior to the incident, or that she had been tutored by her parents to depose falsely.

9. PW-2, the mother of the victim, deposed that on the day of the incident she had gone with her husband to work while the children remained at home. Around noon her husband returned, found the child victim missing, and later traced her crying near the gate of the appellant's house. The child victim narrated to her that the accused had taken her inside his house, gagged her, inserted his finger into her vagina and bitten her cheeks, and that blood had come out, which was then cleaned by him.

In her cross-examination, on a suggestion being put to her that nothing had happened with the victim, she denied the same. She also denied the suggestion that she and her family had falsely implicated the appellant on account of a quarrel arising out of issues regarding water. She further denied that the wife of the accused was present at the time of the incident, or that she had tutored her daughter to depose falsely.



10. PW-3, the father of the victim, deposed that on the relevant day, after returning home around noon and finding the victim missing, he searched for her and soon heard her crying near the gate of the appellant's house. On asking, the victim told him that the appellant had lured her inside under the pretext of giving her toffee, removed her clothes, inserted his finger into her vagina and bitten her cheeks. He identified the appellant as the person his daughter pointed out. PW-3 stated that when he confronted the appellant, the latter slapped him and tore his shirt. Thereafter, the police were called and the victim was taken to the hospital. His statement was recorded by the I.O., exhibited as Ex. PW-3/A.

In his cross-examination, on suggestion being put to him that no such incident had occurred, he denied the same. On suggestion being put to him that he and his wife had falsely implicated the appellant due to a quarrel arising out of the appellant refusing to give them water, he denied the same. He also denied that his daughter had been tutored, or that the wife of the appellant was present in the house at the time of the incident.

11. Having considered the testimonies of the material witnesses, it is now apposite to examine the medical and forensic evidence on record. The examining doctor/PW-5 recorded in the MLC (Ex. PW-5/A) the history as narrated to her by the child victim, that she had been sexually assaulted by her neighbour at his house, after which she started bleeding. The MLC notes a blood stain of 1 x 1 cm over the left ankle of the child victim and that her hymen was found freshly torn at the 6 o'clock position. The MLC thus corroborates the victim's account of having bled after the assault. The MLC was duly proved by PW-5, and nothing substantial was extracted in her cross-examination. As regards the forensic evidence, the FSL report did not



yield any conclusive result, as DNA isolation could not be carried out from several exhibits on account of degradation of the samples. However, the inconclusive report cannot be read to the advantage of the appellant.

12. 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 desirable 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.”*

13. 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.

14. 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.



15. 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. 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...”

16. 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.”

17. In view of the above, it is evident that if the testimony of the child victim inspires confidence and is reliable, the conviction can rest upon it. In the present case, the testimony of PW-1 is consistent and categorical insofar as the appellant having taken her to his house on the pretext of giving



toffees, removing her clothes, inserting his finger into her vagina and biting her cheeks is concerned. Her version stands corroborated by the MLC, which records a blood stain over her ankle and a fresh hymenal tear, both consistent with her account of having bled after the assault. The defence of false implication on account of a quarrel over water during Holi remains unsubstantiated, as both PW-2 and PW-3 denied any such quarrel and no material was led in support of the said contention. The allegation of tutoring is also unsubstantiated; as the bare suggestions given during cross-examination were denied. These factors, taken together, establish the foundational facts of the prosecution case, thereby attracting the presumption under Section 29 POCSO. The testimony of the child victim, having been found to be credible and reliable and duly supported by the MLC, inspires confidence. This Court, therefore, finds no merit in the appeal, which is dismissed, and the impugned judgment of conviction as well as the order on sentence are upheld.

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

**MANOJ KUMAR OHRI
(JUDGE)**

AUGUST 27, 2025

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