



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Pronounced on: 11th November, 2025*

+ **CRL.APPEAL NO.78/2025 & CRL.M.B. 137/2025**

CHHOTE LAL

S/o Late Sh. Prabhu Dayal

R/o C-24, Gali No.19, Chanchal Park, Nangloi,

Najafgarh Road, New Delhi-110041.

....Petitioner

Through: Ms. Urvashi Jain, Mr. Hemant Singh,
Mr. Aman Bidhuri and Mr. Attrey
Gupta, Advocates.

Versus

1. **THE STATE (GOVT. OF NCT) DELHI)**

Through SHO, P.S. Ranhola

2. **PROSECUTRIX**

Through SHO, P.S. Ranhola.

....Respondents

Through: Mr. Shoaib Haider, APP for the State
with SI Paramjeet, PS Ranhola. Mr.
Harsh Prabhakar, Advocate (Amicus
Curiae) (DHCLSC) with Mr. Dhruv
Chaudhry, Mr. Shubham Sourav and
Mr. Vijit Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. An Appeal under Section 415(2) read with Section 528 Bharatiya Nagarik Suraksha Sanhita (*B.N.S.S.*), 2023 or in alternate under Section 374(2) read with Section 482 of the Code of Criminal Procedure (*Cr.P.C.*), 1973 has been filed to challenge the Judgment of Conviction dated 03.08.2024 and the Order on Sentence dated 05.11.2024, whereby the **Appellant/Chhote Lal** has been awarded *sentence of five years and a fine of*



Rs.10,000/- for the offences under Section 354/354A(2) IPC and Section 10 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as "POCSO Act"*) registered at Police Station Ranhola.

2. **Briefly stated**, the Appellant submits that he is a 77 years old individual who has been falsely implicated in this case. He is disabled as his six fingers, three of each hand, got severed in the year 1972 while he was working in a Power Press Factory. The Appellant has already undergone incarceration for seven months.

3. The **Judgment of conviction and sentence is challenged on the ground** that the Prosecution has not been successful in establishing the guilt of the Appellant. *The age of the girl was not established.* PW-3, Sh. Anil Kumar Jha, the Principal of the school of the alleged victim admitted in the cross-examination that no Birth Certificate of the child "T" was furnished at the time of the admission. It has been wrongly concluded that the date of birth Certificate is sufficient to prove the age of the victim. Even though the Principal had stated that the age of the victim was recorded as per the Aadhar Card shown by the mother, but it was neither submitted in the Court nor the Application Form submitted for the admission of the child, was considered.

4. It is further asserted that there are material discrepancies in the testimony of the victim. Her statement under Section 164 Cr.P.C. is totally different from her testimony in the Court. PW-1, the Prosecutrix in her statement under Section 164 Cr.P.C. had stated that she had gone to buy the soap and had told the Uncle to give her one. The soap was given to her but he also pulled her hand and asked her to come inside. He then put his hand in her underwear and then she bit his hand and ran away. She never took the



name of the Accused in her statement. However, she takes the name of the Appellant only in the last line of her examination-in-chief.

5. PW-1, the Prosecutrix and PW-2, her mother both deposed in their cross-examination that Appellant had done such incidents with other children as well. However, this fact has neither been independently verified nor any witness was called to prove this fact. There were several other statements which seemed to be tutored against the Appellant.

6. Furthermore, the learned ASJ had observed that the PW-1, the Prosecutrix has resiled from her previous statement, but has still convicted the Appellant, which is grossly erroneous. It has not been appreciated that the victim embellished her statements and her testimony was completely different from her statement recorded under Section 164 Cr.P.C and Section 161 Cr.P.C. The statement of the victim has been believed as cardinal truth without appreciating that there was no independent evidence alongside the disability and the age of the Appellant. The improvements and the tutoring of the Prosecutrix have been over looked.

7. It is further contended that the Sections under which the Appellant has been convicted, are not made out from the Prosecution Evidence. The story has been concocted and fabricated in order to hide the truth and falsely implicate the Appellant.

8. It is further contended that there was considerable delay in reporting the crime and filing of FIR. In fact, the FIR was filed just in time at 11:57 PM i.e. three minutes before the change of date. It has not been considered that the incident had taken place at 01:30 PM on 03.04.2021, but the call to the Police was made only at 03:50 PM i.e. after more than one hour. There is no explanation for making such belated call to the Police. Further, when



the Police arrived, the Complainant/mother and the child refused to give any Statement to Woman ASI Vidya, in the absence of the husband.

9. *A prayer is, therefore, made that the impugned Judgment and Order on Sentence be set aside.*

10. The **State in its Status Report** has submitted that the allegations against the Appellant has been proved by the consistent testimony of Prosecutrix and her mother. The Date of Birth of the victim was 30.10.2012 which was verified from the School Records and Chargesheet was accordingly filed under Section 354/354-A IPC and Section 10 POCSO Act. It is further submitted that in the facts and circumstances, *no interference in the Conviction and Sentence is merited.*

Arguments heard on behalf of the Appellant and the State. Record perused.

11. *The first ground on which the Conviction has been challenged is in regard to the age of the child.*

12. The contention of the Appellant that the age of the victim has not been proved deserves to be considered in light of the statutory framework governing determination of age.

13. On the issue of determination of age of a minor, a reference is made to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (*hereinafter referred to as the "JJ Rules"*). **Rule 12 provides for the procedure to be followed in determination of age.**

14. The age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in **Rule 12(3)**, reproduced as under:



“ ...

(3) *In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-*

- (a) (i) *the matriculation or equivalent certificates, if available; and in the absence whereof;*
 (ii) ***the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;***
 (iii) *the birth certificate given by a corporation or a municipal authority or a panchayat;*

(b) *and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.*

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, Clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

15. In the case of Jarnail Singh vs. State of Haryana, AIR 2013 SC 3467 it was observed that even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, ***the aforesaid provision***



should be the basis for determining age, even for a child who is a victim of crime.

16. It was further observed that the highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, **Rule 12(3), envisages consideration of the Date of Birth entered, in the school first attended by the child. In case such an entry of Date of Birth is available, the Date of Birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon.**

17. The process of age determination as provided under Sub-Section (3) to Rule 12, is identical to the procedure defined in Section 94 (2) of the JJ Act. It was observed in *Rajni vs. State of Uttar Pradesh*, 2025 SCC OnLine SC 1183 that when the claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court and to discharge the initial burden. However, in terms of Section 94(2) of the JJ Act and Rule 12(3)(a) of the JJ Rules, **the documents mentioned therein, are sufficient for prima facie satisfaction of the Court.** The presumption, however, is not conclusive proof of the age and may be rebutted by contra evidence led by the opposite side.

18. The Prosecution in order to prove the age of the child had examined **PW-3, Anil Kumar Jha, Principal of the School** attended by the victim. He deposed that Victim was admitted in the school in Class I on 26.04.2018 vide Admission No.1505 by her mother vide Admission Form, Ex.PW3/A which was duly supported with an Affidavit, Ex.PW3/B. He further



deposed that the mother had also supplied School Leaving Certificate, Ex.PW3/C of the School where the child had studied upto Nursery standard. The copy of the Admission and Withdrawal Register was Ex.PW3/D.

19. The records reveals that the Admission Form of the child mentioned her Date of Birth as 30.10.2012. The names of the parents were also correctly reflected in the Admission Form, which had the signatures of the mother. The Admission and Withdrawal Register of the previous school is Ex.PW3/D, where the name of the child is mentioned and her Date of Birth is indicated as 30.10.2012. Moreover, there was no challenge to the testimony of PW-3 by way of cross-examination.

20. The learned ASJ has rightly observed that in the two Admission and Withdrawal Register, the Date of Birth of the Child has been given as 30.10.2012. The mother had no reason to give a false information to the school in respect of the age of the child in the year 2018, when the age of the child was mentioned and the mother could not have known that the age of the child would become an issue in any subsequent Court proceedings.

21. Furthermore, **PW-6, I.O SI Sapna Sharma** had deposed that she had served the Notice under Section 91 Cr.P.C, Ex.PW6/C1 to the Principal of the School and thereafter, the Principal had issued a Certificate dated 08.04.2021, Ex.PW6/E certifying the age of the child as 30.10.2012.

22. The other material witness examined by the Prosecution was **PW-2, mother of the Prosecutrix** to whom no suggestion about the age of the child being mentioned incorrectly in the school records, was given.

23. Pertinently, the earlier School records are of 2018, while this Birth Certificate has been prepared subsequently on 08.04.2021 which also records the same Date of Birth.



24. Following the abovesaid principles, it is clear that school records are sufficient for *prima facie* satisfaction of the Court regarding the age of a child, unless effectively rebutted by cogent contrary evidence. There is overwhelmingly consistent evidence in regard to the Date of Birth of the Child as 30.10.2012, which has been proved by cogent and contemporaneous school records.

25. **Therefore, the contention of the Appellant that the age of the child is not proved, is blatantly without any merit.**

26. *The second aspect on which the challenge is made is that there are material contradictions in the testimony of the child and her mother.*

27. It is asserted that the Statement given by the child under Section 164 Cr.P.C. is at variance to her testimony as **PW-1**. Before considering the testimony of the child, it is pertinent to note that she was barely 9 years old at the time when the case got registered and her statement under Section 164 Cr.P.C was recorded. She came to depose in the Court on 06.02.2023 at which time she was 11 years old. The tender age of the child must be kept in mind while making an assessment of her testimony.

28. The victim in her testimony had deposed as under:

“03.04.2021 ko hum apni pass wali aunty ke ghar pe paudhe laga rahe the toh mummy ne bola ki nahane ke liye saabun le aao. Main dukaan pe saabun lene gai toh uncle mujhe ander ki taraf le gaye aur bole le samaan aur phir meri kachhi main haath daal kar phera tha. Un uncle ka naam Chhote Lal hai.”

29. The only material suggestion given to her was that her mother had gone to the Accused to say that if he gave some money to them, then she will withdraw the present case. There is no date or any specific suggestion



to the victim as to when the mother of the Prosecutrix had gone to the house of the Accused. Indeed, what appears from the suggestion is that allegedly the mother had gone subsequent to the registration of the FIR to demand money. Though, this suggestion had not been proved, but even if it is assumed to be correct, then too it does not reflect any false implication of the Appellant in the present case.

30. Much has been argued that the statement given by the child in her Section 164 Cr.P.C was substantially different. However, in her statement under Section 164 Cr.P.C the child had stated that “*main sabun lene gayi thi. Toh Uncle ko bola sabun de do. Uncle ne sabun toh de diya par hath pakad ke kheench ke andar bula liya. Phir meri kachhi main hath de kar phera. Phir main unka hath kaat ke mummy ke paas bhag gayi.*”

31. Essentially, the allegation against the Appellant is consistent about the sexual assault to which the child had been subjected. In fact, the Statement given under Section 164 Cr.P.C and the testimony of the child, is coherent and consistent and there is ***no inherent contradiction***, as has been argued on behalf of the Appellant.

32. The other material witness examined is **PW-2, mother of the Prosecutrix** who had also corroborated that her daughter had gone on 03.04.2021 to the shop to buy the soap, where she was sexually assaulted by the Appellant by moving his hand on the private party of her daughter. She further revealed that her daughter had come weeping to the house from the shop of the Appellant and had told her about the incident. The Appellant tried to escape from the spot by pulling the shutter roller of his shop, but she shouted and immediately called the Police PCR at No.100. Her Complaint was recorded which is Ex.PW2/A. The Complaint given by the mother is



also consistent and has similar allegations of the child being assaulted by the Appellant. Her testimony also is fully consonant with the testimony of the child and PW1.

33. The Appellant had made an argument that *there was a delay in reporting the incident*. However, the incident happened at around 01:30 PM while the FIR has been registered at around 11:57 PM. It has also been said that the Prosecutrix and her mother were not willing to give any statement in the absence of the husband. This in itself explains that on such a traumatic incident having taken place, for the mother and the daughter to look for the support of the husband before making any statement or reporting the incident, cannot be termed as a delay. *There being a cogent explanation as to why it took a few hours for the FIR to be registered, it cannot be termed as a delay in registration of FIR.*

Conclusion:

34. There is no infirmity in the Judgment of Conviction dated 03.08.2024 and the Order on Sentence dated 05.11.2024, which is hereby **upheld**.

35. Learned counsel for the Appellant had argued that considering the age of the Appellant, leniency may be adopted while sentencing the Appellant. However, as per Section 10 POCSO Act, the minimum sentence is 5 years and fine. The Learned Trial Court has given him the minimum sentence and there is **no ground for interference**.

36. The Appeal has no merit and is hereby, dismissed. Pending Applications, if any, are also disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 11, 2025/va