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

% *Judgment reserved on: 20.12.2025*
Judgment pronounced on: 12.01.2026
Judgment uploaded on: 20.01.2026

\+ **CRL.A. 1044/2025 & CRL.M.(BAIL) 1583/2025**

SUJEET KUMAR PANDEY .....Appellant

Through: Mr. Ravi Nayak, DHCLSC.

versus

STATE NCT OF DELHI THROUGH SHO PS SARITA VIHAR .....Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State.
Mr. S. Debabrata Reddy, Adv. for the victim.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

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DR. SWARANA KANTA SHARMA, J.

1. By way of the present appeal, the appellant is assailing the judgment dated 10.02.2025 and order on sentence dated 15.02.2025, passed by the learned Additional Sessions Judge, South East District, Saket Courts, Delhi [hereafter '*Trial Court*'] in Sessions Case No. 2730/2016, arising out of FIR bearing no. 486/2016, registered at Police Station Sarita Vihar, Delhi, whereby the appellant herein has been convicted for commission of offence punishable under Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].

FACTUAL BACKGROUND

2. As per the prosecution, the brief facts of the case are that the appellant herein was a relative of the victim's family. It is alleged that on 29.09.2016, the appellant visited the house of the victim and remained there at a time when the other family members had left the house. When the victim returned home from her tuition classes, the appellant was present in the house. Finding the victim alone, it is alleged that the appellant called her, kissed her on the cheek, rubbed his hand on her vaginal area, and inserted his finger into her vagina. The victim further alleged that the appellant made her lie on him and

discharged a liquid described by her as dirty and urine-like. It is further alleged that thereafter, the appellant tore the pocket of the shirt of the victim's brother and used the same to wipe his own private parts as well as those of the victim, and thereafter discarded the soiled piece of cloth inside the room itself. After the incident, the victim went crying to her mother's workplace and disclosed the incident to her. When the mother returned home and initially confronted the appellant, he denied the allegations. The mother thereafter returned to her workplace to complete her duty hours and, during this time, left the victim at a neighbour's house. Upon returning later, the mother again enquired from the victim, at which point the victim narrated the entire incident in detail. On becoming aware of the full facts, the family members attempted to confront the appellant, and the police were also informed. A formal complaint was thereafter lodged, pursuant to which the present FIR came to be registered.

3. After completion of investigation, the chargesheet was filed before the court. Charges were framed against the appellant for commission of offences under Sections 6 and 10 of POCSO Act. During the course of trial, the prosecution examined twenty witnesses, though a total of twenty-eight witnesses had been cited, out of which eight were later dispensed with. The statement of the accused was recorded under Section 313 of Cr.P.C. The accused examined two witnesses in his defence.

4. Upon conclusion of trial, the learned Trial Court convicted the

appellant for the offences punishable under Sections 6 and 10 of the POCSO Act and sentenced him to undergo imprisonment for a period of thirty-five years, along with payment of a fine of ₹40,000/-, for the offence under Section 6 of the POCSO Act.

SUBMISSIONS BEFORE THE COURT

5. The learned counsel appearing for the appellant argues that the impugned judgment is illegal, perverse, and unsustainable in law. It is argued that the learned Trial Court has failed to properly appreciate the inconsistencies and contradictions in the testimonies of the prosecution witnesses and has not examined whether the prosecution evidence excludes every reasonable hypothesis consistent with the innocence of the appellant. It is contended that, as per the medical evidence on record, neither the victim nor the appellant sustained any injuries. It is specifically pointed out that no injury was found on or near the anal or pre-anal region of the victim, which, according to the learned counsel, casts serious doubt on the prosecution version and makes it difficult to believe that such an offence could have been committed without any injury to either party. It is further argued that the investigating agency failed to collect material and crucial evidence, including the Call Detail Records and location chart of the appellant, which could have established his presence at the house of the victim at the relevant time. The learned counsel further submits that the defence taken by the appellant has been completely ignored by the learned Trial Court without any cogent reasons. On the basis of the above submissions, it is argued that the prosecution has failed

to prove its case against the appellant beyond reasonable doubt. It is, therefore, prayed that the appeal be allowed and the impugned judgment of conviction and order on sentence be set aside.

6. *Per contra*, the learned APP for the State, assisted by the learned counsel for the victim, submits that the victim was a minor aged about six years and eight months at the time of the incident. It is argued that her testimony clearly establishes that the appellant committed the offence when she was alone at home. It is further submitted that the discrepancies pointed out by the appellant are minor in nature and are natural, particularly considering the tender age of the victim and the psychological and physical trauma suffered by her. According to the learned APP, such discrepancies do not go to the root of the prosecution case. It is further argued that the MLC of the victim was duly conducted and her statement was recorded at that stage. The medical opinion, according to the learned APP, clearly indicates that the victim had been subjected to sexual assault. It is also submitted that the FSL report on record lends further support to the prosecution case. The learned APP further contends that under the provisions of the POCSO Act, statutory presumptions under Sections 29 and 30 operate in favour of the prosecution, and the appellant has failed to rebut the said presumptions. It is thus submitted that the learned Trial Court has correctly appreciated the evidence on record and has applied the settled principles of law. According to the learned APP, the prosecution has proved its case beyond reasonable doubt, and the impugned judgment and order on

sentence suffer from no infirmity. Accordingly, it is prayed that the appeal be dismissed.

7. This Court has **heard** arguments addressed on behalf of the appellant as well as the State, and has perused the case file including the trial court record.

ANALYSIS & FINDINGS

A. Age of the victim

8. At the outset, this Court finds it apposite to examine whether the prosecution has established that the victim was a minor and below eighteen years of age at the time of commission of the alleged offence.

9. This Court notes that, in order to prove the age of the victim, the prosecution examined the Principal of the concerned school as PW-4. The school record pertaining to the victim was duly proved. This Court further notes that the certificate issued by the school, exhibited as Ex. PW-4/1, records the date of birth of the victim 'C' as 27.01.2010. The admission form of the victim, exhibited as Ex. PW-4/2, also reflects the same date of birth. These documents were proved in accordance with law and form part of the official school record. PW-4 was not cross-examined by the defence counsel, despite the opportunity given.

10. The alleged incident is stated to have taken place on 29.09.2016. On the basis of the aforesaid documents, the learned Trial Court has rightly concluded that the victim was approximately

six years, eight months, and two days old on the date of the incident.

11. This Court also notes that when the victim was examined in camera as PW-1, the learned Trial Judge recorded a specific observation regarding her apparent age and competence to testify. The relevant observation reads as under:

> "I am convinced that she is a competent witness. However, she appears to be below the age of 12 years and therefore cannot be expected to understand the purpose and consequences of oath."

12. The said observation further lends support to the prosecution case regarding the tender age of the victim.

13. It is also significant that no evidence has been led by the defence to cast any doubt on the authenticity or correctness of the school records relied upon by the prosecution. In the absence of any challenge to the said documentary evidence, and considering the consistent material on record, this Court finds no ambiguity or infirmity with respect to the age of the victim.

14. Accordingly, this Court concurs with the finding of the learned Trial Court that the victim was a minor, aged about six years and eight months, on the date of commission of the offence.

B. Appreciation of Prosecution Evidence

(a) Testimonies of the victim and her family members

15. ***PW-1***, i.e., the victim, was examined in-camera before the learned Trial Court. She has deposed that the accused is her relative, whom she has correctly identified in Court. She has further deposed

that on the day of the incident, the accused had kissed her, had laid upon her, and thereafter had put some "dirty liquid" on her, which he had subsequently wiped off by tearing the pocket from the shirt of one of her brothers. PW-1 has further deposed that she had gone to her mother and told her this fact. Then she had narrated the entire incident to her mother upon her return from work, whereupon her mother had scolded the accused. She has further stated that thereafter the accused had gone to the house of her bua, and her mother had also proceeded there and informed the police about the incident at that very place. She has further deposed that while committing the act, the accused was inserting his finger into her vagina and pressing it also.

16. The mother of the victim has been examined as ***PW-2***. She has deposed that on 29.09.2016, while she was at her workplace, at about 5:00–5:30 p.m., the victim had come to her and had informed her that *Lanta* had come and had committed a wrongful act with her. PW-2 has deposed that upon hearing this, her employer had advised her to go home and slap the said person. She has further deposed that when she had reached her house, the accused was present there. She had scolded him; however, he had failed to give any satisfactory explanation regarding the allegations levelled against him. PW-2 has further deposed that she had thereafter returned to her workplace and, upon completion of her work shift at around 7:30 p.m., had come back home and had found the victim weeping. On being questioned, the victim had told her that the accused had laid her down, had

rubbed her private parts, and had inserted his finger into her private parts. The victim had further stated, in her own words, that "shushu jaisa mere upar kuch kar daala," and had also told her that thereafter the accused had torn the pocket of the shirt of 'S' (brother of the victim), had wiped his private parts as well as the victim's private parts, and had thrown the torn piece of cloth into a corner of the room. PW-2 has further deposed that thereafter she, along with her husband, had gone to the house of the *bua* of the accused and had apprehended him, whereafter the police was called and a formal complaint regarding the incident was made. PW-2 has further deposed that her daughter was taken to AIIMS by the police officials, where she gave consent for medical examination of the victim, and that the frock worn by the victim was taken by the doctor. They had also pointed out the place of incident to the police, and the torn pocket of the shirt was also seized by the police from her house. She has also stated that the she had also handed over printed bedsheet which was lying on the bed at the time of the incident to the police officials.

17. ***PW-3***, Sh. 'S.P.', the father of the victim, has deposed that on the day of the incident, he had received a telephone call from his wife in the evening, though he could not recall the exact time, asking him to return home. He has deposed that upon reaching home, he had met his wife and daughter and had been informed about the commission of a wrongful act by the accused against his daughter, the victim. PW-3 has correctly identified the accused in Court and has admitted

that the accused belonged to his native village. He has further deposed that upon gaining knowledge of the incident, he, along with his wife, daughter, and son, had gone to the house of the *bua* of the accused, where the accused was staying, to confront him regarding the allegations. PW-3 has deposed that the accused had denied all the allegations, whereafter he had been brought to the victim's house and the landlord, Amit, had been informed about the incident. Thereafter, the police had been informed, and the accused had been handed over to the police.

18. The brother of the victim, namely 'R', aged about 19 years, has been examined as ***PW-6***. He has deposed that on the day of the incident, the accused had come to their house at around 1:00 p.m., when he was present there. PW-6 has further deposed that he had gone out to play with his friends at around 3:30 p.m. and had returned home at about 8:00 p.m., whereupon he had been informed about the incident by his parents.

19. Master 'S', aged about 15 years, has been examined as ***PW-7***. He has deposed that on 29.09.2016, at around 6:00 p.m., he had returned home after playing with his friends and had been informed that the accused had committed a wrongful act with his sister, the victim. He has further deposed that thereafter he, along with his parents and sister, had gone to the house of the *bua* of the accused. PW-7 has further stated that when his father had confronted the accused, the accused had started fighting with him. Consequently, PW-7 has deposed that he had called the landlord at the spot, and

with his assistance, the accused had been brought to their house.

20. Upon a conjoint reading of the testimonies of PW-1, PW-2, PW-3, PW-6, and PW-7, the sequence of events emerging from the prosecution evidence may be summarised as under:

- At about 1:00 p.m., the appellant had come to the house of the victim, when the victim and her brother 'R' were present there.
- At about 3:30 p.m., 'R' had gone out to play with his friends, while the appellant remained at his house.
- At about 4:00 p.m., the victim had returned from her tuition classes and had found the appellant present in the house.
- Taking advantage of the victim being alone, the appellant had asked her to lie down beside him and had kissed her, had lain upon her, had rubbed his private parts and fingers on her vagina, and had inserted his fingers into her vagina.
- The appellant had also discharged a "dirty liquid" upon the victim, which he had later wiped off using a torn piece of cloth from the pocket of the shirt belonging to the victim's brother.
- After the incident, the victim had gone weeping to her mother's workplace and had narrated the incident to her.
- Upon gaining knowledge of the incident, the mother had briefly returned home with the victim, had enquired into the matter, and had reprimanded the appellant.
- The mother had thereafter returned to her workplace and, upon coming back home later in the evening, the victim had disclosed the complete details of the incident to her.

- The mother had then called her husband, and the family members had gone to the house of the *bua* of the appellant to confront him regarding the incident.
- PW-3 has corroborated the above sequence by deposing that he had received a call from his wife in the evening, had returned home, and had thereafter gone with his family to confront the appellant.
- The testimonies of PW-6 and PW-7 have corroborated that the house was vacant at the relevant time, as both of them were away, and that after the confrontation, the appellant had been handed over to the police later in the night.

21. Further, ***PW-9***, Shri Rajesh Chopra, the employer of the mother of the victim, has been examined before the learned Trial Court on 23.12.2019. He has deposed that on 29.09.2016, between 5:00 p.m. and 6:00 p.m., while he was present at the godown, the victim had come there in a weeping condition and had approached her mother. PW-9 has deposed that on noticing the child crying, he had made inquiries and had learnt that the victim had disclosed to her mother that the appellant had sexually assaulted her by touching her private parts. He has further deposed that, upon hearing this, he had advised the mother of the victim to take the child home and look into the matter. The testimony of PW-9 assumes significance as it corroborates the immediate disclosure made by the victim to her mother soon after the alleged offence had been committed by the appellant.

(b) Medical and Forensic Evidence

22. ***PW-5***, Dr. Deepak Prakash, has been examined on 10.01.2019. He has deposed that he had conducted the medical examination and potency test of the appellant on 30.09.2016 and had prepared the MLC bearing No. 10951/2016, which has been exhibited as Ex. PW-5/A. He has further deposed that during the medical examination, he had preserved the underwear of the accused, blood in gauze, penile swab, and control swab, all of which were duly sealed with the seal of AIIMS. PW-5 has also proved his endorsement made on the medical documents, exhibited as Ex. PW-5/B. He has deposed that, upon examination, there was nothing to suggest that the appellant was incapable of performing sexual intercourse under ordinary circumstances.

23. ***PW-15***, Dr. Rohitha C., has been examined on behalf of Dr. Amrita, who had prepared the MLC and the gynaecological examination report of the child victim.

24. The record shows that the mother of the victim had given her consent for the medical examination of the child. Pursuant thereto, on 30.09.2016 at around 2:30 a.m., the victim was brought to AIIMS for medical examination, and MLC No. 10950/2016 was prepared, which has been exhibited as Ex. PW-15/A. The MLC records the statement of the victim, which reads as under:

> "The victim alleged sexual harassment by a person named Sujit, who lives nearby. She says that he was kissing her. He took off her underwear and his pants, lay down over her, and peed over her. He also put his fingers in her vagina and kissed her forcefully."

25. The medical examination of the victim was thereafter conducted. It was observed that the fourchette and introitus were congested and red, though no tears were found. It was further recorded that the hymen was not torn; however, congestion and redness around the vaginal introitus were present.

26. PW-15 has deposed that she had perused the medical records prepared by Dr. Amrita and has explained the contents thereof before the Court. She has deposed that, as per the gynaecological report, congestion and redness were found around the vaginal introitus of the victim. PW-15 has further deposed that, in view of these findings, insertion of a finger, foreign object, or penis into the vagina could not be ruled out.

27. *PW-20,* Dr. Indresh Kumar Mishra, Assistant Director (Biology), FSL, Rohini, has been examined in the present case. He has deposed that on 06.10.2016, nine sealed parcels along with a sample seal were received in the office of FSL, Rohini, in connection with the present FIR. He has deposed that all the parcels were found to be duly sealed and that the seals tallied with the sample seal impression. PW-20 has further deposed that the exhibits were marked to him for biological and DNA examination and that, after conducting the examination, he had prepared a detailed FSL report dated 30.11.2016, which has been exhibited as Ex. PW-20/A. The relevant observations of the FSL report are reproduced hereinbelow:

> "DNA profile (STR analysis) generated from the source of exhibits '8' (i.e underwear of accused), '10' (piece of cloth),

> '11' (Bedsheet), were found to be similar with DNA profile generated from the source of exhibit '5' (i.e Blood in gauze cloth piece of accused)."

28. PW-20 has categorically deposed that DNA profiling (STR analysis) generated from exhibits 8 (underwear of the appellant), 10 (piece of cloth described as the pocket of a shirt), and 11 (bedsheet) was found to be ***similar*** to the DNA profile generated from exhibit 5, i.e., blood in gauze cloth of the accused.

C. Presumptions under the POCSO Act

29. Insofar as the basic facts forming the foundation of the alleged offence are concerned, this Court finds that the prosecution has been able to *prima facie* establish the same. Once such foundational facts are proved, the statutory scheme of the POCSO Act comes into operation. The Act incorporates specific presumptions against the accused, and upon their invocation, the burden shifts upon the accused to rebut the same by leading reliable and convincing evidence in defence.

30. In this context, Sections 29 and 30 of the POCSO Act assume relevance and are reproduced hereunder:

> **"29. Presumption as to certain offences.** Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."

> **30. Presumption of culpable mental state.** (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the

> Special Court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
>
> (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.
>
> Explanation.— In this section, "culpable mental state" includes intention, motive, knowledge of a fact, and the belief in, or reason to believe, a fact."

31. In the present case, the prosecution evidence has clearly established the foundational facts, namely that the victim was a minor, that she has consistently narrated the incident of sexual assault, and that the surrounding circumstances brought on record during investigation support her version. Once these foundational facts are established, the statutory presumptions under Sections 29 and 30 of the POCSO Act stand attracted. The burden, therefore, shifts upon the appellant to rebut the said presumptions by leading cogent and credible evidence.

D. Defence put forth by the Accused

32. The defence put forth by the appellant herein was that he had been falsely implicated in the present case. In his statement recorded under Section 313 of Cr.P.C., the appellant denied all the allegations levelled against him and stated that he had already given his defence in writing and did not wish to add anything further.

33. In his handwritten statement, the appellant stated that on the afternoon of the alleged incident, he was sleeping at the residence of

his *bua*. He claimed that during sleep he had an involuntary ejaculation, after which he felt embarrassed and wrapped himself in a bedsheet. He further stated that thereafter he had cleaned his pant using a piece of cloth lying on the floor. According to him, his *bua* had brought him tea, and in the meantime his grandfather and grandmother had arrived. He alleged that his grandfather, who was heavily intoxicated, had started demanding money from his *bua* for construction of a house in the village and had pushed her, causing her to fall. The appellant claimed that he had helped his *bua* and had given her water, following which she had called her husband. The appellant further stated that later in the evening, family members had returned and had started threatening and demanding money. He claimed that at around 8:00 p.m., while his *fufa* was present and they were talking, the police had arrived, taken him to the police station without informing him of the reason, and subsequently taken him to AIIMS for medical examination. He stated that during the medical examination, he had informed the doctor about the aforesaid incident. On these grounds, the appellant claimed that he had been falsely implicated in the present case.

34. In support of his defence, the appellant examined two witnesses, namely DW-1 Smt. Indu Bharti and DW-2 Arun Kumar Bharti.

35. DW-1, Smt. Indu Bharti, has deposed that she had gone to the house of the *bua* of the accused to hand over house keys, where she was informed that the accused had come there and was sleeping.

However, as rightly observed by the learned Trial Court, DW-1 did not claim to have actually seen the accused at the house of the *bua* at around 4:00 p.m. Her statement was based entirely on what she was allegedly told by someone else. This Court finds no infirmity in the conclusion of the learned Trial Court that such testimony was hearsay in nature and, therefore, inadmissible for proving the presence of the accused at the relevant time.

36. DW-2, Arun Kumar Bharti, has deposed that he had witnessed a commotion at the house of the *bua* of the accused on one occasion. However, his testimony does not inspire confidence. During his deposition and cross-examination, he was unable to even state the name of the *bua* of the accused. He admitted that he did not remember the date of the incident and that he had only witnessed a quarrel which took place after the alleged incident. He did not explain the cause of the quarrel between the accused and his *chacha-chachi*, nor did he depose about any facts relevant to the time or manner of the alleged offence. His testimony, therefore, does not advance the defence version in any meaningful manner.

37. It is also pertinent to note that although both defence witnesses claimed to be residing at the given address at the relevant time, no documentary proof was produced to substantiate such claims. The learned Trial Court has also analysed the surrounding circumstances and has observed that the defence witnesses appeared to be planted. This Court finds merit in the said observation, particularly in view of the admission made by DW-1 during her cross-examination that the

date of 29.09.2016 had been told to her by the father of the accused.

38. Viewed cumulatively, this Court is of the considered opinion that the defence witnesses examined by the appellant fail to inspire confidence. Their testimonies neither rebut the statutory presumptions operating under Sections 29 and 30 of the POCSO Act nor probabilize any alternative version capable of creating a reasonable doubt in the prosecution case.

39. The other defences and contentions raised by the appellant have also been duly considered and dealt with by the learned Trial Court. The relevant observations of the learned Trial Court are reproduced hereinbelow:

> "62. In his statement accused had also taken defence of night fall. No independent evidence was produced by accused to substantiate his defence. Moreover even if for sake of arguments defence is assumed to be true, accused has offered no explanation as to how his semen was detected on the bedsheet and shirt pocket recovered from the place of the incident and the injuries suffered by the minor victim as reflected in her MLC.
>
> 63. Learned Defence counsel had also argued that no semen was found on the underwear or frock of the victim.
>
> 64. As per the prosecution case, accused committed aggravated, penetrative sexual assault upon the victim after undressing her. He ejaculated on the body of the victim and thereafter wiped himself and the body of the victim after tearing peace of the shirt of the brother of the victim which was lying there. As the accused had already wiped off the semen by a piece of cloth and victim was undressed at the time of the offence, it is natural that no semen would be detected on her frock. This argument of Ld defence Counsel does not help the defence of the accused in any manner."

40. This Court finds no error or infirmity in the aforesaid

reasoning of the learned Trial Court, and the said conclusions drawn are well supported by the evidence on record.

41. Consequently, this Court is of the opinion that the defence set up by the appellant is unmerited, in this Court's view.

E. Alleged inconsistencies in the statements of the victim

42. One of the main contentions raised by the learned counsel appearing for the appellant is that the victim has allegedly been changing and improving her version from time to time, thereby suggesting that she was tutored by her parents.

43. This Court notes that, in the present case, five statements of the victim were recorded at different stages of the proceedings. Her first statement was recorded before the police, thereafter her statement was recorded at the time of her medical examination, followed by the statement before the learned Magistrate under Section 164 of Cr.P.C., then one supplementary statement was recorded by the police, and finally, her testimony was recorded before the learned Trial Court.

44. A careful perusal of all the statements of the victim shows that her core version has remained consistent throughout. In all her statements, the victim has consistently stated that the offence was committed upon her by the appellant and that no other person was present in the house at the time of the incident. She has consistently narrated that the appellant had kissed her, had rubbed his private parts and fingers on her private parts, and had thereafter inserted his finger into her vagina. She has further stated that the appellant had

discharged a "dirty liquid" upon her and had cleaned the same using the pocket torn from the shirt of her brother.

45. It is also well settled that minor inconsistencies or variations in the statements of a witness, particularly a child witness, do not discredit the prosecution case, if the testimony of victim is otherwise found reliable and credible [Ref: ***State of Punjab v. Gurmit Singh:*** *(1996) 2 SCC 384*; ***Pappu v. State of Uttar Pradesh:*** *2022 SCC OnLine SC 176*].

46. It must also be borne in mind that the victim was only about six years old at the time when the offence was committed. At such a tender age, minor inconsistencies in narration of such events are not only natural but are to be expected. However, such minor discrepancies, as pointed out by the learned counsel for the appellant during the course of arguments and in his written submissions, do not affect the overall credibility of her testimony or the consistency of her allegations against the appellant.

47. This Court is also of the considered opinion that the statements of the victim under Sections 161 and 164 of the Cr.P.C. were recorded immediately after the incident, i.e., on 30.09.2016. Her medical examination was also conducted on the same day at about 2:10 a.m. Considering the close proximity in time between the commission of the offence, the recording of the statements, and the medical examination, this Court finds that there was hardly any opportunity for tutoring of the victim. Further, during her cross-examination, the victim has categorically deposed, in response to

specific questions put to her, that she was not tutored by her mother prior to the recording of her statement by the police or before the recording of her statement under Section 164 of Cr.P.C. by the learned Magistrate. She has further deposed that she was not told by anyone as to what she was required to state before the Court. The victim has also stated that she had not refreshed her memory prior to her deposition and that during lunchtime her mother had not enquired from her about the court proceedings. In view of the above, this Court finds that the allegation that the victim had been tutored is wholly without merit.

48. In view of above facts and circumstances, it is also pertinent to note that the Hon'ble Supreme Court in ***State of Madhya Pradesh v. Balveer Singh:*** *2025 SCC OnLine SC 390* has categorically held that there is no rule of law requiring the evidence of a child witness to be corroborated before it can be relied upon. The Supreme Court has observed that where a child witness is found to be competent, displays the demeanour of a truthful witness, and inspires confidence, such testimony can be relied upon on its own and may form the sole basis of conviction. The Supreme Court has further held that if, upon careful scrutiny, the Court finds that the child witness has not been tutored and that there is no attempt by the prosecution to use the child for any ulterior purpose, the Court must place reliance on such confidence-inspiring testimony while determining the guilt or innocence of the accused. It has also been clarified that corroboration of the testimony of a child witness is a rule of prudence and caution,

and may be insisted upon only in cases where the evidence of the child appears to be tutored or is riddled with material discrepancies or contradictions.

49. Applying the aforesaid principles to the facts of the present case, this Court finds that the victim herein does not appear to have been tutored. Despite extensive cross-examination by the learned defence counsel, no material inconsistency has emerged on record to discredit her testimony. On the contrary, her testimony has remained consistent and natural and is further corroborated by the medical and forensic evidence on record. Consequently, her testimony inspires confidence and can safely be relied upon in support of the prosecution case.

50. Accordingly, this Court finds no merit in the contention of the appellant that the testimony of the victim suffers from material inconsistencies or that she was tutored to falsely implicate the appellant.

E. Prosecution case proven beyond reasonable doubt

51. Having examined the evidence on record as a whole, this Court is satisfied that the prosecution has proved beyond reasonable doubt that the appellant committed penetrative sexual assault upon the minor victim in September 2016.

52. The testimony of the victim is consistent, natural, and reliable. From her initial disclosure to her mother immediately after the incident, to her statement recorded under Section 161 of Cr.P.C., her

statement under Section 164 of Cr.P.C. before the learned Magistrate, and her deposition before the learned Trial Court, the victim has consistently narrated the manner in which the appellant had sexually assaulted her while she was alone at home. No material contradiction has emerged which would discredit the core of her version.

53. The victim's testimony stands corroborated by the medical evidence. The MLC of the victim, prepared immediately after the incident, records a history of sexual assault. The gynaecological examination revealed congestion and redness around the vaginal introitus, and the medical opinion clearly notes that insertion of a finger, foreign object, or penis into the vagina could not be ruled out. The medical examination of the appellant further establishes that he was medically capable of performing sexual intercourse at the relevant time.

54. The forensic evidence further corroborates the prosecution case. The FSL report establishes that the DNA profile generated from the underwear of the appellant, the torn piece of cloth recovered from the place of incident, and the bedsheet matched the DNA profile generated from the blood sample of the appellant, providing strong scientific corroboration to the prosecution version.

55. The testimonies of the family members of the victim corroborate the immediate disclosure made by the victim, her natural conduct after the incident, and the sequence of events leading to the registration of FIR. The evidence on record also establishes that the victim was alone in the house with the appellant at the relevant time.

The defence evidence led by the appellant does not inspire confidence and fails to rebut the statutory presumptions under POCSO Act.

56. This Court also notes that the act of inserting finger into the vagina of the victim would amount to penetrative sexual assault and touching of the vagina would amount to sexual assault, under the POCSO Act. The appellant, being a relative of the victim, was in a position of trust and authority over the minor child. The facts of the case, therefore, squarely attract Section 5(p) of the POCSO Act, punishable under Section 6 as well as Section 9(p), punishable under Section 10 of POCSO Act.

57. In view of the consistent testimony of the victim, the corroborative medical and forensic evidence, and the failure of the defence to rebut the statutory presumptions, this Court finds that the prosecution has proved its case beyond reasonable doubt. This Court is also of the opinion that the impugned judgment is well-reasoned and the conviction recorded by the learned Trial Court calls for no interference.

F. Order on Sentence

58. Insofar as the impugned order on sentence is concerned, this Court notes that the offence in the present case was committed in the year 2016. At the relevant point of time, Section 6 of the POCSO Act prescribed punishment of rigorous imprisonment for a term not less than ten years, which may extend to imprisonment for life.

59. However, the learned Trial Court has awarded a sentence of ***rigorous imprisonment for a period of 35 years***. The order on sentence also does not advert to or discuss the statutory minimum and maximum punishment prescribed under the POCSO Act as it stood at the time of commission of the offence.

60. This Court is in agreement with the contention raised by the learned counsel appearing for the appellant that such a sentence, in effect, amounts to a fixed-term life sentence. In this regard, this Court finds it apposite to take note of the decisions of the Hon'ble Supreme Court in ***Shiva Kumar v. State of Karnataka:*** *(2023) 9 SCC 817*, and ***Sukhdev Yadav @ Pehalwan v. State (NCT of Delhi):*** *2025 SCC OnLine SC 1671*, wherein it has been categorically held that trial courts do not possess the jurisdiction to impose fixed-term life sentences. Such power vests only in the constitutional courts, i.e. the High Courts and the Supreme Court. The rationale underlying this position is that a sentence of life imprisonment *simpliciter* carries with it the right of the convict to seek premature release or remission in accordance with law, and imposition of a fixed-term life sentence by a trial court would effectively curtail or take away this right, which is impermissible. The Hon'ble Supreme Court has, however, clarified that in appropriate cases, only constitutional courts may impose a life sentence with a fixed minimum term, where the facts so warrant, in order to meet the ends of justice.

61. In the present case, therefore, the learned Trial Court could not have awarded a sentence of rigorous imprisonment for 35 years,

when the statutory framework provided only for a minimum sentence of 10 years and a maximum sentence of life imprisonment and the convict in case he would have been awarded life sentence, would have had the benefit of the relevant provision of law for pre-mature release, as per jail rules applicable to convicts undergoing life imprisonment.

62. A similar issue arose before the Hon'ble Supreme Court in ***Ravinder Singh v. State (NCT of Delhi):*** *(2024) 2 SCC 323*, where the Trial Court had convicted the appellant therein under Sections 376 and 377 of IPC and sentenced him to imprisonment for life, while directing that he should not be granted any clemency before undergoing at least 20 years of imprisonment. The judgment was upheld by the High Court. The Hon'ble Supreme Court observed that the statute provided only for a minimum sentence of 10 years and a maximum sentence of life imprisonment, but in effect, the appellant had been sentenced to life imprisonment of a minimum term of 20 years. It was held that the power to impose a minimum term of incarceration while awarding life imprisonment lies exclusively with constitutional courts, and not with trial courts. The Hon'ble Supreme Court further clarified that even in cases where life imprisonment is the maximum punishment prescribed under the statute, constitutional courts retain the power to impose life imprisonment with a minimum term exceeding 14 years, if the facts and circumstances so justify.

63. In view of the aforesaid legal position, this Court is of the considered opinion that the impugned order on sentence, insofar as it

awards rigorous imprisonment for a period of 35 years, is unsustainable in law and is liable to be set aside to that extent.

64. Considering the facts and circumstances of the present case, the tender age of the victim, the manner in which the offence was committed, and the gravity of the crime, this Court is of the view that the ends of justice would be served by awarding the sentence of ***imprisonment for life*** to the appellant herein, for the offence punishable under Section 6 of the POCSO Act.

65. In above terms, the present appeal alongwith pending application is disposed of.

66. Since the appellant is in judicial custody, let the copy of this judgment be forwarded by the Registry to the concerned Jail Superintendent, who shall provide the same to the appellant.

67. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JANUARY 12, 2026/rb/gj
T.D.