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

% *Judgment delivered on: 21.07.2025*

\+ **CRL.A. 215/2025 & CRL.M.(BAIL) 359/2025**

HIRAN .....Appellant

Through: Mr. Dhruva Bhagat, Advocate (DHCLSC)

versus

THE STATE GOVT OF NCT DELHI .....Respondent

Through: Mr. Rajkumar, APP for the State

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. The appellant Hiran has approached this Court by way of this appeal, setting aside of the judgment dated 30.09.2024 [hereafter '*impugned judgment*'] and order on sentence dated 26.10.2024 [hereafter '*impugned order on sentence*'] passed by learned Additional Sessions Judge-01(POCSO), North-West, Rohini Courts, Delhi [hereafter '*Trial Court*'] in SC No. 334/22 arising out of FIR bearing no. 213/2022, registered on 18.02.2022 at Police Station Ashok Vihar, Delhi, whereby he has been convicted for commission of offence punishable under Sections 363/376(3) of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Section 4 of the Protection of

Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].

FACTUAL BACKGROUND

2. The gravamen of the prosecution case is that on 18.02.2022, the complainant 'P' lodged a missing report regarding her daughter (victim) 'N', aged about 13 years, stating that on 16.02.2022 at about 9:00 AM, she had left for work and, upon returning home around 2:00 PM, she found her daughter missing. On her complaint, the present FIR was registered, initially for the offence under Section 363 of the IPC. However, on 19.02.2022, the complainant, along with her daughter, visited the police station and informed that the daughter had returned. The complainant informed that her daughter had disclosed that she had spent the night at the house of an unknown person. The complainant also produced ₹2,000/-, stating that the said amount had been given by that unknown person to her daughter, who had kept her at his house for the night.

3. Thereafter, the medical examination of the victim was conducted, first at Deep Chand Bandhu Hospital, Ashok Vihar, Delhi, and then at Bhagwan Mahavir Hospital, Pitampura, Delhi, and her MLC was obtained, wherein she disclosed details of the sexual assault committed upon her. Samples and exhibits, including the sexual assault evidence kit, were collected and seized.

4. The statement of the victim was recorded under Section 161 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], and thereafter under Section 164 of Cr.P.C. before the learned Magistrate

on 20.02.2022. In her statement, she revealed that, out of anger after being scolded by her mother, she had left home and sat in a park. However, while wandering through the streets, she lost her way and remained in the park for two days. On the morning of 18.02.2022, while still in the park, she met one uncle (the accused), who enquired about her residence and offered to drop her home. However, he took her to his jhuggi (hut), where he prepared food, fed her, and she subsequently fell asleep. Thereafter, the accused established physical relations with her. Later, he gave her food, clothes, and money, and sent her back. On the basis of the victim's MLC and her statements, Sections 376 of IPC and Section 4 of the POCSO Act were added to the FIR.

5. During investigation, the Investigating Officer, along with the complainant and the victim, went to the Lal Bagh area to search for the accused. On the pointing out of the victim, the accused/appellant Hiran was arrested from *jhuggi* no. 91, T Huts, Lal Bagh, Azadpur, Delhi. The victim identified the appellant Hiran as the person who had committed the offence in question. The appellant was thus arrested on 20.02.2022 in connection with the present case, and his medical examination, including potency test, was conducted. The I.O. also obtained the school records of the victim to ascertain her age, and her date of birth was found to be 07.07.2009. Further, the FSL report was later obtained and filed by way of a supplementary charge sheet.

6. Charges were framed against the appellant on 30.05.2022 for

offence under Sections 363/376(2)(f)(k) of the IPC, and Sections 3(a)/4 of the POCSO Act. Later, the charge was altered to Sections 363/376(3) of the IPC and Section 3(a)/4 of the POCSO Act.

7. During the course of the trial, the prosecution examined 10 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C., but he did not lead any defence evidence. After hearing the final arguments on behalf of both sides, the learned Trial Court, *vide* the impugned judgment, found the appellant guilty of the offences under Sections 363 and 376(3) of the IPC and Section 4 of the POCSO Act. The concluding portion of the judgment reads as under:

> "**Conclusion**
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> 49. In the light of above discussion, the testimony of prosecution witnesses are found to be trustworthy and reliable, and the prosecution has succeeded in proving the guilt of the accused, thus having committed offence as described under Section 4(2) POCSO Act and the offence punishable under Section 363/376(3) IPC. Accordingly accused Hiran stands convicted for the offence as mentioned above...."

8. Thereafter, by way of the impugned order on sentence, the learned Trial Court awarded rigorous imprisonment for a period of 20 years along with a fine of ₹20,000 for the offence under Section 4 of the POCSO Act, and rigorous imprisonment for a period of 5 years along with a fine of ₹5,000 for the offence under Section 363 of the IPC. The relevant portion of the order on sentence reads as under:

> "...6. The psychological scars of the sexual abuses during childhood are indelible and they keep haunting the individual forever thereby hindering their proper physical and

psychological development. The convict allured the victim child to leave her at her house and thus enticed her away from lawful implied guardianship of her mother and committed penetrative sexual assault with her. Thus, the penalty awarded to the convict should commensurate with the gravity of the loathsome act so as it serves as an effective deterrance to the like minded persons. However, the mitigating circumstance should also not be lost sight of while awarding the sentence.

7. The convict in the present case has been held liable to be punished u\s 363/376(3) IPC and u/s 4(2) POCSO Act for having committed penetrative sexual assault upon the victim. However, the convict cannot be punished for the same offence under the separate provisions of law.

8. The offence u/s 4(2) POCSO Act and Section 376(3) IPC are the offences provided in two different Acts which are in the same nature. As per Section 42 of the POCSO Act, it has been provided that:

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9. Hence, it has been provided that the provisions of POCSO Act shall have overriding effect on the provision of the other Act. The punishment u/s 4 (2) POCSO Act and Section 376(3) IPC is the same and therefore the convict is being awarded punishment u/s 4 (2) POCSO Act. Further, the convict has also committed the offence u/s 363 IPC.

10. Taking into consideration the aggravating and mitigating circumstances including gravity of the offence, age of the child victim and the convict, the family condition of the convict and the child victim, social and economic factors governing them, the convict is sentenced for 20 years (Twenty years) rigorous imprisonment for the offence punishable u/s 4 (2) POCSO Act. He is also sentenced to 5 years (Five years) rigorous imprisonment for the offence u/s 363 IPC. The convict be given benefit of Section 428 CrPC (u/s 468 BNSS) and the period of detention undergone by him be set off against the sentence of imprisonment. Till date, the convict has suffered total imprisonment of 02 years 08 months and 06 days in this case. All the sentence run concurrently…"

9. Aggrieved by his conviction, the appellant has preferred the present appeal before this Court.

SUBMISSIONS BEFORE THE COURT

10. The learned counsel for the appellant has contended that the impugned judgment is liable to be set aside as it is contrary to law, equity, justice, and fair play, and is not based on a correct appreciation of the facts on record. It is argued that the learned Trial Court has failed to properly evaluate the evidence and has rendered the impugned judgment in a mechanical manner, relying on conjectures and surmises. It is submitted that the learned Trial Court erred in not appreciating that the prosecution failed to establish the foundational facts necessary to invoke the presumption under Section 29 of the POCSO Act. Hence, the said presumption could not be validly raised against the appellant. The learned counsel has also argued that the conviction cannot rest solely on the testimony of the victim, particularly when her statement suffers from inconsistencies and material improvements. It is contended that PW-1 and PW-3 are interested witnesses, and as such, their uncorroborated testimonies should be viewed with caution. Moreover, the learned Trial Court failed to appreciate that no independent public eyewitness was cited, despite the presence of members of the public at the spot. The investigating agency has not offered any explanation for the non-joining of independent witnesses. It is further submitted that although CCTV cameras were installed in the park, the police failed to produce any CCTV footage, which raises serious doubts about the prosecution's version and reflects lack of proper investigation. It is contended that the victim was in love with one Firoz and had

voluntarily accompanied him to the house of the appellant. The learned counsel has also pointed out that the DNA examination report is negative, as the alleles from the source of Exhibit C (blood sample of the appellant) did not match with the alleles from the source of Exhibits A1 and A2 (vaginal swab and smear of the victim). It is further argued that material witnesses, such as the appellant's neighbours, were not examined by the prosecution, which weakens the prosecution case. It is also submitted that the documents relied upon by the prosecution do not conclusively prove that the victim was below 18 years of age at the time of the incident. Therefore, it is prayed that the appellant be given the benefit of doubt and the impugned judgment of conviction be set aside.

11. The learned APP for the State, on the other hand, has argued that the victim was 12 years of age at the time of the incident, as established from the school records. It is submitted that the statement of the victim clearly reveals that the appellant had taken her to his residence and committed the alleged offence. It is contended that the prosecution has proved its case beyond reasonable doubt, and the learned Trial Court has rightly relied upon the consistent and credible testimony of the victim. It is argued that the learned ASJ has passed a well-reasoned and detailed judgment based on a correct appreciation of law and evidence. It is thus submitted that there is no infirmity or illegality in the impugned judgment and order on sentence, and that the appeal, being devoid of merit, deserves to be dismissed.

12. This Court has **heard** arguments addressed by learned counsel for the appellant and learned APP for the State, and has perused the case file including the trial court record.

ANALYSIS & FINDINGS

13. Before proceeding to examine the contentions raised on behalf of the appellant, it is pertinent to first consider the testimony of the two material witnesses in the present case, i.e. the victim 'N' and her mother/the complainant 'P', as well as the version put forth by the appellant.

14. The victim 'N', who was examined as PW-3, deposed before the learned Trial Court that on 16.02.2022, she had left her house without informing anyone, as her mother had scolded her. After leaving home, she went to Hathoda Ram Park, thinking that she would sit there for a while and return home once her mother's anger had subsided. While sitting in the park, she began to worry that if someone who knew her mother saw her there, they might inform her mother, which could lead to further scolding. Fearing this, she left the park and started walking ahead, but eventually lost her way. On the way, she asked a lady about her location and was informed that she was in Lal Bagh. She remained in a park in the Lal Bagh area for two days. On 18.02.2022, while she was still in the park, one man (the appellant herein) approached her and asked why she was sitting alone. She told him that she had lost her way. The man then asked her to come with him, saying that he would drop her home. The appellant

took her to his *jhuggi* (hut), offered her food, and asked her to sleep, stating that he too would go to sleep. However, after she fell asleep, the appellant committed wrong acts with her, despite her resistance. She reminded him that he had earlier said he treated her like his daughter. In response, the appellant asked her to sleep again, saying he would just watch something on his mobile phone. While she was asleep, the appellant removed her *salwar* (pants) and committed penetrative sexual assault on her. The following morning, he gave her a set of new clothes, asked her to bathe and change. Thereafter, he took her in an auto-rickshaw and dropped her a short distance from her house. Before leaving, he handed her ₹2,000. Thereafter, the victim reached her home and informed her mother about this incident, who then took her to the police station. The victim/PW-3 correctly identified the appellant before the learned Trial Court, as the person who did the wrong acts with her, also identified the ₹2,000 currency notes handed over to the police.

15. PW-1, the mother of the victim and the complainant in the present case, deposed that on 16.02.2022, she left for work at about 9:00 AM and returned around 2:00 PM to find that her daughter 'N"', aged about 13 years, was missing. After waiting for two days, she lodged a complaint at Police Station Ashok Vihar (Ex. PW1/A) and submitted a photograph of her daughter. Eventually, the victim returned home and disclosed that she had left the house following a scolding by her mother and gone to Ram Park. After losing her way, she reached Lal Bagh, where she met a man who took her to his

jhuggi and committed rape upon her. On the following day, he gave her new clothes, dropped her near Shri Ram Chowk in an auto-rickshaw, and handed her ₹2,000. The complainant took the victim to the police chowki and handed over the ₹2,000 to the police, which was seized *vide* memo Ex. PW1/3. The victim was first taken to Deep Chand Bandhu Hospital, but due to the unavailability of a lady doctor, she was referred to Bhagwan Mahavir Hospital, where she was medically examined. Her statement under Section 164 of the Cr.P.C. was recorded before the Magistrate at Rohini Court. On the way to the court, the victim indicated that she could identify the house of the person who had committed the offence. She led the police to Lal Bagh, pointed out a particular *jhuggi*, and identified the person appellant inside as the perpetrator, who was then apprehended and arrested in the present case. The complainant PW-1 duly identified the appellant before the learned Trial Court and also identified the ₹2,000 currency notes handed over to the police.

16. Insofar as the stand taken by the appellant Hiran before the learned Trial Court is concerned, in his statement recorded under Section 313 of the Cr.P.C., he denied the allegations against him in totality in response to the incriminating evidence put to him. He further stated that he had found the victim child alone in the park and had taken her to his house. He admitted to having given her ₹2,000 and stated that he had dropped her near Shri Ram Chowk in an auto-rickshaw. However, he denied having committed rape upon her and claimed that he has been falsely implicated in the present case.

17. Having taken note of the above, this Court shall now consider the contention of the learned counsel for the appellant that the prosecution failed to prove with certainty that the victim was below 18 years of age at the time of the incident. In this regard, the record reflects that the prosecution relied upon documents relating to the victim's admission in school, which were duly provided by the concerned school authorities. As per the school admission form and the admission register, the victim was admitted to school on 17.07.2015, and her date of birth was recorded as 07.07.2009. This would place her age at about 12 years and 7 months at the time of the incident.

18. It is also significant to note that at no stage during the trial did the appellant raise any objection or dispute with respect to the age of the victim. No questions were also put to any prosecution witness challenging the age reflected in the school records. In fact, the impugned judgment records that the appellant expressly admitted the documents relating to the victim's age, including the school admission records marked as Ex. PX1/5, under Section 294 of the Cr.P.C., thereby dispensing with the need for formal proof.

19. In light of the above, there remains no doubt that the victim was a child as defined under Section 2(1)(d) of the POCSO Act, being below 18 years of age on the date of the incident. Accordingly, this Court finds no merit in the contention raised on behalf of the appellant regarding the age of the victim.

20. As regards the contention of the learned counsel for the appellant that PW-1 and PW-3 are interested witnesses and that their uncorroborated testimonies ought to have been viewed with caution, this Court finds no merit in the same. PW-1 is the complainant and mother of the victim, while PW-3 is the victim child herself. It is well settled in law that merely being related to the victim does not discredit a witness, unless there are material contradictions or reasons to doubt the credibility of their version. A careful perusal of the record reveals that the testimony of the victim child 'N' (PW-3) has remained consistent from the very inception of the case. She narrated the same version of events at all material stages – including her statement under Section 161 of Cr.P.C. before the police, the history recorded in the MLC, her statement recorded under Section 164 of the Cr.P.C. before the learned Magistrate, and finally during her deposition in court. At all these stages, her version remained consistent, specific, and detailed. Further, during the investigation, she had identified the place of incident i.e. the house of the appellant and the site plan was prepared at her instance. The accused was arrested pursuant to her statement, and she later identified him before the learned Trial Court. Significantly, her cross-examination did not reveal any material contradictions or omissions that would impair the credibility of her version. Her testimony is thus found to be cogent, credible, and of sterling quality. As far as PW-1 is concerned, i.e. the mother of the victim, her testimony also remained consistent. Importantly, there is complete harmony between the depositions of

PW-1 and PW-3 on all material particulars.

21. With regard to the argument that no independent public eyewitness was examined, this Court is of the opinion that such non-examination is not fatal to the prosecution case. The learned Trial Court in the impugned judgment has noted the decision of Hon'ble Supreme Court in ***Ajmer Singh v. State of Haryana:*** *(2010) 3 SCC 746*, wherein it was held that it may not be possible to find independent witnesses at all places and that the obligation to take public witnesses is not absolute. The learned Trial Court has also noted that the PW-9/I.O. in her testimony had stated that she had inquired from the neighbours of the accused for their statement, however, they had refused to give the same.

22. It is now a settled principle of criminal jurisprudence that the testimony of a sole witness, including the prosecutrix in sexual offences, can form the basis of conviction, if found to be wholly reliable and trustworthy. In the present case, this Court is of the view that the testimony of the victim is not only consistent but also inspires confidence and does not suffer from any material embellishment. Therefore, the argument regarding interested witnesses and absence of independent eyewitnesses is misconceived and stands rejected. As far as the contention regarding the non-production of CCTV footage from the park, despite the alleged presence of cameras, is concerned, the same is devoid of any merit. The mere absence of CCTV footage does not weaken the prosecution's case, particularly when the testimony of the victim is

found to be consistent, credible, and trustworthy.

23. As regards the contention of the appellant that the DNA examination report does not support the prosecution case, since the alleles from the source of Exhibit C (blood sample of the appellant) did not match with those from the source of Exhibits A1 and A2 (vaginal swab and smear of the victim), this Court finds that such an argument does not advance the appellant's case in the present facts and circumstances. It is pertinent to note that the alleged incident of sexual assault took place on the night of 18.02.2022, whereas the medical examination of the victim and collection of forensic samples were carried out on 20.02.2022 i.e. after a gap of about two days. Significantly, the victim had clearly stated that on the morning of 19.02.2022, i.e., the next day of the incident, the accused had made her take a bath before leaving her at Shri Ram Chowk. She also categorically disclosed before the doctor at the time of her medical examination that the accused had given her shampoo to wash her hair, cut her nails, made her take bath and change her entire clothes. Apparently, it was the present appellant who had destroyed the biological evidence, and thus ensuring that there remained no proof of the crime he committed. Thus, this intervening act of accused making the victim take bath, coupled with the passage of time, could plausibly have resulted in the removal or degradation of biological evidence, thereby explaining the absence of DNA traces of the appellant in the vaginal swab and smear. Ergo, in view of the credible and consistent testimony of the victim, the lack of matching DNA in

the samples cannot be considered fatal to the prosecution case, and this contention of the appellant is, therefore, rejected.

24. In the above background, this Court notes that firstly, the appellant has been convicted for offence under Section 363 of IPC, i.e. for offence of kidnapping from lawful guardianship. From the evidence on record, including the testimony of PW-1 (the mother of the victim) and PW-3 (the victim herself), as well as the statement of the appellant recorded under Section 313 of Cr.P.C., it stands clearly established that the appellant had taken the minor victim to his house and kept her there without the consent of her lawful guardian. PW-1 categorically stated that her daughter went missing on 16.02.2022 and that she lodged the FIR on 18.02.2022. PW-3 has consistently deposed that on 18.02.2022, while she was at Lal Bagh, the appellant approached her on the pretext of taking her home but instead took her to his residence. Even if the child had earlier left her home voluntarily, once the appellant took her into his custody and kept her at his residence without the knowledge or consent of her guardian, the offence under Section 363 of IPC stood attracted. The age of the victim at the time of the incident, i.e. about 12 years and 7 months is not disputed, as noted in earlier discussion. Therefore, the findings of the learned Trial Court in this regard do not call for interference. This Court finds no infirmity in the conviction of the appellant under Section 363 of IPC.

25. Insofar as the conviction of the appellant for the offence under Section 376(3) of the IPC and Section 4(2) of the POCSO Act is

concerned, this Court finds that the testimony of the victim (PW-3), recorded before the learned Trial Court, clearly and consistently narrates the incident of sexual assault committed by the appellant. Her version is not only cogent and credible but also finds support from her statement recorded under Section 164 Cr.P.C. and the sexual assault history as recorded in the MLC wherein she had disclosed the details of how the appellant herein had sexually assaulted her. Though the victim was subjected to cross-examination, nothing substantial emerged to discredit her testimony or shake her version of the incident. The appellant, in his statement recorded under Section 313 of Cr.P.C., merely claimed innocence and alleged false implication. However, he admitted to having been with the victim on the relevant dates and did not offer any plausible explanation for the same. More significantly, despite the opportunity being granted, the appellant did not lead any defence evidence.

26. It is also pertinent to note that Sections 29 and 30 of the POCSO Act introduce statutory presumptions regarding the culpability and mental state of the accused once the foundational facts of the commission of the offence are established. In the present case, the prosecution has successfully discharged its initial burden by proving the age of the victim, her consistent testimony regarding the offence, and the presence of the appellant with the minor during the relevant period. The appellant has failed to rebut these presumptions either by way of cross-examination of the victim or by leading any defence evidence.

27. In view of the above, this Court finds no infirmity in the conclusion drawn by the learned Trial Court convicting the appellant under Section 376(3) of IPC, as the victim was admittedly below 16 years of age at the time of the incident, and under Section 4(2) of the POCSO Act.

28. As regards the aspect of sentencing, it is noted that the appellant has been awarded rigorous imprisonment for a period of 20 years for the offence punishable under Section 4(2) of the POCSO Act. Section 4(2) mandates that whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term not less than twenty years, which may extend to imprisonment for the remainder of the natural life of that person, and shall also be liable to fine. In the present case, the sentence awarded to the appellant is the minimum prescribed under the statute. Accordingly, no interference is warranted with respect to the said sentence. Further, for the offence under Section 363 IPC, which prescribes a maximum punishment of seven years, the appellant has been sentenced to rigorous imprisonment for a period of five years. The sentence awarded is well within the statutory limits and does not suffer from any illegality or perversity.

29. It is also pertinent to observe that the victim in the present case was a child of 13 years of age, who was taken by the appellant to his house and subjected to penetrative sexual assault. The physical and psychological trauma suffered by the victim, and the long-lasting emotional scars inflicted upon her at such a tender age, cannot be

ignored while considering the aspect of sentencing.

30. Thus, in view of the foregoing discussion, this Court finds no ground to interfere with the impugned judgment of conviction and order on sentence. The same are accordingly upheld.

31. The present appeal is dismissed alongwith pending application.

32. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 21, 2025/ns
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