



2025:DHC:5875



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 21.07.2025*+ **CRL.A. 319/2025 & CRL.M.(BAIL) 586/2025****ARMAAN ALAM**

.....Appellant

Through: Ms. Sunita Arora, Advocate

versus

**STATE NCT OF DELHI**

.....Respondent

Through: Mr. Naresh Kumar Chahar,  
APP for the State with Ms.  
Piya Mann, Advocate.  
Ms. Sakshi Jayant, Advocate  
for Victim.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present appeal, the appellant seeks setting aside of the judgment dated 07.12.2024 and order on sentence dated 31.01.2025 [hereafter '*impugned judgment and order*'], passed by the learned Additional Sessions Judge (FTSC)(POCSO)-02, West, Tis Hazari Courts, Delhi [hereafter '*Trial Court*'] in Sessions Case No. 111/2020, arising out of FIR No. 841/2019, registered at Police Station Nihal Vihar, Delhi for the commission of offence punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].



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## **FACTUAL BACKGROUND**

2. Pithily put, the facts of the present case are that on 16.12.2019 at about 05:00 PM, the victim child, aged about 14 years, had gone to a nearby shop to buy eatables, when she had allegedly been inappropriately touched on her chest by the accused, who had been standing outside the said shop. The victim had returned home without buying anything and had narrated the incident to her mother. Her mother had immediately gone to the shop and confronted the accused; however, he had entered into an argument with her and had left the spot thereafter. The mother of the victim child had then informed her husband about the incident, who, upon reaching home, had called the police at number 100. The said information had been recorded at P.S. Nihal Vihar *vide* DD No. 70-A. Pursuant thereto, inquiry had been conducted. During the course of investigation, the statement of the mother of the child had been recorded, as the child had been stated to be too frightened to narrate the incident herself. On the basis of the statement of the mother of the victim, the present FIR had been registered.

3. During the course of investigation, the statement of the victim child under Section 164 of Cr.P.C. was recorded wherein she categorically alleged that the accused Armaan, who used to live in another lane, had pressed her chest when she had visited the nearby shop to buy something to eat. The accused was subsequently arrested. During investigation, the age proof of the victim child, i.e. MCD Birth Certificate was collected as per which her date of birth was



25.12.2004. After completion of investigation, the chargesheet was filed for commission of offence under Section 354 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Section 10 of the POCSO Act.

4. The learned Trial Court framed charges against the appellant for commission of offence under Sections 354/354A of the IPC and Section 10 of the POCSO Act. During the course of trial, prosecution examined 8 witnesses, as the examination of 4 witnesses had been dispensed with. The statement of the accused was recorded and defence evidence was also led by the accused. Upon conclusion of trial, the learned Trial Court convicted the accused for the offence punishable under Sections 354/354A IPC and Section 8 of the POCSO Act, vide impugned judgment dated 07.12.2024.

5. By way of the impugned order on sentence dated 31.01.2025, the appellant was then sentenced to undergo rigorous imprisonment for a period of four years along with payment of fine of ₹10,000. No separate sentence was awarded to the appellant for the offences punishable under Sections 354/354A of IPC. In default of payment of fine, the appellant was directed to further undergo simple imprisonment for a period of thirty days.

6. Aggrieved by his conviction, the appellant has approached this Court by way of the present appeal.

#### **SUBMISSIONS BEFORE THE COURT**

7. The learned counsel appearing for the appellant submits that



the learned Trial Court has erred in convicting the appellant despite the prosecution's failure to establish the age of the victim beyond reasonable doubt. It is contended that the birth certificate relied upon was issued by the MCD after a delay of almost six years from the stated date of birth, and the school records alone are insufficient to conclusively prove her age, which was a crucial element of the prosecution's case. It is further argued that although the victim was stated to be around 14 years of age at the time of the incident, the complaint was not lodged on the basis of her own statement, but rather on the version given by her mother. The explanation provided by the mother, that the child was unable to speak properly due to fear, appears inconsistent, since the victim gave a detailed statement under Section 164 of Cr.P.C. to the learned Magistrate the very next day without any apparent difficulty, which casts doubt on the prosecution's case. The learned counsel also points to discrepancies in the statements of key witnesses. While in the initial complaint, the victim's mother stated that her daughter had merely described the assailant as "a boy" and that she came to know his identity only upon confronting him at the shop, the victim in her Section 164 of Cr.P.C. statement directly named the accused as Arman, indicating prior knowledge. This, it is argued, amounts to a material improvement in the prosecution's version. It is also contended that the mother of the victim claimed that the appellant appeared to be drunk at the time of the incident, yet the medical examination of the appellant does not indicate any signs of intoxication. Moreover, PW-1 did not state in



her deposition that the victim had returned home crying, which contradicts the narrative mentioned in the complaint. The learned counsel further submits that the arrest memo of the appellant reflects the time of arrest as 8:40 PM on 16.12.2019, whereas the FIR was registered only later at around 10:39 PM, which raises serious questions regarding the sequence of events. Additionally, PW-5, the shopkeeper at the scene, admitted in his testimony that he did not witness the incident himself, which weakens the prosecution's case. Attention is also drawn to inconsistencies in the testimonies of PW-2 (the victim's mother) and her husband regarding the PCR call – specifically, the time at which it was made and the phone from which it was made. Furthermore, it is pointed out that no independent or public witness was examined during the trial, which further affects the credibility of the prosecution's version. In view of these discrepancies and inconsistencies, learned counsel contends that the learned Trial Court had failed to appreciate the evidence in its proper perspective and had wrongly proceeded to convict the accused. Thus, it is prayed that the present appeal be allowed and the impugned judgment and order be set aside.

8. On the other hand, the learned APP for the State opposes the present appeal and submits that the learned Trial Court has rightly convicted the appellant after appreciating all the material evidence. It is argued that the victim's age was duly proved through the MCD birth certificate and school records, which are admissible and trustworthy. The victim's statement under Section 164 of Cr.P.C. was



recorded without delay and the victim clearly named the present appellant, ruling out any doubt regarding identity. It is also contended that the fact that the complaint was initially lodged by the mother does not weaken the prosecution's case, especially when the victim later gave a clear and consistent account of the incident. It is further stated that minor discrepancies in statements of witnesses do not affect the core of the prosecution's case. The learned APP submits that non-examination of public witnesses is not fatal and the evidence of the victim and her mother was sufficient and reliable to convict the present appellant. It is thus argued that the learned Trial Court committed no error in convicting the accused.

9. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

#### **ANALYSIS & FINDINGS**

10. To appreciate and adjudicate the contentions raised on behalf of the appellant, it shall be first apposite to take note of the allegations against the accused and the statements of the witnesses in this regard.

#### ***Testimonies of the Material Prosecution Witnesses***

11. In the present case, the General Diary Entry No. 70A had been recorded at P.S. Nihal Vihar at 17:42:38 regarding the incident of “*chhed khani*” and touching of breasts of a 14-15 year old girl child. The statement of the mother of the victim, i.e. the one given to the



police on the basis of FIR was registered specifically mentions that when her daughter had gone to buy some eatables from a nearby shop, the accused had touched her breast, and her daughter had then come back home weeping and narrated the incident to her. The mother of the victim had clarified at the time of registration of FIR itself that the child was scared due to the incident and would not be able to explain the same incident properly.

12. Further, PW-2, the victim's mother, deposed before the learned Trial Court that on 16.12.2019, when her daughter returned from her tuitions at around 5:00 PM, she asked for permission to go to the market to buy something to eat, which PW-2 granted. As her daughter stepped out of the house, the accused, Armaan Alam, who appeared to be in an intoxicated state, was standing nearby. He approached her, touched her chest, and said, "*Toffee logi?*", which frightened her. She immediately returned home and narrated the entire incident to her mother, also pointing out that the accused was still standing there and asked her to intervene. PW-2 then went to the spot and confronted the accused. When she questioned his conduct, he denied the allegation. She subsequently called her husband, who arrived shortly, and the police was then informed. PW-2 also identified the accused before the Court.

13. Similarly, the statement of the child victim (PW-1) recorded before the learned Trial Court reveals that she specifically stated that when she went to the shop to buy something to eat, after taking ₹5/-



from her mother, the accused Armaan, who lived in the next lane, was standing there. He placed his hand on her chest and asked, “*Toffee logi toffee*”. Frightened, she ran back home and narrated the incident to her mother, who then called her father and informed him. After her father returned home, he dialled 100 and called the police. PW-1 also identified the accused before the Court.

14. PW-3, the father of the victim, deposed before the learned Trial Court that on 16.12.2019, sometime after 5:00 PM, he received a call from his wife informing him that their daughter ‘S’ had gone to a shop across the street to buy something, and the accused, Armaan, had touched her chest. He told his wife to call the police at 100 number, but she was unable to do so. PW-3 stated that his office was about 2.5 kilometers from their residence. Upon reaching home, he called the police at 100 number from his wife’s phone, after which the police arrived at the spot.

15. Having carefully examined the statements and testimonies of the victim and her parents, this Court finds that the immediate disclosure of the incident by the child to her mother reflects a natural and spontaneous response to the trauma of sexual assault. The child’s conduct was instinctive and consistent with the behaviour expected of a victim of such tender age. Her narration of the incident to her mother is corroborated by the latter’s statement recorded under Section 164 of Cr.P.C. as well as her testimony before the Court.

16. Though the learned counsel for the appellant contended that





there were material discrepancies in the statements of the prosecution witnesses, this Court, upon a careful examination of their testimonies recorded before the learned Trial Court, finds no such material inconsistencies. Both PW-1 (the child victim) and PW-2 (her mother) were cross-examined at length, yet no material contradiction or discrepancy could be elicited. It is entirely natural for a 14-year-old child to feel scared and shaken when subjected to such an incident in broad daylight, just outside a shop near her home. PW-2 also clarified during her cross-examination that the shop in question was situated immediately outside their house. Even the cross-examination of PW-3 (the victim's father) did not yield anything to discredit the prosecution's version.

17. The statement of the child victim thus stands fully corroborated by her mother's testimony, and her mother's account is, in turn, supported by the testimony of her husband, PW-3, with respect to the sequence of events. Taken together, the testimonies are coherent, consistent, and inspire the confidence of the Court.

18. It is also material to note that PW-5, the shopkeeper of the concerned shop where the alleged incident took place, though he stated that he had not personally witnessed the incident of sexual assault, deposed that he heard the cries of the child at the relevant time. He specifically stated, *"When I was taking out goods from inside my shop, I heard the noise of crying of the victim and she immediately left my shop. I came to the counter."* While PW-5 did



not witness the act itself, as he was inside the shop, his testimony corroborates the version of the victim that the incident occurred just outside the shop. The fact that he heard the child crying and saw her running from the spot lends further credence to the prosecution's case. The statement of PW-5 thus assumes significance, as it supports the immediate reaction of the child to the incident – that she ran back home crying. This version is further corroborated by the testimony of PW-2, the mother of the victim, who has categorically stated that the child returned home crying and narrated the incident to her. Moreover, the victim has remained consistent in her account, both in her statement recorded under Section 164 of Cr.P.C. and in her deposition before the Court.

### ***Defence of Accused***

19. Now, as far as the version put forth by the accused is concerned, he mentioned in his statement under Section 313 Cr.P.C. that he has been falsely implicated at the instance of the victim's mother. He stated that there was a quarrel regarding the victim child standing outside the shop to purchase eatables, at which time he had also reached the spot. According to him, due to water logging in front of the shop caused by ongoing construction, his foot accidentally stepped on the foot of the victim, following which she went home and informed her mother. He further alleged that, in connivance with Vijay Pradhan, the parents of the victim demanded ₹25,000/- from him, and upon his refusal to pay, he was falsely implicated in the



present case. However, a perusal of the record and the impugned judgment reveals that the accused gave inconsistent explanations regarding his alleged false implication during the cross-examination of prosecution witnesses. While cross-examining PW-1 (the victim), the accused suggested that he was not present at the spot at the time of the incident and that there was a prior dispute between him and the parents of the victim. These suggestions were categorically denied by the victim. Further, during the cross-examination of PW-2 (the victim's mother), it was suggested to her that the child had not gone to the shop to buy anything on the day of the incident and that, while PW-2 was on the first floor of their house, she saw the accused standing downstairs and began hurling abuses at him without any provocation. It was also suggested to her that the accused had accidentally touched the victim while carrying milk and tea leaves in a polythene bag. All these suggestions were expressly denied by PW-2. In addition, while cross-examining PW-5 (the shopkeeper), the defence suggested that while the accused was crossing the water-logged area in front of the shop, he accidentally stepped on the victim's foot. PW-5, however, clearly stated that he did not witness any such occurrence.

20. Considering the aforesaid, this Court concurs with the learned Trial Court's observation that the accused took inconsistent and shifting defences during the proceedings. Initially, he claimed he was not present at the shop. He later stated that he accidentally touched the complainant due to water logging, then asserted that the victim



had not gone to the shop on the day of the incident, and then claimed that his foot accidentally stepped on the victim's foot while crossing the water-logged area. Thereafter, in the statement recorded under Section 313 of Cr.P.C., he alleged that the parents of the victim were demanding ₹25,000/- from him in connivance with one Mr. Vijay Pradhan. However, no evidence in this regard was placed on record by the accused.

### *Age of the Victim*

21. Insofar as the contention of the learned counsel for the appellant regarding the age of the child not being proved beyond reasonable doubt is concerned, no error can be found in the findings of the learned Trial Court. The Assistant Public Health Inspector, Najafgarh Zone, Delhi, was examined as PW-4, and Ms. Usha Tyagi, Principal of the school where the victim was studying, was examined as PW-8, both to prove the age of the prosecutrix. The birth entry of the child in the municipal records was made on the basis of the order of the Tehsildar dated 12.07.2020, and stood duly proved. The learned Trial Court has rightly held that, since the said entry was made on the basis of an order passed by the Tehsildar, Punjabi Bagh, and no cross-examination was conducted on behalf of the accused to challenge the same, the testimony of these witnesses remained unrebutted and unchallenged. It is therefore not open to the appellant to now dispute the age of the child. The school records, as well as the municipal birth entry, were duly proved by the respective witnesses.



22. The learned Trial Court has also rightly relied upon the observations of the Hon'ble Supreme Court in *P. Yuvaprakash v. State rep. by Inspector of Police: 2023 SCC OnLine SC 846*. Further, as per Section 94 of the Juvenile Justice Act, 2015, the age for the purpose of the POCSO Act is to be decided based on the following documentary evidence:

“...(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board..”

23. The records produced by the Principal of the school and the Assistant Public Health Inspector, MCD, in the absence of any cross-examination, stand duly proved. Thus, there is no infirmity in the finding of the learned Trial Court that the age of the prosecutrix was 14 years at the time of the incident. Accordingly, the contention of the appellant in this regard is rejected.

***Presumption under Section 29 and 30 of POCSO Act***

24. Sections 29 and 30 of the POCSO Act, which stipulates certain presumptions, are set out below:

**“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 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.”

25. It is well-settled that once the foundational facts of the case are established by the prosecution, the onus is upon the accused to lead evidence to rebut the presumption. In the present case, the age of victim stands proven, that the same was below 18 years, and the victim was a ‘child’ as defined under the provisions of POCSO Act. Further, the testimonies of the material witnesses i.e. PW-1, 2, 3 and 5 clearly establish that the alleged incident had taken place, and the present appellant had inappropriately touched/ pressed the breasts of the victim child.

26. The appellant was thus required to rebut the statutory presumptions under the POCSO Act by leading cogent and credible evidence. However, as noted above, the defence taken by the accused was inconsistent, uncorroborated, and riddled with contradictions. He failed to present any evidence to support his version or to discredit



the consistent and reliable testimonies of the prosecution witnesses. This Court is therefore of the opinion that the learned Trial Court has rightly held that the appellant failed to discharge the burden of rebutting the presumptions, and the prosecution has successfully established its case beyond reasonable doubt.

***Offence under Section 8 of POCSO Act and Sections 354/354A of IPC***

27. Section 8 of the POCSO Act provides that whoever commits sexual assault shall be punished with rigorous imprisonment of not less than three years, which may extend up to five years, and shall also be liable to fine.

28. The term ‘sexual assault’ is defined under Section 6 of the POCSO Act which provides that whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration – is said to commit sexual assault.

29. Further, Section 354 of IPC reads as under:

“**354.** Assault or criminal force to woman with intent to outrage her modesty – Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.”

30. A plain reading of Section 354 of IPC makes it clear that the



essential ingredients of the offence include (i) the victim being a woman, (ii) an act of assault or application of criminal force, and (iii) the presence of intent to outrage or knowledge that such an act is likely to outrage her modesty [Ref: ***Raju Pandurang Mahale v. State of Maharashtra***: (2004) 4 SCC 371].

31. Moreover, Section 354A of the IPC defines sexual harassment, which includes physical contact and advances involving unwelcome and explicit sexual overtures, and provides punishment for the said offence.

32. In the facts of the present case, it is clearly apparent that the victim was subjected to sexual assault by the appellant, by pressing her breasts, in broad daylight near her residence, and outside the shop of PW-5.

33. As rightly held by the learned Trial Court, as per Section 7 of the POCSO Act, touching a child's sexual part with sexual intent amounts to committing the offence of sexual assault. The learned Trial Court has also rightly taken note of the decision in ***Ramji Lal Bairwa v. State of Rajasthan***: (2025) 5 SCC 117 wherein the Hon'ble Supreme Court held that rubbing the breast of a child would constitute the offence of sexual assault under Section 7 of POCSO Act. The learned Trial Court has also rightly observed that the ingredients of offence punishable under Sections 354 and 354A of IPC are fulfilled.

34. The statements of the material witnesses, specifically the child





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victim, proves that the child was inappropriately touched on her breast by the appellant, and her statement has been found trustworthy.

***The Decision***

35. Therefore, there is no infirmity in the impugned judgment *vide* which the present appellant was found guilty of offence under Section 8 of the POCSO Act and Section 354/354A of the IPC.

36. There is also infirmity in the impugned order on sentence, *vide* which the appellant was awarded sentence only in respect of Section 8 of the POCSO Act. The appellant has been awarded minimum imprisonment i.e. rigorous imprisonment for a period of three years. Thus, the impugned order on sentence is also upheld.

37. In view of the above, the present appeal, along with pending application, if any, stands dismissed.

38. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**

**JULY 21, 2025/zp**

*TS/TD*