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

% *Judgment delivered on: 21.07.2025*

\+ **CRL.A. 371/2025 & CRL.M.(BAIL) 648/2025**

SATISH .....Appellant

Through: Mr. Aditya Aggarwal, Ms. Pooja Roy and Ms. Shivani Sharma, Advocates

versus

STATE NCT OF DELHI AND ANR. .....Respondents

Through: Mr. Rajkumar, APP for the State.

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 30.05.2024 [hereafter '*impugned judgment*'] and order on sentence dated 16.01.2025 [hereafter '*impugned order on sentence*'], passed by the learned Additional Sessions Judge (FTSC) (POCSO)-03, South-West District, Dwarka Courts, Delhi [hereafter '*Trial Court*'] in Sessions Case No. 540/17, arising out of FIR bearing no. 233/2017, registered on 10.08.2017 at Police Station Najafgarh, Delhi for the commission of offence punishable under Section 376 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Section 6 of the Protection of Children from Sexual Offences Act,

2012 [hereafter '*POCSO Act*'].

FACTUAL BACKGROUND

2. Briefly stated, the facts of the present case are that on 10.08.2017, child victim 'S' had written a letter to her school teacher regarding her sexual exploitation by her uncle (*fufa*) from the last 4 years and sought help of her teacher to save her. In the said letter, she mentioned that her uncle would regularly do bad things to her and had been doing so continuously for the past four years. He used to threaten her by saying that if she told anyone, both of them would die together. She further narrated that on one occasion, while he was committing the said act, her elder brother arrived, and she quickly went and opened the door. When her brother asked her why her face was red, she did not say anything because the accused had beaten her that day. She also stated that the accused had repeated the act even the day before. In her letter, she expressed her desperation and fear, stating that she did not want to die, and that despite her refusal, the accused continued to sexually abuse her, beat her, and threaten her on a daily basis. Upon receiving this letter, the school administration had called the police.

3. After arrival of a counsellor, the statement of the child victim was recorded by the police, who disclosed that she had been residing for the past 6–7 years with her paternal aunt (*bua*), her aunt's husband (*fufa*), whom she addressed as 'daddy', and her grandmother. She had been studying in Class 8th at Government

School No. 3, Najafgarh. She stated that for the past four years, her uncle had been sexually assaulting her. Whenever she used to return from school, he used to take her either to the upstairs or downstairs room, bolt the door from inside, undress her and himself, and insert his private part into hers. He also used to press and suck her chest with his hands and mouth. She narrated that even on the previous day, i.e., 09.08.2017, after she had come back from school and was sitting in the room, the accused had entered, latched the door, removed her leggings and undergarment, undressed himself, and again inserted his private part into hers before leaving to sleep in the upper room. She stated that she had never informed anyone about these repeated acts due to fear, but now she wanted strict punishment for the accused.

4. On the basis of the statement of the victim, the present FIR was registered. Thereafter, the child victim was taken for medical examination on 10.08.2017 at Rao Tula Ram Memorial Hospital, Jaffar Pur, New Delhi- 110073, where the child victim gave the history of sexual assault by her uncle (appellant/accused), and also stated that last assault took place one day before the examination. The doctor concerned took the sample of the child victim and handed over the same to the I.O.

5. On 11.08.2017, the present accused was arrested. On the said day, the victim's statement was also recorded under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] before

the learned Magistrate, wherein she alleged that when she was in Class 5th, and was once asleep, her *fufa* had made her sit in his lap, removed her leggings and committed wrong act with her. Since then, he had been continuously committing such acts with her, last incident being 09.08.2017, when she had returned home from school.

6. After completion of the investigation, chargesheet was filed before the learned Trial Court on 01.09.2017, and charges were framed against the appellant. During the course of the trial, the prosecution examined 17 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C., and examined 2 witnesses in his defence. 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 376 of the IPC and Section 6 of the POCSO Act. The concluding portion of the judgment reads as under:

> ".....51. In view of the above discussion, it is concluded that the prosecution has been able to prove its case for the offence of aggravated penetrative sexual assault by a near relative of victim i.e. her uncle (Phupha). Consequently, accused Satish is convicted for the offence 376 of IPC r/w Section 6 of Protection of Children from Sexual Offences Act (POCSO). Let he be heard on the point of sentence on next date of hearing..."

7. 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 ₹2,000 for the offence under Section 6 of the POCSO Act, and rigorous imprisonment for a period of 20 years

along with a fine of ₹2,000 for the offence under Section 376 of the IPC. The relevant portion of the order on sentence reads as under:

> "....11. Keeping in view all the mitigating and incriminating circumstances, convict Satish, son of Sh. Attar Singh is sentenced to rigorous imprisonment for a period of 20 years (Twenty Years) and to pay fine of Rs. 2,000/- (Rupees two thousand only) for the commission of the offence punishable under Section 376 IPC, in default of payment of fine the convict shall undergo simple imprisonment for a period of 30 days; for the offence punishable u/s 6 of POCSO Act, he is sentenced to imprisonment for a period of 20 years (Twenty Years) and to pay fine of Rs.2,000/- (Rupees two thousand only) in default of payment of fine the convict shall undergo simple imprisonment for a period of 30 days.
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> 12. All the sentences shall run concurrently.
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> 13. Benefit of section 428 of Cr.P.C, if any, is also extended to the convict.
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> 14. Fine amount is not paid by the convict. As such, he shall further undergo simple imprisonment for thirty days.
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> 15. Prosecution has also placed on record an affidavit mentioning the expenditure incurred by the State in prosecution of the present case. As per the said affidavit, the state has incurred a sum of Rs. 12,577/- in conducting the prosecution. Keeping in view the financial status of the convict, State is directed to bear the expenses on prosecution of the convict on its own.
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> **COMPENSATION**
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> 16. Victim Assessment report has been received from District Legal Services Authority, South-West.
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> 17. As per the settled principles of law, Courts trying the offences of sexual assault have the jurisdiction to award the compensation to the victims being an offence against the basic human right. In the present case, victim is a minor girl aged about 12 years on the date of incident i.e. 09.08.2017 and considering the allegations of commission of offence even prior to that for 4 years, the child victim is found to be of tender age of 8 years. As per Clause 9 (3) of the Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other

Crimes, in case the victim is a minor, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the Schedule appended to the scheme. As per the Schedule, for the offence of unnatural sexual assault, minimum compensation has to be Rs.4 lakhs and maximum compensation is Rs.7 lakhs. However, in the case of Mst. X (through mother and natural guardian) Vs. State and Ors. W.P. (Crl.) No.1419/2020 dated 13.05.2021, the following was held by the Hon'ble High Court of Delhi:

> "24. In the above view of the matter, in the opinion of this court, the learned ASJ was not bound by the DVC Scheme 2018, which scheme including the maximum and minimum compensation envisaged in the schedule thereto, would at best serve as 'guidelines' for assessment of compensation payable to the petitioner. Considering that the petitioner was subject to the offence of 'Unnatural Sexual Assault', for which the Schedule to Part II setsdown the minimum limit of compensation as Rs. 4 lacs and the upper limit of compensation as Rs. 7 lacs. Since the petitioner is a 'minor' for whom Clause 9 (Part-11) of the DVC Scheme 2018 says that the minimum and maximum limits of compensation would be deemed to be 50% higher than those mentioned in the Schedule, in the petitioners case the minimum and maximum limits would stand enhanced from Rs. 4 lacs to Rs. 6 lacs and from Rs. 7 lacs to Rs. 10.5 lacs respectively. To reiterate, these limits on the amount of compensation payable would be binding upon the DLSA/DSLSA but not upon the court. It may be noted that Clause 9(3) (Part II) of the DVC Scheme 2018 even grants discretion to the DLSA/DSLSA to say that "...However, in deserving cases, for reasons to be recorded, the upper limit may be exceeded."

18. Hence, keeping in view the age of the victim and her family circumstances, this Court deem it fit to award an amount of Rs.10,00,000/- (Rupees Ten Lakh only) to the victim as compensation after adjusting the interim compensation already granted. Keeping in view the Victim Impact Report received from DLSA, as per which, the convict does not have paying capacity, it is directed that the Ld. Secretary, District Legal

> Services Authority, South-West, New Delhi shall ensure that the amount is given to the victim within one month on receipt of this order and shall further ensure that the said amount is disbursed in such a manner that the same be used for welfare and rehabilitation of the victim. 19. Parents of the victim shall contact the office of DLSA with the assistance of Ms. Nigar Parveen, Ld. Counsel for DCW. 20. Copy of the judgment and of this order on sentence be supplied to the convict, free of cost. It be also given dasti to the parents of the victim.
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> 21. Convict is informed that he has a right to prefer an appeal/revision against the judgment and order on sentence. He has been apprised about his right to approach the Legal Services Authorities for the services of Legal Aid Counsel, in case he cannot afford to engage an advocate.
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> 22. Copies of the judgment dated 30.05.2024 and this order on sentence be sent immediately to the learned Secretary, DLSA, South-West through cinail:southwest-dlsa@nic.in and also physically for information and compliance regarding the payment of compensation amount as awarded above.
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> 23. File be consigned to record room after due compliance and after the expiry of the period of limitation.
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> 24. In terms of the "Guidelines of High Court of Delhi for recording of evidence of vulnerable witnesses", the Ahlmad is further directed to keep the record containing identifying information of vulnerable witness confidential and kept under seal before consigning the judicial file to record room. The record shall only made available upon written request and order of the court...”

8. Aggrieved by his conviction, the appellant has assailed the impugned judgment of conviction and order on sentence by way of the present appeal.

SUBMISSIONS BEFORE THE COURT

9. The learned counsel appearing on behalf of the appellant has contended that the learned Trial Court failed to appreciate that the prosecution did not establish the foundational facts underlying the

registration of the FIR. It is submitted that the first complaint was made by the victim on 10.08.2017 to her school teacher, following which the police was informed and the present FIR was registered. It is argued that although the undergarment allegedly worn by the victim was sealed by the doctor who conducted the medical examination and later handed over to the I.O., and despite the FSL report confirming the presence of semen matching the DNA of the accused, the victim, during her chief examination on 06.10.2018, failed to identify the said undergarment as belonging to her. The learned counsel has also contended that as per the victim's own statement, the incident allegedly occurred on 09.08.2017 at around 1:00 PM. She approached her teacher the following day, on 10.08.2017, and was thereafter taken for medical examination. The MLC records the "brought time" as 6:18 PM. However, the Trial Court failed to consider that the victim had purportedly worn the same undergarment for over 29 hours, despite having attended school the next day, whereas other items, such as the bed sheet and the accused's clothes, were admittedly changed, as deposed by PW-15 (I.O. SI Amolak) during cross-examination. It is also submitted that the MLC does not mention whether the victim had bathed or not after the alleged incident, a relevant factor in assessing the evidentiary value of the garments allegedly worn by her during the assault.

10. The learned counsel appearing for the appellant further argued that during the first examination of the victim (PW-1) on 15.12.2017, the Legal Aid Counsel appearing for the accused had not disputed the

identity of the case property as the articles were with the FSL and not produced before the Court at that time. The cross-examination was thus closed. Subsequently, on 09.08.2018, an application for bail was listed, and the new counsel for the accused submitted that the previous Legal Aid Counsel had not raised any objection regarding the identity of the undergarments, and accordingly sought re-calling of PW-1 for identification of the case property. It is submitted that the Trial Court, while accepting the importance of the undergarment as a crucial piece of evidence due to the matching DNA, allowed the re-calling of PW-1. However, when the case property (i.e., the undergarment) was first shown to PW-10 (the *bua* of the victim) on 30.07.2018, she categorically denied that it belonged to the child victim, stating that the navy-blue panty was not hers. Similarly, when PW-1 was re-called, she too failed to identify the garment.

11. It is argued that the learned Trial Court erred in convicting the appellant despite the lack of any reliable evidence to establish that the undergarment in question actually belonged to the victim. Even PW-2, during her chief examination, merely stated that the undergarment was taken by the doctor concerned, but no case property was shown to her in court. Thus, it is submitted that the prosecution failed to prove that the clothes from which semen was recovered in fact belonged to the victim.

12. It is also contended that the victim had alleged forcible sexual assault, but the MLC revealed no internal or external injuries, which

casts further doubt on the prosecution version. It is also contended by the learned counsel that it is doubtful as to whether any semen sample or the blood sample of the accused was collected and sent to FSL since PW-9 has deposed that he had collected the samples of the accused and deposited in malkhana on 10.08.2017, whereas the accused himself was apprehended and arrested only on 11.08.2017 and medically examined on that day. Lastly, it is submitted that the learned Trial Court erred in relying upon the FSL report to corroborate the victim's testimony, as the report itself is inconclusive and suffers from material deficiencies. Notably, Parcel 4, containing the semen sample of the accused, was returned unexamined, raising serious doubts about the manner in which the DNA matching was reported. The FSL findings, therefore, could not have been relied upon as conclusive corroborative evidence. It is thus prayed that the appellant be given the benefit of doubt and be acquitted in the present case.

13. The learned APP for the State, on the other hand, strongly opposes the present appeal and submits that the conviction is based on a well-reasoned and detailed analysis of the evidence on record by the learned Trial Court. It is contended that the prosecution has successfully proved its case beyond reasonable doubt through the cogent and consistent testimony of the victim, who clearly implicated the appellant. It is further submitted that the medical and forensic evidence, particularly the FSL report matching the DNA of the appellant with semen found on the undergarment of the victim,

conclusively supports the prosecution's case. The learned APP argues that minor inconsistencies, if any, do not go to the root of the matter and that the judgment warrants no interference. He thus prays that the present appeal be dismissed.

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

ANALYSIS & FINDINGS

15. Before proceeding to examine the contentions raised on behalf of the appellant, it is apposite to first consider the testimony of the material witnesses in the present case.

16. In the instant case, the child victim was taken in adoption by the accused, who is her maternal aunt's husband (*fufa*), at a very young age. As per her statement recorded under Section 164 of Cr.P.C., she stated that the accused had been sexually exploiting her since she was in 5th standard. She was examined as PW-1 before the learned Trial Court. PW-1, in her deposition, initially gave a brief background about her class and school. She stated that the accused, whom she referred to as 'Daddy', used to scold and beat her for about four years, and at first, she did not mention anything further having happened at her aunt's house. However, she abruptly stopped deposing and, upon request by the learned APP, was permitted to be cross-examined. In response to a Court query as to why she did not mention the allegations earlier, PW-1 stated that she forgot to tell. She further disclosed that she had come to Court accompanied by her

father, two aunts (one of whom is the wife of the accused), and also the sister of the accused and her husband. PW-1 testified that she had confided in her school teacher about the accused doing "wrong things" to her. She narrated to the police that the accused removed her *salwar*/jeans and his own lower garment, and then inserted his private part into hers. She also described that the accused used to press and suck her breasts. She proved her complaint as Ex. PW-1/A and the site plan prepared at her instance as Ex. PW-1/B. She also identified her medical examination report as Ex. PW-1/C and stated that she could identify her clothes. Although the case property (victim's clothes) was not received from the FSL at that time, the identity of the same was not disputed by the accused. She also identified her signatures on her statement recorded under Section 164 of Cr.P.C. PW-1 further stated that after the incident, she began living with her parents and changed her school. She also deposed about another instance when the accused was doing wrong acts with her and her brother arrived; upon seeing her face red, he asked what had happened, but she remained silent out of fear. She also stated that the accused beat her on the same day. During her testimony, PW-1 identified the accused before the learned Trial Court. However, when the child victim was recalled for examination to identify her clothes, she failed to identify her blue-colored underwear.

17. PW-2 Dr. Shruti Joshi Dabral, who examined the child victim, deposed that the child had given a history of repeated sexual assault by her uncle, Satish, with the last incident occurring just a day prior

to the medical examination. She further testified that she collected the necessary medical samples from the victim and handed them over to the Investigating Officer. PW-4 Dr. Someshwar Boldoloi was examined to prove the MLC of the accused. PW-5 and PW-6, both teachers, were examined to establish the age of the child victim based on school records.

18. PW-7, Ms. Meera Kumari, a guest teacher and Special Educator at the school of the child victim, testified that she came to know of the victim's sexual exploitation by her paternal uncle (*fufa*) at her aunt's residence. This information was shared with her by Ms. Neelam, a counselor at the same school. PW-8, Ms. Neelam Kumari, who is the Educational and Vocational Guidance Counselor (EVGC) at GGSS School No. 3, Najafgarh, stated that she was the first person to come in contact with the child victim on 10.08.2017, during a group counseling session for girls. The victim disclosed her ordeal to her during that session. PW-8 informed PW-7 and subsequently called the police. In her cross-examination, she reaffirmed that the disclosure and counseling session took place on 10.08.2017.

19. PW-9, Head Constable Sudhir, testified regarding the deposit of case exhibits at FSL Rohini. He confirmed that 15 sealed parcels relating to the victim and four exhibits related to the accused were deposited through the Investigating Officer, SI Amolak.

20. PW-10 is the paternal aunt (*bua*) of the victim and wife of the accused. She did not support the prosecution's case and denied being

present at the time of the victim's medical examination, though her name is recorded in the MLC. When shown the case property i.e. the underwear of the victim, she denied it belonged to the child. She refuted the prosecution's suggestions regarding her visit to the hospital, her presence as recorded in the MLC, the clothes worn by the victim, and allegations of influencing the child to depose in favor of the accused. However, she conceded that the victim is currently residing with her parents and that the child had made a disclosure at school.

21. PW-11 to PW-15 and PW-17 are all police personnel, with PW-15 being the Investigating Officer of the case. PW-16 proved the FSL report.

22. Having taken note of the testimonies of the witnesses, this Court notes that in the present case, insofar as the age of the child victim is concerned, it has been the case of prosecution that she was a minor, aged about 12 years, at the time of lodging of the present FIR. The learned Trial Court observed as under with respect to the age of the victim:

> "45. Applying the principles laid down by the Hon'ble High Court of Delhi in Dharmender (supra), following facts have come on record in the present case:-
>
> (i) The school record pertaining to the birth record of PW-1 Ex. PW6/A and Ex PW6/B and Ex. PW6/C have been duly proved in compliance with Section 94(2)(i) of Juvenile Justice (Care and Protection of Children) Act 2015.
>
> (ii) According to school record, the date of birth of PW-1 is 01.01.2005.

> (iii) There is consistency in all the documents with respect to age of PWl/child victim 'S'.
>
> (iv) Moreover, no question disputing/questioning the age of victim 'S' was put to her and witnesses from school at the time of their cross examination by the learned counsel for the accused. The tenor of cross examination of victim as well witnesses from school also goes to show that defence has not challenged the age as well as date of birth of the victim."
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> 46. **On the basis of aforesaid discussion, this Court is of the considered opinion that prosecution has proved the date of birth of PW-I/'S' child victim as mentioned in school record Ex. PW6/A, Ex. PW6/B and Ex. PW6/C as per mandate of Section 94 of the Juvenile Justice (Care and Protection of Children) Act 2015. Thus, the date of birth of PW-1 is accepted to be 01.01.2005. Accordingly, the age of PW-1 at the time of commission of alleged offences i.e. the child victim was about 12 years & 7 months.** Thus, on the date of commission of alleged offence, the age of PWl was less than 18 years and hence, she was a child u/s 2(d) of the POCSO Act."
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> (Emphasis added)

23. It is clear that the appellant has not disputed the age of the victim, either before the learned Trial Court or before this Court. Thus, the applicability of provisions of POCSO Act to the present case is undisputed.

24. As far as the medical evidence is concerned, the MLC of the victim records the history given by her, of the sexual assault committed by her *fufa* i.e. the appellant upon her for the last 4 years. The hymen of the victim was also reported as 'torn'. Insofar as the argument that the victim had alleged forcible sexual assault, but the MLC revealed no internal or external injuries, is concerned, this Court is of the view that the doctor i.e. PW-2 was cross-examined on

the aspects of there being no injury on the breasts or the private parts of the victim, however, she clearly stated that - "*It is not necessary if a 40 years old man had sexual intercourse with a child 14 years old, the child get the internal injury in her private part. It is also not necessary that if the breast of child victim were pressed, the injury would occur on her breast.*"

25. In the present case, the main contention of the learned counsel for the appellant is that the victim child has not identified a crucial piece of evidence i.e., her underwear in court, and that since the FSL Report is based on the semen stains found on the said underwear, the entire prosecution case stands vitiated on this ground alone. However, this Court is of the considered view that the record reveals a different picture. The proceedings before the learned Trial Court clearly record that the earlier defence counsel had specifically stated that he did not dispute the identity of the case property, i.e., the underwear of the child victim. This concession was duly recorded by the Trial Court. However, subsequently, when a new counsel appeared for the defence and moved an application under Section 311 of Cr.P.C. seeking recall of the child victim for further examination, and she was again questioned about the identification of the case property, it was at that stage that she did not identify the said underwear as hers. In this regard, this Court is of the opinion that it is a matter of record that the case property in question was not seized by the police from any private place but was, in fact, seized by the doctor who had medically examined the child victim. The medical

examination was conducted when the victim was brought to the hospital wearing the said underwear. The MLC dated 10.08.2017 clearly mentions that the underwear worn by the victim at the time of examination was seized, sealed, and handed over to the Investigating Officer by the doctor concerned (PW-2). While the child victim, at the time of her subsequent recall, may not have recollected or identified the underwear after a lapse of time, the doctor who conducted the examination has recorded, in continuity with the details of the medical examination, that the underwear was indeed worn by the child at the time of the check-up, and was seized and sealed in her presence.

26. Further corroboration is found in the testimony of PW-14, HC Kapil Dev, and PW-15, SI Amolak, as well as in the Seizure Memo Ex. PW-14/A. The said memo details the fifteen exhibits that were collected and sealed by Dr. Shruti (PW-2) at the time of the medical examination. PW-14 specifically deposed that – "*In the hospital, Dr. Shruti had given the exhibits/samples of the child victim in a sealed box to SI Amolak, who had seized the exhibits/samples of the child victim vide seizure memo Ex. PW-14/A bearing my signature at point A. Thereafter, on the instruction of the IO, I had deposited the sealed exhibits/samples in the malkhana, P.S. Najafgarh*." PW-15, the I.O. of the case, similarly deposed that – "I *collected sealed exhibits from the doctor after the medical examination of the child victim and the same were seized by me vide seizure memo already Ex. PW-14/A. On return back to the police station, I sent HC Kapil for depositing the*

case property in the malkhana."

27. In light of the aforesaid, this Court is of the considered view that there was neither any reason nor any occasion for the doctor to fabricate or falsely record the seizure of the said underwear in the MLC, nor could the doctor have planted or manipulated such an article. In her deposition, the child victim also stated that the doctor had taken her clothes at the time of the check-up, which further supports the prosecution version. Therefore, the contention raised by the learned counsel for the appellant, that the prosecution case stands demolished merely on the ground that the victim did not identify the underwear in court, is found to be devoid of merit and is accordingly rejected.

28. The learned counsel for the appellant has also contended that the FSL report does not support the prosecution's case. It was argued that the samples of the accused could not have been sent to the FSL for examination as evident from contradictions in the records and testimony of PW-9 and, therefore, there was no question of its comparison with the semen stains found on the underwear of the victim child. However, this contention is clearly contrary to the record. This Court notes that the accused was arrested on 11.08.2017, as is evident from the Arrest Memo (Ex. PW1/D). Following his arrest, he was taken for medical examination, and his MLC was prepared on 11.08.2017 at about 12:30 PM. The concerned doctor specifically recorded that both the semen and blood samples of the

accused had been obtained. Thereafter, a seizure memo of the exhibits collected from the accused was prepared on the same day, i.e., 11.08.2017, by SI Amolak, in the presence of Constable Ajeet Singh, who signed as a witness. This seizure memo clearly records that Dr. Someshwar handed over the accused's exhibits, collected during the medical examination, including the semen and blood samples, to the Investigating Officer. As per the testimonies of the prosecution witnesses, the exhibits of both the victim and the accused were then sent to the FSL on 14.08.2017. An acknowledgment letter confirming receipt of these exhibits at FSL has also been placed on record.

29. At this stage, it is important to address the argument raised by the learned counsel for the appellant, who pointed out that PW-9, HC Sudhir, deposed before the learned Trial Court that on 10.08.2017, he received the exhibits of the victim and, on the same day, also received the exhibits pertaining to the accused. It is contended that this could not be correct since the accused was arrested only on 11.08.2017, and his samples could not have been received a day prior. In this regard, this Court is of the view that although PW-9 has stated that he received the accused's exhibits on 10.08.2017, the same is evidently erroneous and not supported by the documentary evidence on record. All other records clearly indicate that the accused was arrested on 11.08.2017, and his medical examination was conducted on the same day, during which his exhibits were collected and handed over to the police. Importantly, PW9 was not cross-

examined by the defence counsel on this alleged discrepancy in the date. Therefore, in the absence of any cross-examination or challenge to the testimony of PW-9 on this aspect, the mere statement of an incorrect date, unsupported by any corroborating material, cannot enure to the benefit of the accused, particularly when the rest of the documentary and oral evidence is consistent and points toward the guilt of the appellant.

30. It is to be noted that the FSL report in the present case clearly states that human semen was detected on the underwear of the victim. Furthermore, the DNA fingerprinting analysis confirmed that the semen stains present on the underwear of the victim matched the blood sample of the appellant. While it is true that the FSL report notes that the sealed semen sample of the accused was not opened and examined, this fact does not benefit the appellant in any manner, as the forensic result based on the comparison of semen stains on the victim's underwear with the appellant's blood sample unequivocally established his involvement. It is also significant to note that PW16, the Senior Scientific Officer (Biology), FSL Rohini, had duly proved the FSL report during her deposition before the Trial Court. Her testimony went unchallenged, as the defence counsel did not cross-examine her on any aspect.

31. The learned counsel for the appellant also contended that another prosecution witness, i.e. the *Bua* of the victim (PW-10), failed to support the prosecution's case. In this regard, this Court is of

the considered opinion that PW-10, who is the *Bua* of the victim child, is also the wife of the accused. Therefore, it is not surprising that she did not support the prosecution's case or failed to identify the case property. Her testimony, in the given circumstances, appears to be coloured by her relationship with the accused and cannot be relied upon. Accordingly, this contention of the appellant is rejected.

32. As far as the argument of the appellant regarding the alleged motive for false implication by the child victim – that she was reprimanded by the accused for bringing some boys home – is concerned, this Court finds no merit in the same. The statement of the accused recorded under Section 313 of Cr.P.C., as well as the defence evidence, is completely silent with respect to the identity of such boys or the specific date and time when they were allegedly brought to the house. Furthermore, during her cross-examination, the victim child (PW-1) categorically denied the suggestion that on 09.08.2017 she had returned home accompanied by some boys and that the accused had objected to the same. In light of these facts, the alleged motive put forth by the appellant stands unsubstantiated and is of no assistance to the defence.

33. Furthermore, this Court is of the opinion that the minor child victim was not residing with her parents at the relevant time, but was living with her *Bua*, *Fufa* (the accused), and grandmother. The fact that she confided in one of her school teachers about the repeated sexual assault committed upon her by the accused is a crucial aspect

of the case. It demonstrates not only the sustained trauma suffered by the child but also the fear and helplessness she must have felt within the very household where she was supposed to feel protected and cared for. The decision of the child to disclose the abuse to a teacher rather than to any family member is understandable and significant. It reflects the psychological state of a vulnerable child who, having been subjected to prolonged abuse by a close relative, found it difficult to speak up within the family environment. The act of confiding in a teacher indicates that she was seeking help from a figure she trusted and viewed as capable of providing safety and support. Such disclosures by child victims, particularly in cases involving intra-familial abuse, are often delayed and made to individuals outside the immediate family, due to feelings of shame, fear of disbelief, and emotional manipulation. Her disclosure thus not only lends credibility to her version but also is also similar with behavioural patterns seen in victims of child sexual abuse.

34. Therefore, in the totality of the facts and circumstances of the present case, this Court is of the considered view that the prosecution has succeeded in proving its case beyond reasonable doubt. The testimony of the child victim, which is credible, finds corroboration from the depositions of her school teachers, the letter written by the victim herself, her statement recorded under Section 164 of Cr.P.C., as well as the medical evidence including the MLC and the FSL report. All these pieces of evidence, when read together, form a cogent and compelling chain pointing towards the guilt of the

appellant. Thus, his conviction for commission of offence under Section 376 of IPC and Section 6 of the POCSO Act is upheld.

35. The learned Trial Court has authored a well reasoned judgment on every aspect and after considering the overall facts and circumstances of this case, this Court finds no infirmity or illegality in the impugned judgment dated 30.05.2024.

36. However, insofar as the sentence awarded to the appellant is concerned, this Court notes that the learned Trial Court has sentenced the appellant to undergo rigorous imprisonment for a period of 20 years for the offence under Section 376 of IPC as well as for the offence under Section 6 of the POCSO Act.

37. It is evident that the learned Trial Court has overlooked the mandate of Section 42 of the POCSO Act, which clearly lays down that where an act or omission constitutes an offence punishable both under the POCSO Act and under certain provisions of the IPC, then, notwithstanding anything contained in any other law, the offender shall be liable to punishment under either of the two statutes, but not both, and that too under the statute which provides for the punishment which is greater in degree. Additionally, Section 42A of the POCSO Act provides that the provisions of the POCSO Act shall have overriding effect over any other law for the time being in force, in case of any inconsistency.

38. In view of the above statutory provisions, it is clear that once the act committed by the appellant constitutes an offence under both

Section 376 of IPC and Section 6 of the POCSO Act, the learned Trial Court was required to award punishment only under Section 6 of the POCSO Act.

39. Accordingly, the sentence awarded under Section 376 of IPC is not sustainable in law and deserves to be set aside. However, the sentence awarded to the appellant for offence under Section 6 of the POCSO Act is upheld. The order on sentence dated 16.01.2025 is modified to this limited extent.

40. In view of the above, the present petition, along with pending application, stands disposed of.

41. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 21, 2025/zp
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