



2025:DHC:8453



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

% Reserved on : 09.09.2025
Pronounced on : 22.09.2025

+ **CRL.A.858/2024**

DANISH

.....Appellant
Through: Mr. Abhinav Bajaj, Advocate
(DHCLSC) with Mr. Saksham Ojha
and Ms. Geetashi Chandna,
Advocates.

versus

STATE OF NCT OF DELHI & ANR

.....Respondents
Through: Ms.Shubhi Gupta, APP for State with
SI Sangeeta Malik PS Bindapur,
Delhi.
Ms. Geeta Tandon, Advocate for
victim.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal filed under Section 415 (2) read with Section 424 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [in short, 'BNSS'] has been preferred against the judgment dated 03.02.2024 and order on sentence dated 21.03.2024 passed by ASJ-01(POCSO Act) South West District, Dwarka Courts, New Delhi, in Session Case No. 440245/2016, FIR No.1434/2014 registered under Sections 376/366 IPC & 6 of Protection of Children from Sexual Offences ACT, 2012 [in short, 'POCSO' Act] at P.S. Bindapur, Delhi.



The appellant was convicted under Section 6 of the POCSO Act and sentenced to undergo R.I. for a period of 10 years alongwith fine of Rs. 10,000/-, in default whereof he was directed to undergo S.I. for a period of 30 days. Benefit of Section 428 CrPC was given to the appellant.

2. The investigation commenced with DD No. 42A recorded on 28.11.2014 at 7.40 P.M. wherein a lady caller had informed of commission of offence of rape with a 7-year old girl.

3. SI *Kusum*, the IO of the case, who deposed as PW-25, on being assigned the case, reached DDU Hospital where she met with the child victim and her parents. The statement under Section 161 Cr.P.C. of the child victim was recorded as (Ex.PW1/A), wherein the child victim stated that Appellant/*Danish* had committed *galat kaam* with her. She further stated that Apellant/*Danish* had come to ask for tea leaves whereafter he took her to his house and laid her down on the bed; he removed her clothes and then applied oil like substance on her private parts. He further threatened the child victim not to disclose anything to her parents. There was darkness in the room as the appellant had switched off the lights of his room and the door was closed. Though she tried to raise alarm, however because of fear, she could not be heard. After some time, child victim's father called out her name, on hearing which she came out from the room and told the entire incident to her father. Her father caught the accused and called the police.

4. In these circumstances, FIR under Sections 376/366 IPC and Section 6 of POCSO Act came to be registered.

5. The child victim was medically examined on the same day at 10.20 P.M. and her statement under Section 164 Cr.P.C. came to be recorded the



next day. The Trial Court framed charge under Section 6 of POCSO Act whereafter the prosecution examined 27 witnesses to prove its case. In his statement recorded under Section 313 Cr.P.C., the appellant denied the prosecution's case and further claimed that he was falsely implicated as he had a dispute with the parents of the child victim.

Age of the Child Victim:

6. As per the case of the prosecution, the child victim was aged about seven years at the time of the incident. The said fact was stated by the child victim. The age of the child victim was proved through the child victim as well as the school records produced through concerned teacher (PW-5) where the child victim was studying. The school record in the form of original admission register was exhibited as Ex.PW5/A. As per the school record, the date of birth of the child victim was recorded as 07.11.2007. The age of the child victim was not disputed before the Trial Court and even before this court, no contentions have been raised. As such, this Court concurs with the conclusion of the Trial Court that the child victim in the present case is a 'child' within the meaning of Section 2(d) of the POCSO Act.

Material Witnesses:

7. The child victim was examined as PW-1. The Trial Court recorded its satisfaction as to the competency of the child victim by putting some preliminary questions before recording her testimony. Keeping in view the tender age of the child, the statement of the child victim was recorded without oath. In her statement, the child victim stated that she knew the appellant prior to the incident as he was a neighbour and he used to reside as a tenant in an adjacent room. On 28.11.2014 in the evening, her father along



with her elder brother had gone to the market. After leaving the child victim at the house of her neighbour, her mother had left for her workplace. The neighbour with whom the child victim was left, asked her to bring grater from her house. When the victim went to her house to bring the grater, the appellant came and took her to his room by holding her hand. Thereafter, he removed her pant and applied some oil on her private part, after which he laid upon her. She raised an alarm and hearing her screams, her father reached there. When her father called out her name, she came out from the room of the appellant and apprised him of the entire incident. Someone called police by dialling on 100 number and the appellant got arrested. Her statement under Sections 161 and 164 CrPC were exhibited as Ex.PW1/A and Ex Pw1/B respectively.

8. Father of the child victim was examined as PW-4. He deposed that the appellant was already known and was residing in the same building as a tenant. He stated that he used to leave his house at around 10-10:30 a.m. and return by 7 P.M and that his wife was working as house maid. He deposed that on the date of incident, he had left his house at around 4.00 P.M. along with his son for the market and when he returned to his home at around 7.00 PM, he found that his house was open, but no one was there. Thereafter, he called his daughter by calling out her name but he did not get any response. After hearing his call, the child victim came out from the room of the appellant. At that time she was crying, and on being inquired, she told that the accused had taken her forcibly into his house and thereafter committed rape upon her. He also found that the undergarment of the child victim was wet. He further deposed that he called his neighbours and confronted the appellant about the incident. The appellant accept his guilt.



In the meanwhile, his wife reached at about 7.30 PM and on being told about the incident, called the police by dialling No. 100.

9. In cross-examination, father of the child victim stated that on the date of incident, he along with his son had left his house around 12.30 P.M. and reached back around 6.30 P.M. He admitted that there was no blood stain either on the body parts of the child victim or on her undergarment. He denied the suggestion that there was a quarrel between his wife and the appellant on the issue of water and for that reason false case has been registered. He also denied that no such incident had occurred. Mother of the child victim, examined as PW-3, deposed that on the day of incident at about 6.30-7.00 PM, she received a telephonic call from her husband who informed her about the incident.

In her cross-examination, she stated that prior to the incident, her family was on talking terms with the appellant. The appellant was known to them for last one year. She denied the suggestion that there was a money dispute between the appellant and them because of which he was falsely implicated.

10. The landlord of the building was examined as PW-15. He deposed that the appellant as well as the child victim along with her family were his tenants and were residing in the building. He stated that the father of the child victim had called him to inform that the appellant had committed wrong act with his daughter.

In cross-examination, he denied the suggestion that the father of the child victim had not informed about the incident to him. The suggestion was also denied that he was deposing falsely at the instance of police. He also denied the suggestion that he had personally seen any incident.

**MLC & FSL:**

11. The MLC of the child victim was proved through the testimony of Dr. Avnish, Emergency Medical Officer, DDU hospital, who was examined as PW-7. He stated that on 28.11.2014, the child victim was brought to the hospital and that he prepared the MLC (Ex.PW7/A) and after examination, the child victim was referred to the Department of OBS and Gynae. A perusal of the MLC would show that the MLC was conducted on 28.11.2014 at about 10.20 PM. In the history of the incident, which was recorded as per the statement given by the child victim and her mother, the appellant had, earlier that day, around 6.00 PM, taken the child victim to his house and removed her pant, underwear and his pant and applied some lubricant into her vagina with finger. The victim was unable to tell exactly what was happening because it was dark in the room. Notes of the MLC records that there was no external injury, however, hymen was found torn and the extent of injury was noted as fresh alongwith oedeme/congestion/tenderness. Further, on physical examination, semen was found on the clothes as well as semen stain was detected from left thigh and left anterior abdominal wall.

12. Dr. Usha Yadav, Specialist, DDU Hospital, examined as PW-16, identified the signatures and handwriting of Dr. Deepika Aggarwal, who had conducted the gynae examination of the child victim. She admitted that the MLC did not record presence of any lubricant in the private part of the child victim at the time of her medical examination. On being asked, she stated that in case of fresh hymen torn, it is not necessary that there has to be injury or reddishness in the private part.

13. Exhibits were sent to FSL and Ms Babyto Dev, Assistant Director, Biology, FSL was examined as PW-21. She deposed to the receipt of sealed



exhibits and conducting DNA examination on them. As per her report (Ex. PW21/A), Male DNA was generated from the source of exhibits i.e., swab taken from left thigh, left anterior abdominal wall swab, one baby pant and one baby t-shirt because human semen was detected on them. Although semen could not be detected on the underwear of the child, blood was detected on it which, on further analysis, was found to not contain male DNA. Since no male DNA profile could be generated from the blood gauze of the accused on account of degradation therefore, comparison could not be done with the other exhibits sent to FSL.

14. In view of the FSL report, with the permission of Trial Court, a fresh blood sample of the accused was drawn and sent to the FSL. Ms Soni Khampa, Junior Forensic Chemical Examiner, Biology, FSL was examined as PW-20 who proved the second FSL report (Ex. PW20/A). As per the second FSL report, male DNA generated from the second sample was found matching with the DNA profile generated from the source of exhibits i.e., swab taken from left thigh, left anterior abdominal wall swab, one baby pant and one baby t-shirt of the victim.

Contentions:

15. Learned counsel for the appellant contended that though it has come in the testimony of the prosecution witnesses that there were other tenants, who were residing in the building, none was examined. Further, though the victim has alleged that some oil/lubricant was applied on her private parts, however, no such lubricant was found during her medical examination. Learned counsel also referred to the portion of the MLC wherein it is noted that no fresh external injury was noticed on the external genitalia. In arguendo, he contended that as no semen was detected in the child victim's



vulvar and vaginal swabs, the act of penetration is not proved. In support of his submissions, learned counsel for the appellant placed reliance on the decisions of other High Courts in Mikal Bhujel alias Rubeen vs. State of Sikkim¹, Pradeep Gulabrao Choudhari vs. State of Maharashtra & Anr.² and Annadurai vs. The Inspector of Police.³

16. The appellant has been convicted under Section 6 POCSO Act, which prescribes punishment for aggravated penetrative sexual assault. As per Section 5 (m), whoever commits penetrative sexual assault on a child below twelve years is said to have committed aggravated penetrative sexual assault. Thus, if the act of an accused person falls within any of the four categories as mentioned therein, the same would constitute an offence under Section 3 of the Act. Moreover, the depth of penetration is immaterial while considering whether the offence is made out as even the slightest of penetration would be sufficient to constitute an offence of rape. (Ref: Wahid Khan v. State of M.P.⁴).

17. Coming to the facts of the present case, the first information of the incident was recorded on 28.11.2014 *vide* DD No.42A, which mentions about rape. The said DD was recorded at 7:40 PM. *Rukka* was prepared on the statement of the child victim, who stated that the appellant had committed '*ganda kaam*' with her as he had taken her to his room and made her lie upon the bed and thereafter, removed her clothes and applied oil on her private part and threatened her not to disclose the incident to anyone.

In her statement recorded under Section 164 Cr.P.C. on the very next

¹ 2021:SHC:70

² 2024:BBHC-NAG:13178

³ 2024:MHC:5955

⁴ 2010) 2 SCC 9



day, the child victim again stated that the appellant held her hand and took her to his room, switched off the light, applied some oil like substance on her body and removed hers as well as his pant. When her father came and called out her name, she came out from the room of the appellant and told that the appellant/*Danish* had committed wrong act with her.

Lastly, the child victim in her deposition stated on similar lines that the appellant had removed her pant and applied oil on her private part and thereafter, he laid upon her and she raised alarm and hearing screams, her father reached there. When her father called out her name, she came out from the appellant's room and told her father the facts.

18. Thus, the consistent prosecution version which can be culled out from the above discussion is that on 28.11.2014, around 6 P.M., the appellant took the child victim from her home by grabbing her hand to his room, removed her pants and underwear, removed his own pants and applied some oil/lubricant on her genitals and laid down on her. Around 7 P.M., the father of the child victim returned home to find the gate open. He called for his daughter, hearing which, the child victim came out of the appellant's room. He informed his wife telephonically and whereafter she reached home and made the call to police at 7.40 P.M. The MLC of the child victim was prepared on the same day at 10.20 P.M, i.e. within a couple of hours of the incident. In the history of incident, given by the child victim and her mother, they have stated that the appellant had applied some lubricant into her vagina with finger. This is corroborated by findings of torn hymen, fresh injury/oedeme/congestion/tenderness in the MLC, which indicate penetration. Moreover, as per the FSL, semen was detected on the left thigh, left anterior abdominal wall and clothes of the child victim and the DNA



which was extracted from it matched with that of the appellant as per the 2nd FSL report. Blood was also detected on the child victim's underwear as per the 1st FSL report dated 07.04.2016.

19. Since there has been a consistent stand that a lubricant was put on the private part of the child victim, with the MLC recording an allegation that the lubricant was put into her vagina by the appellant with his finger, coupled with the findings of a torn hymen, and other swelling, injuries and tenderness is suggestive that it is not a case of mere touching, but actually insertion/penetration, thus attracting the conviction under Section 6 of the POCSO Act.

20. Coming to the cases relied upon by the appellant, pertinently, none of them are binding precedent, being decisions of other High Courts. Still, a perusal of some of these decisions may now be made. In Mikal Bhujel alias Rubeen (Supra), the High Court of Sikkim was dealing with a case wherein there were two accused persons. While the other accused person was found to be the biological father of the child with the victim, the only accusation against the appellant was that he '*chara garyo*' and sexually assaulted her. Thus, it was held that since the testimony did not disclose any act of penetration, the conviction under Section 6 of the POCSO Act was not made out. In the present case, the MLC, with the torn hymen, and accompanying swelling and tenderness are suggestive of penetration and the FSL report has confirmed the semen found on the body and clothes of the child victim to be the appellant's.

21. The decision of the Nagpur Bench of the Bombay High Court in Pradeep Gulabrao Choudhari (Supra) can be factually distinguished as well as in that case the child victim and her family had turned hostile and did not



utter anything about penetrative sexual assault. In the present case, the child victim as well as her father have supported the prosecution case.

22. In Annadurai (Supra), the child victims had alleged that accused had positioned himself on top of them and pinched their chests and vaginas. Then he removed both their panties, as well as his pants and kept his penis on their vagina. The Division Bench of Madras High Court observed that none of their statements indicate that the accused had actually penetrated his penis or finger or any other part of his body inside the vagina of the children to any extent. Consequently, the conviction was altered from that under Section 6 to under Section 10 of the POCSO Act. Again, the distinguishing feature from the present case is the non-supportive medical evidence in that case. Upon the examination of both the child victims, the hymen was found intact, and there was no presence of any blood or semen, unlike the present case.

23. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts. [Ref: *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat*.⁵]

24. In view of the clear and categorical testimony of the child victim that the appellant, who she duly identified in Court, removed her and his clothes, laid down on her and applied oil on her private parts, the MLC's findings which indicate penetration and appellant's semen being detected on the thigh, abdomen and clothes of the child victim and blood being detected on the child victim's underwear, it is held that the prosecution has been able to



lay the foundation of the facts and thus brought into play Section 29 of the POCSO Act, and that presumption the appellant has miserably failed to rebut. He has been unable to shake the credibility of any of the witnesses who supported the prosecution case by thorough examination or pointed any fatal gaps in the prosecution case.

25. In view of the above, no ground is made out to interfere with the impugned judgment. The appeal is accordingly dismissed and the impugned judgment convicting the appellant as well as the order on sentence are upheld.

26. A copy of this judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.

27. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 22, 2025

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⁵ (2025) 2 SCC 399