



2025:DHC:9100



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

% Reserved on : 19.08.2025
Pronounced on : 13.10.2025

+ **CRL.A. 657/2024**

RAM KRISHAN SINGH @ DADUAppellant
Through: Mr. Shivek Trehan and Mr. Ishaan
Kumar, Advocates.

versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Pradeep Gahalot, APP for State.
Ms. Gayatri Nandwani and Mr.
Mudita Sharda, Advocates for victim

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. Being convicted and sentenced by the Sessions Court, the appellant has preferred the present appeal seeking setting aside of the judgment of conviction dated 27.03.2024, vide which he has been convicted for offences punishable under Section 6 read with Section 5(l) and (m) POCSO, Section 10 read with Section 9(m) POCSO, and Section 506 IPC, and the order on sentence dated 16.05.2024, vide which he has been directed to undergo RI for a period of 12 years along with payment of fine of Rs.1,000/-, for the offence punishable under Section 6 POCSO; RI for a period of 5 years along with payment of fine of Rs.1,000/-, for the offence punishable under Section 10 POCSO; and SI for a period of 1 year for the offence punishable under Section 506 IPC. In default of payment of fine, he was directed to undergo



SI for 30 days. The benefit of Section 428 Cr.P.C. was extended to the appellant, and all the sentences were directed to run concurrently.

2. The facts, in a nutshell, are that DD No. 94A came to be recorded on 23.02.2019 at 23:56, wherein the caller informed that his 10-year-old daughter had been raped.

3. The statement of the child victim was recorded, and her MLC was prepared at DDU Hospital. The exhibits, including the clothes of the child victim, were seized and deposited in the *Malkhana*. In her written complaint (PW-1/A), the child victim stated that she was residing with her parents and studying in 5th class. The accused, who is her uncle (*chacha*), had been residing with them since August 2018. Towards the end of January 2019, the appellant called her to another room to play, pulled down her lower (*pyjama*), and touched her private part. At that time, she ran away on the pretext of urinating. Thereafter, on 17.02.2019, her mother, along with her two brothers, went to their native place in Chitrakoot, U.P., to attend a relative's marriage. On the said day, her father was also not at home, when the appellant, at about 10:00 to 10:30 a.m., came into her room, removed both his and her clothes, and inserted his private part into her private part. He also threatened to kill her. The appellant again committed the *galat kaam* on 22.02.2019 at about 6-7 p.m. and again threatened her not to disclose the incident to anyone. On 23.02.2019, her tuition *didi* told her about good touch and bad touch, whereafter she narrated the incident to the said tuition teacher, who, in turn, informed the mother of the child victim, resulting in a call being made to the police.

4. During investigation, the statement of the child victim was recorded under Section 164 Cr.P.C. She reiterated that, firstly, towards the end of



January 2019, the appellant had touched her private parts, and then on 17.02.2019, he again touched her private parts and also committed the act of penetration. On 22.02.2019, while he was attempting to commit rape, her sister saved her. She was told about good and bad touch by her tuition teacher, upon which she disclosed the incident.

The charges were framed under Section 6 read with Section 5(l) and (m) POCSO, Sections 376AB/506(ii) IPC, and Section 10 read with Section 9(m) POCSO, to which the appellant pleaded not guilty and claimed trial.

The prosecution examined a total of seven witnesses, the material witnesses being the child victim (PW-1), the mother of the child victim (PW-2), and the tuition teacher (PW-5). The MLC of the child victim was exhibited through Dr. *Nidhi Gupta*, who was examined as PW-3. The appellant, while claiming false implication, examined himself as DW-1 under Section 315 Cr.P.C. and also examined the father of the child victim as DW-2.

5. It has been contended on behalf of the appellant that the testimony of the child victim does not inspire confidence, as there have been not only material improvements but also contradictions in her statement when compared to those of her parents. In this regard, it is stated that while the child victim has stated that the appellant was residing with them, her parents have stated otherwise. It is next contended that neither the MLC of the child victim nor the FSL report supports the prosecution case. In the MLC, no injury was noted and the hymen was found intact, while the swabs collected did not yield any conclusive report. The prosecution has further failed to explain why no bedsheet or clothes were seized. The testimony of the mother has also been called into question, as she was only a hearsay witness,



being away at her native place at the relevant time. The tuition teacher too has not fully supported the prosecution case, inasmuch as she has not stated about being told by the child victim of any act of penetrative sexual assault. The child victim has further stated that on 22.02.2019, while the appellant was attempting to commit rape, she was saved by her sister; however, her sister was not examined. Learned counsel has made an alternate submission that, even if the testimony of the tuition teacher is believed, at best it discloses the ingredients of an offence under Section 7 of the POCSO Act, punishable under Section 10, and not Section 6. The motive for false implication has been suggested to be a monetary dispute between the appellant and the family of the child victim.

6. The contentions are disputed by the learned APP for the State, duly assisted by the learned counsel for the victim. It is submitted that the child victim's deposition before the Court is consistent with her statements recorded during investigation; she has given specific dates and details of the incidents and stated that the appellant, who was already known to her family, committed the offence. It is further submitted that the appellant has failed to rebut the presumption under Section 29 of the POCSO Act.

7. The child victim in the present case is stated to be aged about 10 years, her date of birth being 09.05.2008. The first incident is stated to have occurred towards the end of January 2019, the second on 17.02.2019, and the third on 22.02.2019. The Investigating Officer of the case, SI *Mamta*, during her testimony, exhibited the documents collected from the school attended by the child victim. The said documents included the birth certificate issued by the MCD, stating her date of birth as 09.05.2008. Accordingly, this Court concurs with the conclusion rendered by the Trial



Court, holding the victim to be a “child” within the meaning of Section 2(d) of the POCSO Act.

8. The Trial Court, before recording the statement of the child victim, recorded its affirmative observations regarding her competency to depose. In her deposition, the child victim stated that the appellant, being her uncle, had come to reside with her family from their native village in August 2018. Sometime towards the end of January 2019, he called her to his room and, on the pretext of playing, removed her *pyjama* and touched her private parts. At that time, she managed to escape under the pretext of going to the toilet. On 17.02.2019, while her mother, along with the victim’s siblings, was visiting their native place at Chitrakoot, U.P., for attending a marriage, and at that time she was alone with her younger sister aged about 5-6 years, the appellant came to her room and forcibly removed her clothes. Thereafter, he also removed his own clothes and inserted his private part into her private part. She explained that by "private part," she meant the parts of the body of males and females used for urinating. Being under duress, she did not disclose the incident to anyone. On 22.02.2019, when again no one was present in the house except her younger sister, the appellant repeated the act. She further stated that by "same act," she meant insertion of his private part into her private part. On the next day, i.e., on 23.02.2019, during her tuition class, the tuition teacher explained what was meant by good and bad touch, and upon understanding it, she disclosed the occurrence of the incidents to her. The said tuition teacher then informed the mother of the child victim, who had returned from her native village. Her mother called at number 100. The victim identified her signatures on the written complaint given to the police (PW-1/A).



In cross-examination, she stated that while her father is a priest in a temple, her mother is a housewife. The appellant used to drive her family's tempo on a hiring basis, and her father used to share the money earned from the driving of the said tempo. She further stated that her father had helped the appellant in learning how to drive as well as in procuring a driving license. She stated that from August 2018 till the filing of the complaint, the appellant was residing in their house and used to sleep in one room on the terrace. A suggestion was given that even after obtaining a driving license, the appellant did not know how to drive, which she denied. Another suggestion was given that 2-3 days prior to the date of the incident, an oral argument took place between the appellant and her mother, which was also denied. The suggestion that the appellant's inept driving led to several accidents for which her parents had to spend a lot of money on repairs was also denied. She denied having any knowledge of a dispute between her father and the appellant regarding the payment of the appellant's share of profit in running the tempo and volunteered that no such dispute had occurred in her presence. A suggestion was further given that on 23.02.2019, the appellant had demanded his due amount from her father, which was refused, whereupon the appellant was beaten, and the present false case was lodged against him, which she denied. She also denied the suggestion of tutoring and of any demand of Rs.5,00,000/- by her family from the elder brother of the accused for withdrawal of the case.

9. The mother of the child victim, during her deposition, stated that when she had gone to attend a wedding in her native village on 18.02.2018, she had left behind her husband and two daughters, one of them being the victim. When she returned on 09.03.2018, the tuition teacher informed her



that the appellant had committed a wrong act with her daughter. The child victim also informed her of being touched on her private part, insertion of a finger, touching of her breast, as well as being made to sit upon him. She was specifically informed that on 22.02.2019 and 23.02.2019 the appellant had removed both his and the child victim's underwear and inserted his penis into her vagina.

The witness was cross-examined, during which she denied the suggestion that the appellant was driving her husband's tempo. She stated that the appellant had no driving license and that the tempo was driven by her other brother-in-law, 'R'. She further stated that the victim had only told her about the incidents of 22.02.2019 and 23.02.2019 and that she had not produced any bloodstained clothes. She stated that the appellant had no fixed work timings and was allowed to stay in their house only on humanitarian grounds. She denied the suggestion that when the appellant demanded his savings from her husband, he was told that the amount had been adjusted towards the cost of repairs necessitated by the damages caused by him to the tempo. She further denied that the appellant had been falsely implicated in the present case as a consequence of his having threatened to initiate legal action against her husband.

10. The tuition teacher stated that she had been giving home tuition to the child victim since July 2018. On 23.02.2019, while she was discussing good and bad touch, the child victim appeared uneasy and, on being asked, told her that the appellant, her *chacha*, who was residing in the same house, had done a wrong act with her. He had, after removing his clothes as well as hers, touched her inappropriately and threatened her not to disclose the incident to anyone.



In cross-examination, the witness specified that the victim had not told her about the appellant developing physical relations with her. The incident was narrated by the child victim in the presence of her younger sister. The victim did not provide any specific dates of the incident. At times, when she used to give tuitions, either the parents or the uncle, i.e., the appellant, used to remain present.

11. Dr. *Nidhi Gupta* exhibited the MLC of the child victim as Ex. PW3/A.

The medical examination was conducted on 24.02.2019 at about 2:34 a.m., and the MLC, recording an alleged history of sexual assault, was accordingly prepared. In the general history, it was noted that the accused used to rub his private part against the genitals of the child victim. No injury on the labia majora, labia minora, vulva, or perineum was noted, and the hymen was also found intact.

12. The FSL report was exhibited by SI *Mamta*, the I.O. of the case. The exhibits seized were subjected to examination; however, no semen could be detected on the samples. Accordingly, no DNA examination was conducted on exhibit S-2 (blood sample of the appellant).

13. The appellant, in his statement recorded under Section 313 Cr.P.C., admitted to residing with the family of the child victim; however, he denied the remaining allegations and claimed false implication. He stated that he was working with the father of the child victim, who had promised to return his savings whenever required. However, when he demanded the money from the father of the child victim, he refused and, with the help of his brother, beat him. Upon the appellant threatening to file a complaint, the father of the child victim implicated him in the present case. He was examined as DW-1 and further stated that in 2018, while he was earning his



livelihood as a farmer, he came to Delhi in June 2018 at the request of the father of the child victim. Initially, he was employed with OLX Company; later, he agreed to drive the car of the father of the child victim, a TATA Ace/*Chhota Hathi*. He was supplying goods to various shops, though he was not paid for 4 ½ months. During this period, the vehicle also got hit and sustained damage, leading to several quarrels. On 22.02.2019, although an accident occurred, no major damage was caused to the vehicle. He informed the father of the child victim about the same. The vehicle was repaired, but he was beaten. Despite repeated demands, his money was not returned. In cross-examination by the learned APP, he denied the incidents dated 17.02.2019 and 22.02.2019 as alleged by the child victim.

14. Curiously, the appellant had examined the father of the child victim in his defence as DW-2. The father of the child victim stated that the appellant was a neighbour in their native village and had come to stay with them in the year 2019. He was providing boarding, lodging, and food to the appellant. Though the witness owned one vehicle (TATA Ace), the same was driven by the his brother 'R' and not by the appellant. He stated that there was no dispute regarding the salary of the appellant, as he was not employed by the witness. He further stated that neither had any accident taken place on 22.02.2019 nor were any beatings given to the appellant.

15. From the above, it is evident that it is an undisputed fact that the appellant was residing with the family of the victim. While the appellant has claimed non-payment of dues towards the driving of the tempo and the occurrence of accidents as the reason for his false implication, interestingly, the father of the child victim, examined as DW-2, denied the same. The prosecution witnesses have otherwise also denied the said claim of the



appellant. At this point, it is deemed apposite to note that the child victim, in her cross-examination, admitted that the appellant used to drive the tempo on a hiring basis. She further stated that her father had helped the appellant in learning how to drive and in procuring a driving license.

16. Insofar as the incidents for which the appellant has been charged are concerned, there are contradictions in the versions of the child victim, her mother, and her tuition teacher. While the child victim stated that the act of penetration took place on 17.02.2019, the tuition teacher, however, did not mention any act of penetration on 17.02.2019 or on any other date. The mother of the child victim also did not state anything about an incident on 17.02.2019 and, instead, stated that the incidents took place on 22.02.2019 and 23.02.2019.

Insofar as the incident of 22.02.2019 is concerned, the child victim initially described it as a *galat kaam* and later stated it to be an act of penetration. In her statement recorded under Section 161 Cr.P.C., it was described as a *galat kaam*, whereas in her statement recorded under Section 164 Cr.P.C., it was stated to be an attempt that was prevented due to the presence of her sister. There is no mention of any incident on 23.02.2019, as stated by the mother of the child victim.

17. As noted above, the MLC conducted on 24.02.2019 also does not record any history given by the mother of any act of penetration. The MLC further does not note any injury on the body or private parts of the child victim, and the hymen was also found intact. The FSL report likewise does not support the prosecution's case in any manner. However, the testimony of the child victim, insofar as it relates to being inappropriately touched on her private parts, finds support in the deposition of the tuition teacher.



18. Keeping in view the aforesaid facts and in light of the suggestions given, the appellant's conviction under Section 6 read with Section 5(l) and (m) POCSO is set aside; however, his conviction under Section 10 read with Section 9(m) POCSO is upheld.

19. The appellant was sentenced to rigorous imprisonment for five years under Section 10 of the POCSO Act, and as per the latest nominal roll on record, he has already undergone a sentence of more than six and a half years. Although the fine remains unpaid, considering that the period already undergone covers both the modified substantive sentence and the default sentence, he is directed to be released forthwith unless required in connection with any other case.

20. The present appeal is allowed to the aforesaid extent.

21. A copy of this judgment be communicated to the Trial Court, as well as the concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 13, 2025

na