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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 23rd December, 2024*

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CRL.A. 475/2020

RAM PREET

.....Appellant

Through: Ms. Manika Tripathy, Mr. Barun Dey
& Mr. Rony John, Advs. (M:98118
31835)

versus

STATE

.....Respondent

Through: Mr. Harsh Prabhakar, Adv.
(DHCLSC), Mr. Dhruv Chaudhry, Ms.
Eshita Pallavi and Mr. Adeeb Ahmad,
Advs. for Survivor (M:9999309014)
Mr. Ajay Verma, Ms. Sudha Reddy &
Ms. Bhoomika Uppal, Advs. for
DSLSA (M: 9811098069)
Mr. Ritesh Kumar Bahri, APP with
Mr. Lalit Luthra & Ms. Divya Yadav,
Advs. with SI Nishant, PS Gulabi
Bagh.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

Background:2. The present appeal has been filed on behalf of the Appellant-Ram Preet under Section 374(2) read with Section 383 of the Code of Criminal Procedure (*hereinafter, 'Cr.PC.'*) assailing the impugned judgment of conviction and order on sentence dated 2nd March, 2020 and 6th March, 2020 respectively, passed by Sh. Mohd. Farrukh, ASJ-05 Special Judge (POCSO Act) Central



District, Tis Hazari Court, New Delhi. The Appellant has been convicted in *Sessions Case No. 812/2017* arising out of *FIR No. 113/2017* registered at P.S. Gulabi Bagh under Sections 376 of the Indian Penal Code, 1860 and Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter, the 'POCSO' Act*)

3. Vide the impugned judgment of conviction and order on sentence, the Appellant has been convicted for offences punishable under Section 376 (2) (i) of the Indian Penal Code, 1860 and Section 6 of the POCSO Act. The Appellant has been sentenced to undergo rigorous imprisonment for life for offence punishable under Section 6 of the POCSO Act along with fine of Rs.10,000/. In default of the fine, the Appellant has been sentenced to undergo simple imprisonment for 3 months.

Brief Facts:

4. A complaint was filed on 19th October, 2017 (*hereinafter, the 'complaint'*) by the mother of the Survivor that at about 11:00 am on the same day, her daughter informed her that the Accused who resided on the upper floor of the house had removed her undergarments and had inserted his finger in the private parts of her daughter.

5. The daughter of the complainant is a minor who was 3 years of age when the incident took place. Her date of birth on record is 29th September, 2014.

6. It is further stated in the complaint, that upon receiving the information from her daughter on 19th October, 2017 at about 11:00 am, the Complainant went to the Accused and scolded him. Thereafter, she put the survivor to sleep. However, when the Survivor woke up, she complained of a burning sensation in her private parts. The mother then dialled the number 100 and the



concerned police officials took the Survivor to Hindu Rao Hospital, Delhi for a medical examination.

7. On the statement made by the mother of the survivor, an FIR dated 19th October, 2017 was registered at the Police Station Gulabi Bagh, Delhi under Section 376 of the Indian Penal Code, 1860 and Section 3(b)/4 of the POCSO Act. In the charge-sheet however, Section 6 of the POCSO Act was also added and the charge was framed vide order dated 6th December 2017, as under:

“I, Kaveri Baweja, Additional Sessions Judge, Delhi do hereby charge you accused Rampreet S/o Bechu Ram as under:

That on 19.10.2017 at about 11 AM at H. No. 10642, Gali No. 6, Pratap Nagar, Delhi, you inserted your finger into private part of minor prosecutrix 'D' [name of the victim withheld in order to protect her identity and told to the accused verbally] and committed rape upon the above named minor Prosecutrix and thereby committed offence punishable under Section 376 IPC and within my cognizance. Secondly, on the aforesaid date, time and place, you inserted your finger into private part of above named minor prosecutrix aged below 05 years and thus committed penetrative sexual assault punishable under Section 4 & 6 of POCSO Act and within my cognizance. And I hereby direct that you be tried by this Court for the said charge.”

8. The date of birth of the Survivor was recorded by the authorities as 29th September, 2014. The birth certificate was exhibited as Ex.PW4/8. The Accused pleaded not guilty and the trial of the case commenced. The prosecution examined 8 witnesses - out of which, the Survivor was examined as PW-2 and her mother was examined as PW-3. The mother and the daughter were the key witnesses. The statement of the Accused was recorded under Section 313 Cr.PC. The Trial Court after hearing the arguments convicted the



Accused under Section 376(2)(i) of the Indian Penal Code, 1860 and Section 6 of the POCSO Act. The observations of the Trial Court are set out below:

“30. In view of the aforementioned settled position of law, the argument of Ld. Counsels for the accused that no rape has been committed upon the victim is without any merit when the testimony of the prosecutrix/victim 'D' is consistent and the same is corroborated by the testimony of the mother of the victim. No material/evidence has been brought by the accused to show as to why the victim would be interested in falsely implicating him and therefore in the absence of any other circumstances to discard her evidence, she cannot be disbelieved.

31. In view of the aforesaid discussion coupled with the evidence on record, it is proved that the accused has committed rape /aggravated sexual assault upon the victim as she has specifically deposed that she has been sexually assaulted by the accused and her testimony stands fortified by the testimony of her mother and her MLC. Since the prosecution has succeeded in proving the guilt of the accused of aggravated penetrative sexual assault with the victim who was aged about 3 ½ years at the time of the commission of the offence falling within Sec. 5(m) of the POCSO Act which is punishable u/sec. 6 of the POCSO Act and thus, presumption under Section 29 of the POCSO Act that the accused has committed the offence, has to be raised against him. The accused has failed to rebut the said presumptions either by discrediting the prosecution witnesses or by leading any defence evidence to prove that the offence in question was not committed by him. Thus accused, is liable to be convicted for the offence punishable U/s 6 of POCSO Act as the accused has committed aggravated penetrative sexual assault upon the victim girl, and thus the accused is not being convicted u/sec. 4 of POCSO Act which is lesser in degree. The prosecution has also succeeded in proving the offence punishable under



Section 376 (2) (i) IPC as accused has committed rape with the victim aged less than 16 years of age. Accordingly, I hold accused Ram Preet guilty for the offences u/s 376(2)(i) of IPC & U/s 6 of POCSO Act and he is convicted accordingly.”

9. The order on sentence dated 6th March, 2020 reads as under:

*“14. In the present case the convict has been convicted for committing the offence u/sec. 5(m) of the POCSO Act which is punishable u/sec. 6 of the POCSO Act and u/sec. 376 (2) (I) of IPC. The victim child was aged about 3½ years at the time of the incident and she had suffered injury on her private part as reflected in the MLC and making her complaint about the physical pain to her mother leading to the registration of present case. Due to the acts of the convict, the victim child suffered considerable physical pain and mental trauma. Considering the aforesaid facts and circumstances, I do not find that the present case is a fit case for any leniency and **I hereby sentenced convict Ram Preet to undergo rigorous imprisonment for life for having committed the offence punishable u/s 6 POCSO Act. I further impose a fine of Rs. 10,000/- on the convict. In default of payment of fine, he shall undergo simple imprisonment for 3 months.***

15. However, the convict is not being awarded any sentence under Section 376 (2) (i) of IPC in view of Section 42 of POCSO Act which provides that in case the offender is found guilty under the POCSO Act and other Section of IPC and the said offence is also covered under the POCSO Act, the punishment would be awarded under the said Act providing punishment greater in degree. In the present case, the convict has already been convicted under Section 6 of POCSO Act for life imprisonment and thus, no sentence is being awarded to the convict U/s 376 (2) (i) of IPC. ”



10. In addition, compensation was also awarded to the Survivor in the following terms:

“16. The convict shall be entitled to benefit of Section 428 Cr.P.C. It is further directed that the aforesaid fine imposed on the aforesaid convict be paid to the victim by way of compensation, upon being deposited by the convict.

17. In addition thereto, I recommend payment of adequate compensation to the victim in the present case as per provisions of Section 357A Cr.P.C. The quantum of compensation to be awarded under Victim Compensation Scheme shall be decided by Delhi Legal Aid Services in terms of provision under Section 357A Cr.P.C. Accordingly, it is directed that copy of this Judgment and order be sent to Secretary DLSA, Central District for necessary action.”

Submissions:

11. The submissions of Ms. Tripathy - Id. Legal Aid Counsel, appearing on behalf of the Appellant are as follows: -

- i. There is inconsistency between the testimony given by the child and the mother to the effect as to when the incident took place and when it was reported. The child states that after the incident she went to sleep and thereafter she informed her mother of what had happened. However, the mother of the survivor states that the child reported the incident to her in the morning, after which she confronted the Accused. Thereafter, the child went to sleep and upon waking up, complained to her mother about a burning sensation in her private parts, which is when the mother reported the incident to the police.
- ii. It is recorded in the mother’s testimony that she saw injury marks



on the child, however, the Medico-Legal Case (*MLC*) does not report any injury except some redness. The MLC also does not record any history of sexual assault. The Id. Counsel highlights that the medical examination was conducted on the same day the incident is stated to have taken place.

- iii. The Accused has tried to explain his version of facts and this has been supported by PW-7.
- iv. There is a possibility that the Survivor has been tutored by her mother as is clear from her cross-examination.

12. On the other hand, Mr. Bahri, Id. APP submits the following:

- i. In the MLC report of the Survivor, there is redness in her private parts, which constitutes material evidence corroborating the occurrence of the incident.
- ii. Considering the fact that the survivor was only about 3 years old when the incident took place, small inconsistencies in her statements ought to be ignored.
- iii. The law in fact recognises that benefit has to be given to such children as is clear from a reading of Section 82/83 of the Indian Penal Code, 1860.
- iv. The statement given by the survivor is sufficient to convict the Appellant. On three occasions the survivor was uncomfortable and the Court had to accommodate the Survivor. Finally, when she was comfortable and she gave the evidence on 28th August, 2019. The child was clear about what had happened to her. Under such circumstances, the conviction is fully justified. Moreover, there was no cross-examination conducted on the occurrence of the



incident itself, which itself shows that the incident had occurred.

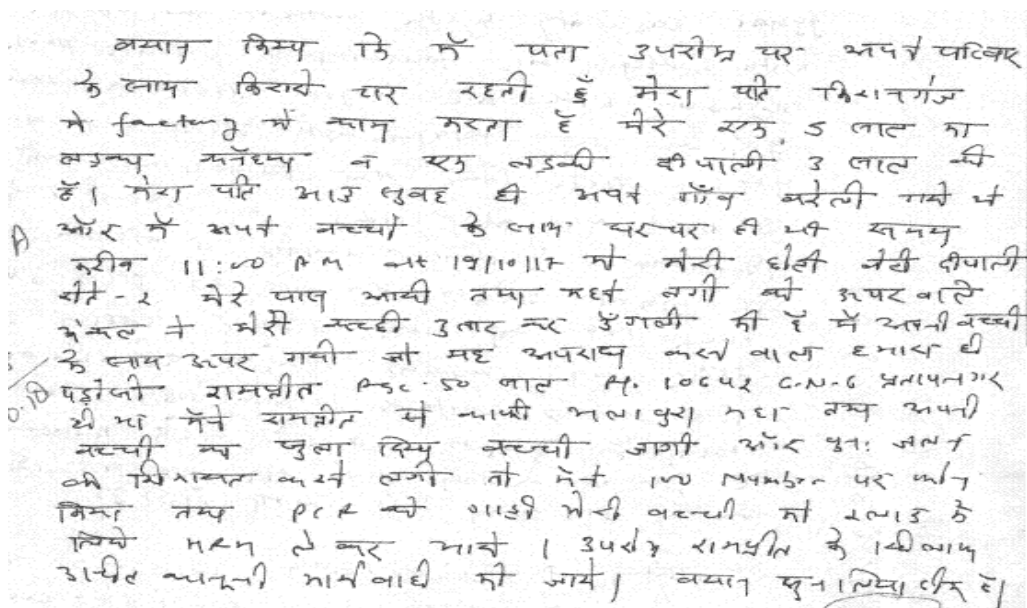
- v. The evidence of the Survivor would also show that there was no tutoring. She is in fact clear how she had narrated the incident to her parents and the same has been proved clearly on record.

13. Mr. Harsh Prabhakar, Id. Counsel for the Survivor has again pointed out the MLC to show that the same does reflect some injury and the said report read with Section 7 and 8 of the POCSO along with the testimony of the Survivor, is sufficient to convict the Appellant.

Analysis:

14. The Court has considered the matter. The first and foremost thing that needs to be noticed is the actual allegations against the Accused. In the complaint given by the mother dated 19th October, 2017 the allegation is as under:

“मेरी छोटी बेटी**** रोते-2 मेरे पास आई तथा कहने लगी कि ऊपर वाले अंकल ने मेरी कच्ची उतार कर उंगली की है।”





15. In the FIR dated 19th October, 2017, it is recorded as under:

“मेरा पति आज सुबह ही अपने गांव बरेली गया था और मैं अपने बच्चों के साथ घर पर ही था समय करीब 11:00 बजे डी.टी. 19/10/17 को मेरी छोटी बेटी **** रोते-2 मेरे पास आई तथा कहने लगी कि ऊपर वाले अंकल ने मेरी कच्ची उतारकर उंगली की है।”

16. The MLC of the Survivor was conducted on the same day i.e. 19th October, 2017 and the said MLC was exhibited as Ex.P-1 records as under:

C/SIB, EMOCC)
PARTICULARS OF INJURIES OR SYMPTOMS IN CASE OF POISONING

19/10/17
5:45 PM

The victim was brought to the gynae casualty by her mother and police constable with alleged H/O touching of private parts by her neighbour with his fingers. There is no H/O any attempt of sexual intercourse.

There is no H/O any physical assault. There is no H/O insertion of finger into the victim's vagina by the accused. Patient conscious, well oriented to time, place and person.

Adv

gyn: - Sup PCM 5ml BD x 3 days
- Refer to EMOCP for further management
- No active gynaecological intervention required
- Patient discharged from gynae side at 6:15 PM and referred to EMOCP

OH: - 12 A
gyn of 3 yrs of age
Not attended menses yet

UPT negative

O/E = GC fair
Afebrile
P/R = 88/min
H > N A D
P-I-E-I-E-
No injury mark present on the body.
P/A - soft
NO G/TIR
No injury marks over the abdomen
L/E = NO bleeding from vagina observed
External genitalia apparently healthy
Redness present over B/L labia majora and labia minora
No abrasions/scratch marks present on the external genitalia etc

EM अपने मरीज की अंशुनी जांच नहीं करवाना चाहते हैं।

श्रीमती
The
Susp.

17. A perusal of the MLC would reveal that the doctor stated as under:

- The Survivor was brought to the gynae casualty of the Hindu Rao Hospital by her mother and a police constable. The allegation made was that the neighbour of the Survivor had touched her private parts.
- There was no attempt of sexual intercourse or physical assault or



insertion of finger into the Survivor's vagina by the Accused.

- There was no injury mark present on the body or over the abdomen of the Survivor. Further, no bleeding from the Survivor's vagina was observed.
- The External genitalia of the Survivor appeared healthy.
- There was redness present in the Survivor's private part.
- There was no abrasions/scratch marks present on the internal genitalia or thighs of the Survivor.

18. The Doctor who conducted the MLC of the Survivor was Dr. Sheeba Farooqui, the Casualty Medical Officer at Hindu Rao Hospital, Delhi. She was not examined as witness and thus the Court has to go merely by the exhibited documents.

19. The Survivor – PW2 initially on 7th June, 2018 and then on 16th July, 2018 was not responsive and remained silent in Court. However, the Court used the services of a support person, Prof. Nandita Babu, Department of Phycology and finally on 28th August, 2019, the Survivor was examined as PW-2 in vulnerable deposition room with the help of support person. She was then able to give her testimony and also was cross-examined. In her testimony, her answer to that question as to what the Accused did is as under :

Q4. Phir Uncle ne kaya kiya?

Ans. Meri panti utaari aur yahan par ungli daali (witness has pointed out finger towards her vagina).

Q5. Aur kuchh bhi kiya tha?

Ans. Uncle ne mujhe chooma bhi tha yaha pe (witness has pointed out towards her lips).

Q6. Aapko dard bhi hua tha?

Ans. Haan. Mujhe dard hua tha yaha par (witness has pointed out towards her vagina).

Q7. Aur Uncle ne apne kapdhe bhi utaar the?



Ans. Han. Unhone aapni baniyan aur pant utaari thi.

20. The testimony of the mother of the Survivor PW-3 is as under:

“On 19.10.2017, I was present at my house along with my children and my husband went to his native village at Barelley. On that day, prosecutrix 'D' had come to me while crying at about 11 AM and informed me that ‘upar wale uncle meri kachhi utarkar ungli kari thi meri bathroom wali jagah’. I had noticed that there was mark of nail on her vagina. After listening the same, I went to the upper floor at the room of accused Rampreet and asked him why he had done so with my daughter. Upon which he replied that he had not done anything. My daughter ‘D’ had also pointed out towards the accused and informed that this is said uncle who had done said ‘galat kaam’ with her.....”

21. The date of birth of the Survivor was established as 29th September, 2014 by PW-4, who was the record keeper from the MCD office, Karol Bagh. Apart from these witnesses, all the other were official witnesses.

22. In the statement given by the Accused under Section 313 of the Cr.PC., he states in response to Question no. 7 and Question no. 31 as under:

“Q.7 It is in evidence against you that on 19.10.2017 prosecutrix/PW-2 namely 'D' went to (PW-3)-mother of the victim/prosecutrix namely Smt. 'S' while crying at about 11 am. What have you to say ?

Ans. It is correct. The victim was playing at that time alongwith other children. The victim was making noise and therefore I gave her beatings due to which she started crying and went to her mother.

Q.31 Do you want to say anything else?

Ans. I am innocent and have been falsely implicated in the present case. I have only given the beatings to the victim who was making noise.”



23. In the background of the above recorded evidence, the Trial Court, has incorrectly proceeded in the judgment right from inception. Paragraph 1 of the Trial Court judgment as under:

“1. Law was set into motion upon the complaint dated 19.10.2017 (Ex.PW3/A) of the mother of the victim who stated that on 19.10.2017, at about 11:00 am, her minor daughter aged about three years came to her crying and told her that uncle who resided at the upper floor of the house removed her penti and inserted his finger. It is further stated that hearing this, she went to the room of the accused at the upper floor and scolded him. It is further stated that she made the victim sleep, however, when she (victim) woke up, she complained about burning sensation in her private part and thus she dialed 100 number, upon which PCR officials came and took her and victim to Hindu Rao Hospital. On the statement of mother of victim, FIR u/sec. 376 & 3(b)/4/6 POCSO Act was registered.”

24. In the above paragraph, clearly there are two errors. Firstly, that the accused had inserted his finger in the Survivor’s vagina and secondly, that the FIR was also registered under Section 6 of the POCSO Act, both of which are factually incorrect.

25. The complaint and the FIR clearly used the terminology “*ungli kari thi*” which does not amount to insertion. Even the MLC of the Survivor dated 19th October, 2017 records without any ambiguity that there is no insertion of finger into the Survivor’s vagina by the Accused. The discussion in the impugned judgment to the effect that there was penetrative sexual assault would therefore not be made out in the present case.

26. In addition, though, the charge was framed under Section 6 of the POCSO Act, the initial complaint and the FIR did not book the Accused for



offences under Section 6 of the POCSO Act. A perusal of statement of the Survivor under Section 164 of the Cr.PC. shows that the Accused touched and kissed the lips of the Survivor. The said statement is also set out below:

“ऊपर वाले Uncle ने मुझे Chocolate दी और मुझे ऊपर अपने घर ले गए। वहाँ Uncle ने मेरी Panty उतारी और आगे और पीछे हाथ लगाया।

(The Victim stood and touched her private parts and pointed out that ‘Uncle’ touched her there.)

Uncle ने चूमा था (She touched her lips and pointed out that ‘Uncle’ kissed her on lips)

मुझे दर्द हुआ था बहुत। Uncle ने pant उतार दिया अपना। मैं रो पड़ी। Uncle ने छोड़ा नहीं। मैंने Mumma को बताया।”

27. The charge was, however, framed under Section 3B, 4 and 6 of the POCSO Act as also Section 376 of the Indian Penal Code, 1860. The statement of the Survivor under Section 164 of the Cr.PC., read with the initial complaint and the FIR, would show that the allegation against the Accused was of touching the Survivor’s private part. The MLC of the Survivor also records that there is no penetration of the vagina, either by finger or otherwise. The redness present over the private parts clearly indicate some contact but not as such that would constitute either penetrative sexual assault or aggravated penetrative sexual assault.

28. Under the POCSO Act, there are three forms of sexual assault:

- i) Simple Sexual Assault under Section 7 – punishable under Section 8
- ii) Penetrative Sexual Assault under Section 3 – punishable under Section 4
- iii) Aggravated Penetrative Sexual Assault under Section 5 –



punishable under Section 6

29. Under Section 3 of the POCSO Act which is punishable under Section 4, there has to be penetration. However, under Section 7 of the POCSO Act penetration is not required and mere touch would constitute sexual assault.

Sections 7 and 8 of the POCSO Act read as under:

*“7. **Sexual assault.**—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.*

*8. **Punishment for sexual assault.**—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.”*

30. In a recent judgment of ***Santosh v. State of Maharashtra [(2024) SCC OnLine Bom 2070]***, the Bombay High Court, while adjudicating on squarely similar facts, set aside the conviction of the Appellant therein under Section 376 (2)(f)(i) of the Indian Penal Code, 1860, Section 5(m) (n) and Section 6 of the POCSO Act. The Court observed that in the absence of medical evidence that speaks towards penetration or even forcible attempt of penetration or even slightest penetration, conviction under Section 5/6 of POCSO cannot be sustained. The Court further observed that the evidence on record establishes the fact that the Accused therein had touched the vagina of the survivor. In view thereof, the Accused therein was *inter alia* convicted for the offence punishable under Section 7/8 of the POCSO Act. The relevant portion of the judgment is extracted hereinunder:



“12. In this background, it would be necessary to appreciate the evidence of the Medical officer (PW3). The victim was referred for medical examination on 24.05.2015. The evidence of the Medical Officer (PW3) coupled with the medical report, needs proper appreciation. She has stated that on 24.04.2015, she was working as a Gynaecologist at BGW Hospital, Gondia. She has stated that a minor victim girl, aged about 4 years old was brought for examination and on obtaining consent of her mother, she examined the victim girl. She has categorically deposed that there were no minor or major injuries over vulva and vagina. She has stated that her hymen was intact. There was no bleeding, but there was swelling on vulva and vagina. The medical examination report of the victim issued by her is at Exh.42. She has given opinion that sexual intercourse has not taken place in this case with the victim girl. She has further opined that as there was slight swelling over vagina, there was possibility of rubbing over vulva and vagina. She has further opined that there was possibility of an attempt of sexual assault. **In my view, this opinion given by the Medical officer needs proper appreciation to come to a conclusion as to the actual offence made out in this case. The learned Judge has observed that the evidence on record is sufficient to prove the manipulation of a part of the body of the victim so as to cause penetration in vagina, urethra etc. by the accused. The learned Judge has observed that on the basis of this evidence, the offence of rape as defined under Section 375 of the IPC has been proved. Admittedly, the medical evidence is silent about penetration or even forcible attempt of penetration or even slightest penetration. The evidence of the victim girl is also silent about it. She has not stated that any attempt of penetration or slightest penetration was made by the accused. She has stated that the accused lied on her person and therefore, she felt burning sensation near her private part. The victim**



has not narrated any specific act having been committed by the accused so that it could be said to be an attempt of penetration or even slightest penetration.

.....

13.In my view, in this context, the evidence of the victim, her mother and the medical evidence would assume significance. The medical evidence does not corroborate the case of the prosecution as to the penetrative sexual assault. The evidence on record is sufficient to prove that the accused attempted to commit rape, however he could not commit penetrative sexual assault. The evidence, on its proper appreciation, is not sufficient to establish the offence of actual rape. The evidence, however, is sufficient to prove the offence of an attempt to commit rape. The basic ingredients of the offence of rape, as defined under Section 375 of the IPC, have not been made out. Similarly, the offence of aggravated penetrative sexual assault, as defined under Section 5(m) & (n) of the POCSO Act has not been proved. The offence of attempt to commit rape has been proved. In my view, therefore, as far as the offence under the POCSO Act is concerned, Section 7 of the Act would get squarely attracted in this case. Section 7 defines sexual assault on a child and section 8 provides for punishment for sexual assault. Section 7 states 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. In the case on hand, the evidence on record clearly proves the intention of the accused while touching the vagina of the victim. The medical evidence and the opinion of the Medical Officer (PW3) clearly spells out the offence of sexual assault, as defined under Section 7 of the POCSO Act.



On re-appreciation of the evidence, I am satisfied that the offences proved against the accused will be under Section 376 read with Section 511 of the IPC and under Section 7, punishable under section 8 of the POCSO Act. In view of this, the conviction recorded by the learned Additional Sessions Judge for the offence punishable under Section 376(2)(f)(i) of the IPC and under Sections 5(m)(n) and 6 of the POCSO Act, is required to be set aside. It is accordingly set aside. The accused is convicted for the offence punishable under Section 376 read with Section 511 of the IPC and under Section 7, punishable under Section 8 of the POCSO Act.

31. The evidence in the present case points towards the Appellant touching the private part of the Survivor and not penetration which is an essential element to convict the Accused under Section 3/4 and 6 of the POCSO Act.

32. The testimony of the Survivor given in the Court, when compared with the allegation in the complaint, the FIR, the charge-sheet as also her statement under Section 164 of the Cr.PC., clearly appears to be an improvement. Moreover, the Trial Court appears to have ignored the material evidence in respect of the nature of the act committed by the Accused.

33. Accordingly, this Court finds the Accused to have committed an offence punishable under Section 354B of the Indian Penal Code, 1860. However, as per Section 42 of the POCSO Act, in case an offender is found guilty of any offence punishable under the provisions of the POCSO Act as well as under any other law for the time being in force, then, he shall be liable to punishment only under such law or the POCSO Act, which provides for punishment which is greater in degree. Section 42 of the POCSO Act is reproduced for a ready reference:



*“42. Alternate punishment.—Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 2 [376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], 3 [376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000 (21 of 2000)], then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment **which is greater in degree.**”*

34. Therefore, following the mandate of Section 42 of the POCSO Act, the Appellant is held guilty for the commission of offence punishable under Section 354B of the Indian Penal Code, 1860 which reads as under:

“354B. Assault or use of criminal force to woman with intent to disrobe.—

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.”

35. A perusal of the nominal roll dated 19th December, 2024 would show that the Appellant has undergone incarceration for a period of 7 years 2 months and 5 days. His conduct has also been satisfactory.

36. In these circumstances, the appeal is partly allowed and the Appellant is convicted under Section 354B of the Indian Penal Code, 1860 and Sections 7/8 of the POCSO Act. The order on sentence is modified to the period already undergone. The remaining portion of the order on sentence, *i.e.*, in respect of



compensation in terms of the Victim Compensation Scheme is however sustained.

37. The sentence having already been undergone by the Appellant, he may be released after completion of due formalities, if his custody is not required in any other case.

38. Copy of this order be communicated to the Jail Superintendent for necessary compliance.

39. Copy of this order be communicated to the Secretary, Delhi State Legal Services Authority for necessary information and compliance.

40. Order be uploaded on the website of this Court *forthwith*.

41. The Appeal is disposed of in above terms. All pending application, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

DECEMBER 23, 2024

Rahul/rks