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

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Reserved on : 23.09.2025

Pronounced on : 06.10.2025

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CRL.A. 1114/2018

RAJENDRA SINGH

.....Appellant

Through: Mr. Sahil Malik, Mr. Nakul Khatri,
Mr. Sahil Lakra and Mr. Aditya Jain,
Advocates

versus

THE STATE (GOVT OF NCT OF DELHI)

.....Respondent

Through: Ms.Shubhi Gupta, APP for State
Ms. Urvi Kuthiala, Advocate (*Amicus*
Curiae) (*pro bono*) for victim.**CORAM:****HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****JUDGMENT**

1. The present appeal has been instituted under Section 374 of the Cr.P.C. seeking setting aside of the impugned judgment dated 30.08.2018 and order on sentence dated 27.09.2018 rendered by the Additional Sessions Judge-06, West, Tis Hazari Courts, Delhi in SC No. 105/17 arising out of FIR No. 300/16 registered under Sections 376 IPC and Section 10/6 POCSO Act at P.S. Nangloi , Delhi.

Vide the impugned judgement, the appellant was convicted for the offence under Section 7 r/w Section 9 and punishable under Section 10 of the POCSO Act. He was sentenced to undergo RI for 5 years and fine of



Rs.30,000/-, in default whereof to undergo SI for 10 months. Benefit of Section 428 CrPC was given to the appellant.

The sentence of the appellant was suspended by this Court on 18.10.2019.

2. The prosecution case, as noted by the trial court, in brief is extracted hereunder:

“1. Briefly stated facts of the prosecution case are that Ms. "VJ" (identity withheld), who was about 7 years of age, has moved a complaint dated 01.07.2016 Ex.PW1/A against the accused Rajendra Singh raising allegations of sexual assault upon her by smooching her cheeks & inserting his hands into her underwear that resulted in registration of FIR No.300/16, Ex.PX-6, U/s 376 of Indian Penal Code (hereinafter referred as IPG) & section 6 of POCSO Act (hereinafter referred as the Act).

As per prosecution story, it is alleged that she had gone to the shop of accused for purchasing Fevicol for her school project, the accused had called her into his shop, picked her on his lap, smooched her both cheeks and inserted his finger into her vagina and when she objected the accused allowed her to go and also offered some eatables and cautioned her not to tell about the incident to anybody in her house and that on reaching home she narrated her ordeals to her mother and her mother informed the police and reported the matter by moving a complaint....”

3. On completion of investigation, charge was framed against the appellant under Sections 10/6 POCSO Act and 376 IPC to which the appellant pleaded not guilty and claimed trial.

4. The prosecution has examined only three witnesses as remaining witnesses were not examined for the reason that the learned counsel of the appellant had made statement under Section 294 Cr.P.C on his behalf



admitting the evidence of PWs Dr. Pooja Paliwal, Mr. Chander Bhan Yadav, Ms. Anu Aggarwal, HC Ram Kumar Meena and Ct. Atam Dev, witness No.3 to 7 in the list of witnesses and hence the formal proof of documents was dispensed with. The material witnesses being the prosecutrix, who was examined as PW-1, her mother as PW-2 and the IO as PW-3. The MLC was exhibited as PX1.

5. Learned counsel for the appellant contended that though FIR mentions receipt of first information recorded through DD29A, however, neither the caller who had informed nor Bhagwati Prasad, the person who had reached the spot was examined. Further, PCR form was also not placed on record. It is also contended that the testimony of the mother of the victim does not inspire confidence as no such incident as claimed took place. In fact, a quarrel had taken place between the appellant and the mother of the victim on the aspect of return of a 'fevicol tube' which the victim had purchased from the appellant and to prove this, the appellant had examined four defence witnesses. It is further contended that the MLC of the victim also does not record any external injury. Lastly, it was contended that a grave prejudice was caused to the appellant as in the proceedings dated 02.08.2017 before the Trial Court whereby an *amicus curiae* was appointed to represent the appellant and, on the said date mother of victim was examined and discharged. On the very same date, statement under Section 294 Cr.P.C. also came to be recorded.

6. The contentions of the learned counsel for the appellant were refuted by the learned APP as well as Ms Urvi Kuthiala, who was appointed as an *amicus curiae* to represent the victim. Ms Kuthiala submitted that the incident was committed between 2.30-3.00 PM and the DD No.29A came to



be recorded at 3.20 P.M. and the *rukka* came to be recorded at 5.20 PM on the statement of the victim. The victim was examined within three hours at about 6.30 PM wherein not only she has given the history of assault, but in the local examination of genital parts, the doctor has observed redness on victim's labia minora.

Learned *amicus curiae* further contended that the victim had correctly identified the appellant and has consistently stated that when she had gone to buy 'fevicol' from the shop of the appellant for her school project, the appellant had called her into his shop, picked her on his lap, sucked down her both cheeks and put his finger into her vagina. She further invited the attention of the Court to the MLC where, the following has been noted:

“As told by victim Mother X, her daughter AY, 7 yr child, was sexually assaulted by a shopkeeper. As told by victim mother, her daughter went to a shop named Kake Ki Dukan – Dahiya General Store at 3:00 PM on 1/07/16 when she was sexually assaulted by the shopkeeper. As told by victim mother, the shopkeeper kissed her daughter and put his finger into her panty and poked at her private parts.”

She further referred to various decisions, wherein it has been stated that the testimony of the child victim inspires confidence and no corroboration is required and conviction can be based on the sole testimony.

7. The age of child victim was 7 years at the time of incident. Before proceed further, it has to be noted that there was no contest on the age of the child victim before the trial court. No contention has been raised on the aspect of the age of the child victim in the present appeal as well. As such, this Court concurs with the trial court's conclusion that the victim was a minor at the time of the commission of offence and is covered under the



definition of a 'Child' within the meaning of Section 2(d) of POCSO Act.

8. As noted above, *rukka* was prepared on the statement of the child victim. In the said statement, the child victim claimed that she was a student of 3rd Class and for a school project, she had gone to the nearby shop to buy 'fevicol'. The uncle present in the shop asked her to come inside, whereafter he made her sit on his lap, sucked on her both cheeks and '*uske baad dukaan wale uncle ne meri underwear mai haath daala aur fir apni ungli meri susu mai daali.*' She told the said uncle that she was feeling pain on which he asked her not to disclose about the incident to anyone and let her go. The child victim informed about the said incident to her mother and then, the police was informed. *Tehrir* was prepared at 5.20 PM. The FIR was recorded at 5.25 PM. The statement of the child victim was recorded under Section 164 Cr.P.C. in which she reiterated the material allegations. She deposed that when she went to appellant's shop for buying fevicol for a school project, he called her inside, made her sit in his lap, sucked both her cheeks and put his hand in her underwear and '*susu mai ungli daalne laga.*'"

9. At the time of recording of statement, the Trial Court had ensured that the child victim was a competent witness having capacity to understand questions and give rational answers. The child victim's statement was recorded without oath. In her deposition, the child victim identified the appellant and, on a question, as to what the appellant had done to her, she stated as under:

"At this stage the accused is shown to the witness on the screen installed in the witness room and she correctly identified the accused and stated that he is same fallow who used to sit at the shop
Q. What did this accused do with you, who was shown to you on the screen?



*A. MAIN FAVICOL LENE ISKI DUKAAN PAR GAYI THI PHIR MENE KAHA UNCLE FAVICOL DE DO PHIR USNE MUJHE GODI MEIN BITHA KE MERE DONO GAAL CHOOSE PHIR USNE MERI SUSU KE UNДАР HAATH DAALA PHIR MENE UNKA HAATH HATAYA PHIR USNE MUJHE CHOCOLATE DI THI PHIR USNE KAHA KE APNE GHAR JAYO AUR KAHA THA KI APNI MUMMY KO MAT BATANA PHIR MENE GHAR JAAKAR APNI MUMMY KO BATAYA JO USNE KIYA THA. PHIR MUMMY ISKI DUKAAN PAR GAYI PHIR MERI MUMMY NE ISS UNCLE KE SAATH JO MUJHE AAJ TV PAR DIKHAYA AUR DOOSRE UNCLE KE SAATH (**JO KI ISKI DUKAN PAR BAITHTA HAI USKE SAATH**) LADAI KI PHIR MERI MUMMY NE POLICE KO BULA LIYA.”*

10. In cross-examination, she replied that the incident had occurred when she had returned from school. She stated that at that time, she was wearing a frock and a *payjama*. She stated that during vacations, a project was given for which ‘fevicol’ was required. She further stated that at the time of occurrence of incident, no other family member of the appellant was present at the shop. She denied the suggestion that on the date of incident, her mother had gone to the shop of the appellant to return/exchange ‘fevicol’ which was defective and that the accused had refused to do so, on which a quarrel took place between the appellant and child victim’s mother and it is for this reason that he was falsely implicated. She denied the suggestion that no such incident had taken place. She further denied that she had deposed on being tutored by the mother.

11. The child victim’s mother was examined as PW-2, who stated that on 01.07.2016, her daughter had left the house to purchase ‘fevicol’ from a nearby shop and after sometime when she returned, she was weeping and her cheeks were red. On being asked, she narrated the incident. She stated that she along with her daughter went to the appellant’s shop and told the



appellant's son as to the act committed by his father. As a quarrel had taken place, she dialed 100 number.

In cross-examination, she stated that she was not an eyewitness to the incident. She denied the suggestion that she used to take grocery and other general items from the appellant's shop without making payment and in order to avoid the payment, she had fought with the appellant and falsely implicated him in this case by using her daughter.

12. The DD No. 29A records the caller stating that a shopkeeper had tried to rape their daughter. The mother of the child victim has categorically stated in her cross examination that she was the one who called the PCR. Though she could not remember whether the phone number recorded in the DD entry was hers, or whether she was using it at the time of making the call. Even the child victim in her testimony has stated that her mother called the police. Thus, the allegation that the caller was someone else who was not examined is unfounded. The appellant has been unable to explain how the non-examination of Bhagwati Prasad materially affected the prosecution case. At this stage, this court takes note of the contention that the appellant had suffered grave miscarriage of justice as no proper opportunity was given to the counsel for the appellant to cross-examine the mother of the child victim as he was appointed as *amicus curiae* on the same day when she was examined. The contention is specious. In this regard, it is pertinent to note that subsequent to cross examination conducted on 02.08.2017, an application under Section 311 Cr.P.C. came to be filed on 23.11.2017 on behalf of the appellant to recall mother of the child victim. While taking into account the submissions of the appellant, the said application was allowed and the mother of the child victim was recalled for further cross-



examination on 06.03.2018. In further cross-examination conducted in pursuance of the order passed on 17.02.2018, the witness deposed that she was residing in the said area for the last 4-5 years. Nothing substantial came out in her cross examination. The suggestion qua tutoring her daughter and falsely implication of the appellant in the case were, however, denied.

She also denied the suggestion that earlier she had quarreled many times with appellant or his family.

13. Coming to the legal position whether a finding of conviction can be returned on sole testimony of the child victim. In State of Punjab Vs. Gurmit Singh¹, the Supreme Court, while dealing with the case of rape of a minor, held that minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground to throw out an otherwise reliable prosecution case. It was observed that the evidence of the victim of sexual assault is sufficient for conviction and does not require any corroboration unless there are compelling reasons for seeking the same.

14. The same has been recently reiterated by Supreme Court in Ganesan v. State², and State of Madhya Pradesh vs. Balveer Singh³.

15. As pointed out by the learned *amicus curiae* as well as learned APP that since the child victim has consistently stated about the act done by the appellant, there is no embellishment in the statement of the child victim. The child victim has, in clear and categorical terms, stated that the appellant had made her sit in his lap and sucked down her both cheeks, put his hands in her underwear and inserted his finger into her vagina. The MLC

¹ (1996) 2 SCC 384

² (2020) 10 SCC 573

³ 2025 SCC OnLine SC 390



conducted within three hours records redness on labia minora. Though the appellant had examined four defence witnesses, none of them are the eyewitness to the first incident and never stated that a quarrel had taken place between the mother of the child victim and the appellant in front of their eyes. DW1 had deposed that he did not know the facts pertaining to the present case, DW2 and DW3 deposed that they went to the shop after hearing noises and came to know that there was a dispute, whereas DW4 said that one lady was quarrelling with the appellant over returning 'fevicol' but never stated that the same was PW2. The testimony of the defence witnesses in no manner impinge on the truthfulness or the genuineness of the child victim and the mother of the child victim, who was informed about the incident. The testimony of the child victim finds strength not only in her MLC, but also deposition of her mother, who was told about the incident immediately after the occurrence.

16. It appears that the Trial Court has interpreted the phrase '*susu ke under haath dala*' in the deposition of the child victim to mean that 'he put his hand inside her undergarment.' To come to this conclusion, it has relied on the use of the word 'hand' instead of 'finger' in the earlier statements and the MLC, stating that the same did not have any physical injuries and the hymen was intact. It has treated the deposition as an improvement or exaggeration and acquitted the appellant for the offence under Section 6 POCSO Act. Though neither the State nor the child victim has preferred an appeal on this aspect, it appears to the Court that the reasoning adopted by the Trial Court is not correct. In the *rukka*, it can be seen that the appellant has used the word 'susu' to mean vagina and has used the word 'underwear' separately. Same is the case in her statement under Section 164 CrPC. The



child victim has never used the two words interchangeably. Furthermore, it is trite law that to establish the offence of rape, penetration, no matter how slight, is sufficient. (cf: Wahid Khan v. State of M.P.⁴) It is not a given that in every case of rape, there would be injuries on the private part of the victim. No injuries on private parts or hymen being intact do not belie the child victim's testimony. (cf: Ranjit Hazarika vs. State of Assam,⁵)

17. However, since the appeal has been preferred only by the accused and not by the State or Victim, this Court cannot convict him for an offence for which he stands acquitted. Section 386 (b) (iii) of the CrPC reads as follows:

“386. Powers of the Appellate Court.—

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(b) in an appeal from a conviction—

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(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same”

The Supreme Court, in Nagarajan v State of Tamil Nadu⁶, was dealing with a case wherein the Trial Court, while convicting the accused for other offences, had acquitted him for the offence under Section 306 IPC. Neither the prosecution, nor the victim had challenged this acquittal. In the appeal filed by the accused for his conviction under other offences, the High Court sought to exercise *suo motu* revisional powers for convicting the appellant under Section 306 of IPC. The Supreme Court set aside the conviction by the High Court, holding that under Section 386(b)(iii) CrPC, the High Court cannot exercise its revisional jurisdiction under Section 401 of CrPC and enhance sentence awarded to the accused/appellant.

18. In view of the above, the appeal fails and the impugned judgment on

⁴ 2010) 2 SCC 9

⁵ (1998) 8 SCC 635



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conviction is upheld. The appellant is directed to be taken in custody to serve the remaining part of his sentence. His bail bonds are cancelled and sureties discharged.

19. Before parting, this court records its appreciation for the valuable assistance rendered by Ms. Urvi Kuthiala, Advocate appointed as an *amicus curiae* to represent the victim.

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

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 06, 2025/pmc

⁶ 2025 INSC 802