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

*Reserved on: 5<sup>th</sup> April, 2025*

*Pronounced on: 11<sup>th</sup> July, 2025*

+ CRL.A. 652/2024

VINOD RAI @ BHULLAN

.....Appellant

Through: Ms. Aishwarya Rao and Ms. Mansi Rao,  
Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Sanjeev Sabharwal, APP for the  
State with Ms. Mansi Sharma,  
Advocate.

SI Meghna, PS Roop Nagar.

Mr. Pawan Kumar Sharma, Advocate  
for the survivor.

Mr. Himanshu Anand Gupta (DSLISA)  
with Mr. Sidharth Barua, Mr. Shekhar  
Anand Gupta, Mr. Mike Desai, Ms.  
Navneet Kaur and Mr. Anvesh Verma,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT SHARMA**

**JUDGMENT**

**AMIT SHARMA, J.**

1. The present appeal under Section 415(2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') has been filed assailing the judgement of conviction and order on sentence dated 26.10.2023



and 23.12.2023, respectively, passed by Mr. Muneesh Garg, learned Additional Sessions Judge-01 (POCSO), Central, Tis Hazari Courts, Delhi, whereby, the appellant has been convicted in Sessions Case No. 28295/2016 arising out of FIR No. 208/2015 under Sections 4/6/8/10/12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and Sections 376/376(2)(n)/376(2)(i)/506/354A(ii)(iii)/450 of the Indian Penal Code (for short, 'IPC') registered at Police Station Roop Nagar.

2. *Vide* the impugned judgement of conviction dated 26.10.2023, the appellant has been convicted for the offences punishable under Sections 376(2)(n)(i)/354A/450/506 of the IPC and Sections 6/12 of the POCSO Act. *Vide* the order on sentence dated 23.12.2023, the appellant was sentenced to undergo rigorous imprisonment for a period of 30 years alongwith a fine of Rs. 10,000/- and in default of payment of fine, he was sentenced to undergo simple imprisonment for a period of 2 months for the offence punishable under Section 6 of the POCSO Act. The appellant was further sentenced to undergo rigorous imprisonment for a period of 3 years alongwith a fine of Rs. 5000/- and in default of payment of fine, the appellant was sentenced to undergo simple imprisonment for a period of 1 month for the offence punishable under Section 12 of the POCSO Act. Further, the appellant was sentenced to undergo rigorous imprisonment for a period of 10 years alongwith a fine of Rs. 5000/- and in default of payment of fine, he was sentenced to undergo simple imprisonment for a period of 2 months for the offence punishable under Section 450 of the IPC. The appellant was also sentenced to undergo rigorous imprisonment for a period of 2 years alongwith a fine of Rs. 1000/- and in default of payment of fine, he was sentenced to undergo simple imprisonment for a period of 15 days



for the offence punishable under Section 506 of the IPC. Benefit of Section 428 of the Cr.P.C. was given to the appellant and all the sentences were directed to run concurrently.

### **FACTUAL BACKGROUND**

3. Brief facts relevant for the purpose of the present appeal are as follows:

3.1. On 04.04.2015, the survivor, Ms. 'K', aged about 12 years visited Police Station Roop Nagar alongwith her mother to give her statement that she is a resident of Chandrawal, Delhi and one uncle, namely, Bhullan *i.e.*, the appellant who resided in the same neighbourhood used to visit her house. Sometime in December, 2014, when the survivor's mother, brother and sisters were not present at their house, the appellant had visited the house and brought certain eatables like *kurkure* and chocolates for the survivor and, thereafter, the appellant showed certain obscene photographs from his phone and tried to do '*gandi baat*' with the survivor and threatened to slap her if she informed anyone about the incident.

3.2 Thereafter, it is alleged that the appellant committed penetrative sexual assault upon the survivor by inserting his penis inside her vagina and told the latter not to disclose about the said incident to anyone. The survivor further stated that the act was committed by the appellant 2-3 times. When the survivor complained of stomach ache to her mother, she was taken to a clinic and while returning from the doctor's clinic, when the survivor's mother inquired whether any wrongful act was committed with her, the survivor narrated the entire



incident to her mother. Consequently, the mother of the survivor took her to the Police Station after which FIR No. 208/2015 was registered on 04.04.2015 for the offences punishable under Sections 4/6/8/10/12 of the POCSO Act and Sections 376/506 of the IPC.

**3.3** During investigation, the Investigating Officer got the counselling conducted for the survivor. Then, MLC No. 2035/15 of the survivor (Ex. PW13/A) was conducted at Hindu Rao Hospital, Delhi on 04.04.2015, wherein, it was found that the survivor was pregnant after which she was admitted in the Hospital. Further, during investigation, statement of the survivor under Section 164 of the Cr.P.C. was recorded by the learned Metropolitan Magistrate and the appellant was arrested. Then, the survivor was advised to medically terminate her pregnancy after which the *foetus* and sample seals were sent to the Forensic Science Laboratory, Rohini for analysis.

**3.4** After the culmination of the investigation, the chargesheet was filed on 29.04.2015 before the concerned Court against the appellant *qua* the commission of offences punishable under Sections 4/6/8/10/12 of the POCSO Act and Sections 376/376(2)(n)/376(2)(i)/506/354A(ii)&(iii)/450 of the IPC.

**3.5** Learned Trial Court *vide* order dated 21.09.2015 framed charges under Sections 376(2)(n)(i)/354A(ii) and (iii)/506/450 of the IPC and Sections 6/12 of the POCSO Act against the appellant, who then pleaded not guilty and claimed trial. It is noted that during the course of trial, the appellant under Section 294 of the Cr.P.C. admitted the genuineness of the following documents:-



- “(i) MLC bearing no. 7032 of accused itself dated 12.09.2018 prepared by Dr. Gulab Singh, (Ex. PW- 23/D)
- (ii) MLC bearing no. 7093/18 of victim ‘K’ dated - 14.09.2018 prepared by Dr. Amit and Dr. Divya Arora, (Ex. PW-23/E1).
- (iii) Factum of making entry in the Maalkhana register and sending of sample vide RC No. 19/21/18 dated 25.09.2018 by MHC(M) HC Mahesh whereby the blood samples obtained vide aforesaid two MLCs sent to FSL (Ex. PW-23/G).
- (iv) Factum of taking aforesaid exhibits to FSL through Ct. Ramesh Chand, No. 2717/N, PIS No. 2B104107 vide acknowledgment RFSL (CH.P)s-2018/Bio-989, (Ex. PW- 23/H.)”

**3.6** The prosecution examined 23 witnesses, and after the conclusion of prosecution evidence on 24.05.2023, statement of the appellant was recorded on 02.09.2023 under Section 313 of the Cr.P.C. The appellant did not opt to lead any evidence in his defence. After hearing the final arguments on behalf of the parties, the impugned judgement of conviction dated 26.10.2023 and the order on sentence dated 23.12.2023 was passed by the learned Trial Court.

### **SUBMISSIONS ON BEHALF OF THE APPELLANT**

**4.** Learned counsel appearing on behalf of the appellant submitted that the prosecution has not been able to prove the age of the survivor beyond reasonable doubt as Jai Mala Aggarwal (PW-1), Principal of the MC Primary School, Mandeliya Road, where the survivor was studying had stated in her cross examination that no documents pertaining to the survivor’s date of birth were submitted by her parents at the time of admission. Therefore, the date of birth recorded in the school records cannot be relied upon to prove the age of



the survivor. It is further submitted that the survivor herself is not aware of her date of birth. In her testimony, the survivor (PW-6) had stated on 24.08.2016 that her age was more than 12 years, however, on a pointed question regarding her date of birth, she stated that she did not know the exact date. Hence, the learned Trial Court ought to have carried out an ossification test of the survivor to determine her actual age. It is the submission of the learned counsel for the appellant that wherever there is a contradiction in the age of the survivor, and different dates of birth are given in different documents, no conclusion can be arrived at regarding the specific age of the survivor without an ossification test.

5. To support this contention, learned counsel has placed reliance upon a judgement of the Hon'ble Sikkim High Court in **Mangala Mishra v. State of Sikkim**<sup>1</sup>, wherein, it has been observed and held as under:

“25. Hence, if in the first instance the date of birth from the school or Matriculation Certificate of the child is unavailable then resort can be taken to a Birth Certificate given by a Corporation or a Municipal authority. It is only thereafter that the Prosecution can rely on the Ossification Test. As Exhibit 7 the Birth Certificate is of no assistance to the Prosecution and the Victim being a student of Class 7 did not possess a Matriculation Certificate the Ossification Test of the child could have been conducted. The provisions of the Section have not been complied with hence the Prosecution has failed to establish the first requirement of the case under POCSO Act, viz.; to establish that the Victim was below the age of 18 years as is the requisite provided under Section 2(d) of the POCSO Act. Thus, it is but apposite for this Court to reject Exhibit 7 as proof of age of the Victim which thereby remains unproved.”

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<sup>1</sup> 2018 SCC OnLine Sikk 215



6. Reliance has been further placed on a decision of a Coordinate Bench of this Court in **State (NCT of Delhi) v. Saddam**<sup>2</sup>, wherein it has been observed and held as under:

“10. **The first aspect for consideration** is the age of the victim/prosecutrix. As submitted by the learned APP, one set of school record reflected the age as 26.06.1997 and another set reflected 26.04.1998, but as candidly admitted by PW8 and PW12, there were no supporting documents on the basis of which the age of the victim/prosecutrix had been so mentioned in the school record. PW4, the father of the prosecutrix was also unable to give the date of birth of the prosecutrix. Likewise, PW2, the mother of the prosecutrix, in her testimony stated that her daughter was born at Maharashtra and her date of birth was twenty sixth, however, she was not aware of the month and year of the birth. Thus, it has been rightly observed by the learned ASJ that in view of contrary stands and the inconsistencies in the testimonies of the prosecution witnesses, it was not established beyond doubt that the prosecutrix was below 18 years of age.”

7. Learned counsel for the appellant further submits that there is a possibility of tampering with the DNA samples extracted from the blood of the survivor's *foetus* and the appellant. As per the FSL Report, the blood samples were seized for the first time and sent to FSL for examination on 07.04.2015 and the results which were received on 13.02.2018 *vide* Ex. PW23/C were inconclusive, as no male DNA profile could be generated from source of the exhibits. Hence, the blood sample of the appellant was not further processed for DNA Examination. Thereafter, the FSL requested for fresh blood samples for the second time on 04.07.2018, about 3 years later, without any explanation. In pursuance of the same, the appellant's blood sample was taken on 12.09.2018, and survivor's sample was taken on 14.09.2018, however, it is submitted that the survivor did not state anything regarding her blood sample

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<sup>2</sup> 2023 SCC OnLine Del 6510



being collected on 14.09.2018 in her testimony during the trial. It is stated that the abovementioned samples were sent to the FSL after a delay of 10 days on 24.09.2018 and, therefore, it is possible that the blood samples may have been tampered with.

8. It is submitted that there is no entry for depositing the samples in the *malkhana* by the Investigating Officer. Dr. Suminder Kaur (PW-20) had stated that she did not provide the worksheets prepared by her at the time she was conducting the DNA examination to the Investigating Officer, and no cogent reasons have been provided by the FSL to show as to why the samples of the appellant and survivor were taken for the second time, that too after a period of 3 years. It was submitted that the said samples were either degraded or manipulated to implicate the appellant.

9. It is further pointed out that there are inconsistencies in the testimony of the survivor (PW-6) with her earlier statements recorded under Section 161 and Section 164 of the Cr.P.C., insofar as the date and time of the alleged incident is concerned and the same has not been proved beyond the reasonable doubt. At the time when the complaint was lodged, she was allegedly 4 months pregnant, however, in her testimony, she has given different dates and time pertaining to the incident as well as the number of times she was assaulted by the appellant. It is submitted that in her statement under Section 164 of the Cr.P.C., the survivor had stated that Bhullan uncle had come to her house only once, whereas she has given a different version during her examination before the learned Trial Court. Further, the survivor was not aware during which month, day, year or the season the alleged incident of sexual assault was





committed. Thus, there are various discrepancies in her testimony, which would render her not to be a sterling or reliable witness.

10. In these circumstances, it was argued that the impugned judgment of conviction and order on sentence is liable to be set aside and the appellant be acquitted.

### **SUBMISSIONS ON BEHALF OF THE STATE/ PROSECUTION**

11. *Per contra*, learned APP for the State assisted by the learned counsel for the survivor submitted that the prosecution has succeeded in proving his case against the appellant. It is submitted that the survivor examined as PW-6 has supported the case of the prosecution which was duly corroborated with her MLC (Ex. PW13/A), the Obstetric Ultrasound (Ex. PW/19A) and the FSL report dated 05.12.2018 (Ex.PW20/A), wherein, it was recorded that the appellant was the biological father of the *foetus* sample which was sent for examination to the RFSL. It is submitted that the survivor at the time of commission of the incident was a child within the meaning of Section 2(d) of the POCSO Act. It was further argued that the appellant had failed to rebut the presumption under Section 29 of the POCSO Act.

### **FINDINGS AND ANALYSIS**

12. Heard the learned counsels for the parties and perused the records.



**13.** This Court will deal with the first issue with regard to the age of the survivor. Learned counsel for the appellant submitted that the age of the survivor has not been proved on record. It is submitted that the date of birth as per the school records cannot be relied upon as the same were not based on any birth certificate given at the time of the admission of the survivor in the school. It is submitted that the survivor in her testimony recorded on 24.08.2016 had stated that her age was more than 12 years and, thereafter, on a pointed question she had stated that she did not know the exact age. It is, therefore, argued that the learned Trial Court ought to have carried out an ossification test of the survivor to determine her actual age. A perusal of the record reflects that in the testimony of PW-2 i.e., mother of the survivor, on being asked about the date of birth of the survivor, in her cross-examination had stated that survivor was born in Hindu Rao Hospital, however, she did not get her birth certificate issued from the MCD. She further stated in her cross-examination that her other daughter who is elder than the survivor is only 15 years old and she had gone to the school to get the survivor admitted. Survivor in a question put to her during cross-examination stated that her date of birth is 21.03.2003.

**14.** It is noted that the school records are of the year 2009, when the survivor was admitted in the said school in the 1<sup>st</sup> grade, even if it is assumed purely for the sake of arguments that the mother of the survivor had given a date of birth, lower than her original date of birth, in order to get the survivor admitted in the 1<sup>st</sup> grade, even then the survivor would not be more than 16 years of age at the time of the incident. In her cross-examination, the mother of the survivor as pointed out hereinabove, has categorically stated that her elder daughter is 15



years of age. Even at the time of examination of the survivor before the learned Trial Court, she stated that she was studying in 7<sup>th</sup> grade.

**15.** The prosecution, in order to prove that the survivor was less than 12 years of age, had relied upon the register maintained by PW-1, who was the Principal of MC Primary School, Mandeliya Road. As per the admission and withdrawal register, the date of birth of the survivor was shown as 21.09.2003. PW-1 exhibited the register (Ex.PW1/A) and as well the certificate issued by her on the basis of the said register (Ex.PW1/B) and in her cross-examination, she admitted that the date of birth of the survivor was given by her parents at the time of admission, and no document was given by them. A perusal of the certificate issued by the said witness, PW-1, shows that there is no proof of date of birth in their records and it is further stated that as per the school policy, it was not necessary to ask for proof of date of birth at the time of admission of the child. PW-2, *i.e.*, the mother of the survivor in her examination-in-chief did not state anything about the date of birth of the survivor, and that her daughter was still studying in school and then she denied the suggestion that the survivor was 18 years of age, to which she volunteered that her daughter who is elder to the survivor, is only 15 years of age. She further submitted that the survivor was born at Hindu Rao Hospital, however, she did not get any birth certificate issued from the MCD and at the time of admission of the survivor in the school, the school authorities did not ask for the same. The survivor during her examination-in-chief, as noted hereinabove, on a question put to her, regarding her date of birth said that she does not know her date of birth, and in her examination-in-chief recorded on 16.04.2019 and, thereafter, towards the end of her cross-examination dated 16.04.2019, she had stated that her date of birth



was 21.03.2003. Admittedly, no ossification test was conducted to demonstrate that the survivor was less than twelve years at the relevant time.

16. The appellant has been convicted under Section 6 of the POCSO Act, prior to the amendment by Act 25 of 2019, which reads as under: -

**“6. Punishment for aggravated penetrative sexual assault.—**  
Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”

17. Definition of aggravated penetrative sexual assault has been provided under Section 5(m) of the POCSO Act, which reads as under: -

**“5. Aggravated penetrative sexual assault.—**

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**(m)** whoever commits penetrative sexual assault on a child below twelve years; or”

18. In view of the above, the prosecution had to prove that the survivor was below 12 years of age at the time of the incident, beyond reasonable doubt. However, there are some discrepancies with regard to the age of the survivor being below 12 years. However, the fact that she was admitted in 1<sup>st</sup> grade in 2009, she cannot be more than 16 years of age at the time of the incident.

19. The testimony of the survivor (PW-6) recorded before the learned Trial Court is reproduced here as under: -



**“24.08.2016**

**Victim “K”/Prosecutrix is present.**

**Ms. Poonam Chauhan from DLSA Is present as Supporting person and sitting with the victim. To ascertain as to whether witness is capable of making rational statement or not, now I asked following general questions.**

**Question: Are you studying?**

**Answer: I am studying in 7<sup>th</sup>Standard.**

**Question: What are the subjects you have taken?**

**Answer: My subjects are Maths, Sanskrit, Hindi & Science.**

**Question: How many brothers and sister do you have?**

**Answer: We are five sisters, one brother and mother. My father is no more. My father died in the year 2015.**

**Question: Do you watch TV and which programme do you like most?**

**Answer: I watch TV and like Cartoons Doremon and Motu Patlu. I like Doremon the most.**

**Question: Which character in Cartoon Doremon is your your favourite character and why?**

**Answer: I like Nobita. I like the story line of the Doremon Cartoon.**

**Question: Do you play any game, If yes which game?**

**Answer: I don't play.**

**Question: What do you wish to become in future?**

**Answer: I want to Join Police.**



**Question: Whether one should tell a lie or truth?**

**Answer: Truth.**

**Question: In case, if somebody lies then what?**

**Answer "Bura Lagega".**

**Question: Whether you speak truth or do you lie sometime?**

**Answer: I always speak truth and never lie.**

**She is looking confident and comfortable and she is more than 12 years of age therefore, I am of the opinion that victim should be examined on oath.**

**Now, I proceed to record the statement.**

**PW:6**

**Statement of Victim K D/o Late Sh. Badri Mandal, aged more than 12 years, R/o House No. 5508, Gali No.7, Chandrawal, Delhi.**

**On SA:**

**Question: In which school you are studying?**

**Answer: BirlaArya Girls school.**

**Question: Earlier In which school you were studying?**

**Answer: Earlier I was studying in a private school, the name I do not remember. The school was at Mandelia road.**

**Question: Whether you are the eldest child of your family?**



Answer: I am the youngest one amongst my siblings.

**Question: Do you know any Bhullan Uncle?**

Answer: I know Bhullan Uncle as he was residing in front of our house.

**Question: Whether Bhullan Uncle used to visit at your house?**

Answer: Yes. He used to visit at our house.

**Question: When Bhullan Uncle had brought anything for you?**

Answer: I do not know the month & year, but he had brought the 1<sup>st</sup> and 2<sup>nd</sup> of the month and it was winter time and I was studying in 5<sup>th</sup> Standard at that time.

**Question: Can you tell the time of visiting Bhullan along with the articles?**

Answer: Bhullan uncle visited at 6.00pm in the evening.

**Question: What articles he had brought?**

Answer; Tedhe Medhe Kurkure were brought by Bhullan.

**Question: Where were your mother, sister and brother at that time?**

Answer: At that time my mother and brother had gone to their work and my sister went for her tuition.

**Question: Were you alone at that time?**

Answer: Yes, I was alone at that time and watching TV.

**Question: What Bhullan did on reaching at your house?**



Answer: I was shown the obscene pictures in the phone by Bhullan.

**Question: Then, what happened thereafter?**

Answer: He started "Gandi Gandhi Harkat" with me.

**Question: What do you mean by "Gandi Gandhi Harkat"?**

Answer: Bhullan told me to remove my panty and he also remove his underwear and stated that he will put his urinating portion in my vagina. (susu wall jagah). (witness takes time to narrate the above facts and feel slightly shy/uncomfortable).

**Question: How many times, he did the above act with you?**

Answer: Bhullan used to do the above act with me daily. (Roz karte rehte the").

**Question: Whether Bhullan did the above act with you after stating so?**

Answer: Yes. Bhullan had did the above act with me.

**Question: Did you disclose the above fact to any person?**

Answer: I disclosed the above fact to my mother. Question: When your mother reached in the house?

**Question: When your mother reached in the house?**

Answer: My mother reached in the house on that day at about 8.00pm.

**Question: When you disclosed the above said incident to your mother?**

Answer: I did not disclose the above said incident on the same day to my mother. Later on, I disclosed about the incident to my mother.





**Question: After how many days you disclosed the incident?**

**Answer:** I told the incident to my mother on "Parso". Again said after 10 days of the incident.

**Question: Why you did not disclose the incident to your mother on the same day?**

**Answer:** On the day of the incident Bhullan threatened me by showing the slap. Bhullan used to threatened me by showing slap every day.

**Question: Did you feel pain in any part of your body after committing "galat harkat" as alleged by you by Bhullan?**

**Answer:** I felt pain in my stomach.

**Question: Whether you had made complaint regarding pain in your stomach?**

**Answer:** I made complaint to my mother regarding pain in my stomach.

**Question: Where you were taken by your mother?**

**Answer:** I was taken to the doctor by my mother.

**Question: What quarries were made by your mother from you after visiting the doctor?**

**Answer:** On the way of returning to home from the Doctor's clinic, my mother enquired from me, what had happened with me, then I disclosed about the "Galat Harkat" with me to my mother.

**Question: Then where you were taken by your mother?**

**Answer:** My mother took me to Hindu Rao Hospital.



**Question: Whether Police was also accompanied you and your mother when you were taken to Hindu Rao Hospital?**

Answer: Yes.

**Question: Whether you were taken before the police by your mother?**

Answer: Yes I was taken before the police by my mother.

**Question: Whether you had disclosed the fact of 'galat Harkat' as narrated by you to the Police?**

Answer: Yes, I had disclosed the facts of the incident before the Police.

**Question: Can you identify your signatures on the statement recorded by the police?**

Answer: Yes I can identify my signatures on my statement recorded by the Police, (at this stage, the Ruqqa/statement of the victim has been shown to her on which she identified her signature at point A and the same is Ex.PW- 6/A.)

**Question: Whether your clothes were taken in the hospital?**

Answer: Yes. My panty, Baniyan and Suit Salwar were taken in the hospital.

**Question: Whether you were also medically examined in the Hospital?**

Answer: Yes, I was medically examined by female doctor in the hospital.

**Question: Whether you had visited earlier in the Court and your statement was recorded before the learned MM?**



Answer: Yes. My statement was recorded by one lady officer in the Court.

**Question: Can you Identify your signatures in your statement u/s 164 Cr.PC.**

Answer: I did not sign the statement.

**Question: If your statement is shown to you bearing your signatures, then can you identify? (Objection to by learned defence counsel)**

Answer: Yes, I can.

(At this stage, a sealed envelop duly sealed with the seal of RG is opened and it found containing statement of U/s 164 Or. P.O. The witness identify her signatures at point A on each page of statement recorded U/s 164 Or. P.C exhibited as Ex.PW-6/B).

**Question: Can you identify accused Bhullan uncle?**

Answer: Yes.

(At this stage accused is shown on the TV Screen and on seeing, the witness has correctly identified the accused).

Further examination of the witness is deferred for want of case property.

**28.01.2019**

**Victim 'K' /Prosecutrix is present.**

**Ms. Sunaina Nigha, Advocate from Vulnerable Witness Deposition Room Is present as Supporting person and sitting with the victim 'K.'**



**PW-6: Statement of Victim 'K', D/o Late Sh. "BM", aged about 15 years, R/o Chandrawal, Delhi. (Re-called for further examination in chief after 24.08.2016.)**

**ON SA**

**Question: What is your date of birth?**

Answer: I do not know.

**Question: Did you point out the place of occurrence to the police?**

Answer: Yes.

**Question: Did IO prepared site plan of the place of occurrence?**

Answer: Yes.

**Question: Did you signed the same?**

Answer: Yes.

(At this stage, Site plan prepared by the police is shown to the Victim and after seeing the same, the witness states that it bears her signatures at point A. The same is **Ex. PW6/C.**)

**Question: What do you mean by "Bhullan used to do the above act with me daily, roz karte rehte the"?**

Answer: *"usne mere sath 3-4 bar aisa galat kaam kiya".*

**Question: Did you get pregnant by the abovesaid repeated act of accused?**

Answer: Yes. I got the fetus aborted at Hindu Rao Hospital. I went with my mother to get the fetus aborted.

**Question: Can you identify your clothes which you were seized by the Doctor during your medical examination?**



Answer: Yes.

At this stage, MHC(M) produced parcel No. 2 sealed with the seal of IM FSL DELHI. Seals are intact and parcel is opened and found containing one legging of Black colour, one ladies shirt of grey blue colour and one chunni of printed yellow, purple and orange mix colour. The same were shown to the witness and after seeing the same, witness states (after thinking over for some time) that these were her clothes which she was wearing at the time of her medical examination. The same are **Ex. P1 (colly)**.

At this stage, MHC(M) produced parcel No. 3 sealed with the seal of IM FSL DELHI. Seals are intact and parcel is opened and found containing one under wear of cream colour. The same is shown to the witness and after seeing the same, witness states that this is her underwear which she was wearing at the time of her medical examination. The same are **Ex. P2**.

**XXXXX by Sh. Yatinder Kumar, Advocate, Ld. Amicus Curiae for accused.**

**Question: Where were you born?**

Answer: In Delhi at Hospital.

**Question: On which dates did the accused commit the wrong act with you?**

Answer: I do remember the dates, but he committed wrong act in Summers.

**Question: Can you read and write Hindi?**

Answer: No.

**Question: Who told the facts about the incident to the police?**



**Answer:** I told my mother, who told the police.

**Question:** Can you tell the date on which your statement was recorded by the police?

**Answer:** I do not remember.

**Question:** Did you tell the police that accused showed you obscene pictures in his mobile phone?

**Answer:** Yes.

**Question:** Can you tell the make and brand of mobile phone of the accused?

**Answer:** *"Airtel wala tha, chhota sa, button wala."*

**Question:** Can you tell the dimension of the screen of mobile phone of accused?

**Answer:** The Victim points out the size which is about 2.5 x 3 cm.

**Question:** What time did your mother used to leave for work and return from work?

**Answer:** *"Vo 8 baje jaati thin aur 8 baje aati thin."*

**Question:** During the day time when your mother used to go for her work, who used to be with you at your house?

**Answer:** No one.

**Question:** Since when did you know the accused prior to the incident? **Answer:** I did not know him prior to the incident.

**Question:** Did you know his name prior to the Incident?

**Answer:** No.



**Question: Who was the first person who told you the name of the accused?**

**Answer:** *"Padosi ne bataya tha, ek Auntie thin unka naam mujhe nahi pata, vo mere ghar ke paas hi rehti thin, mein un Auntie ko jaanti hun, vo ab vahan se khali karke chale gaye 2-3 maheene ho gaye."*

**Question: When you came to the Court for recording of your statement under section 164 Cr. P.C. before Ld. MM, from where did you come for recording of the said statement?**

**Answer:** From the Police Station.

**Question: Whether you had told to the Ld. MM that you had come from the Hospital?**

**Answer:** Yes.

**Question: Did you tell the Ld. MM that the accused committed wrong act with you 2-3 times?**

**Answer:** Yes.

**Question: I put it to you that you told the Ld. MM that the accused had committed wrong act with you only once. What have you to say?**

**Answer:** It Is correct.

**Question: In which class do you study and in which school and since when?**

**Answer:** In 9<sup>th</sup> class in a School at Kamla Nagar, Delhi, since the last two years.

**Question: Which is the first school attended by you?**



Answer: *Mandeliya Road, at Shakti Nagar. I do not remember the name of school.*

**Further cross-examination of the victim is deferred as not time left.**

**RO&AC**

**16.04.2019**

**Victim 'K'/Prosecutrix is present.**

**Ms. Preeti Khattar, Advocate from Vulnerable Witness Deposition Room Is present as Supporting person and sitting with the victim 'K'.**

**PW-6: Statement of Victim 'K', D/o Late Sh. "BM", aged about 15 years, R/o Chandrawal, Delhi.**

**(Re-called for further cross-examination after 28.01.2019.)**

**ON SA**

**XXXXX by Sh. Yatinder Kumar, Advocate, Ld. Amicus Curiae for accused.**

**Question: Can you tell who had written the complaint given to the police?**

**(At this stage, rukka / complaint of the Victim shown to the victim)**

Answer: *"Police ne likhi thi."*

**Question: At whose narration, the police official wrote the abovesaid complaint?**

Answer: *"Meri mummy ne bataya tha."*

**Question: Can you tell where the accused Vinod Ral Bhullan used to reside?**





Answer: *"Ye Chandrawal mein rehta tha. Mujhe uska makaan number ya gali number nahi pata."*

**Question: Do you remember the month or the year in which the accused committed wrong act with you?**

Answer: I do not remember the month and the year. Probably it was two years back.

**Question: What was the time when the accused committed wrong act with you for the first time?**

Answer: *"Subah ka samay tha, 12.30 baje."*

**Question: From where did you get to know the time as 12.30 p.m.?**

Answer: *"Apne ghar mein ghadi dekh kar."*

**Question: Can you tell the name of Doctor or name of the Clinic or where the Clinic was situated where your mother took you?**

Answer: *"Vahin Ghanta Ghar mein tha, ek ladies Doctor thi."*

**Question: Where was the complaint Ex. PW6/A recorded and at what time of the day?**

Answer: *"Police Station mein shaam ko, us samay andhera nahi hua tha."*

**Question: Did the police prepare a site plan at your instance?**

Answer: *"Han banaya tha, mere bataane par."*

**Question: Can you read English?**

Answer: *"Nahi."*



**Question:** Whether accused had arrested in your presence?

**Answer:** *"Nahi mein us time poifice thaane mein thi, meri mummy ghar iene gayi thi usko."*

**Question:** How many times the police recorded your statement?

**Answer:** *"Do baari."*

**Question:** Who told you the brand name of the mobile phone of the accused with which he showed you obscene pictures?

**Answer:** *"Usne (accused ne) dikhaya tha."*

**Question:** When did you come to know that the accused was also called by the name "Bhullan"?

**Answer:** *"Mummy ne bataya tha jab main paanchvi class me thi."*

**Question:** Did you know that the name of the accused was also Bhullan at the time when you filed the complaint?

**Answer:** *"Nahi."*

**Question:** Did you tell the Ld. M.M. that the accused Vinod Ral @ Bhullan committed wrong act with you 2-3 times?

**Answer:** Yes.

**Question:** When you were taken to Hindu Rao Hospital, who gave the alleged history to the doctor?

**Answer:** *"Mummy ne bataya tha."*

**Question:** Did the doctor ask you anything?



Answer: "Nahi."

**Question: Did you suffer any injury on your vagina at the time of playing or running or otherwise at any point of time?**

Answer: "Nahi."

**Question: Do you know where you were born?**

Answer: At Hindu Rao Hospital.

**Question: What is your date of birth?**

Answer: 21.03.2003.

**Question: Did the police inquire from your mother in your presence?**

Answer: Yes.

**Question: Do you know from where accused Bhullan was arrested?**

Answer: "Apne gharpe mila tha."

**Question: When you had shown the place of occurrence to the police?**

Answer: "Complaint ke 2-3 din baad maine police ko jagah dikhai thi."

It is wrong to suggest that no galat kaam was ever committed with me by the accused or that there was some money dispute between my mother and the accused as the accused had prepared food at the time of last rites (tehravi) of my father and my mother was reluctant to pay his dues. It is further wrong to suggest that I have deposed falsely at the instance of my mother due to enmity qua non-payment of the dues of preparing of food etc. with the accused.

**R O&AC”**

20. There is some discrepancy in the statement given by the survivor with respect to the standard in which she was studying at the time when she was giving her deposition. In the initial part of her deposition to the Court question, she answered that she is studying in 7<sup>th</sup> standard, however, in the cross-examination dated 16.04.2019 she stated that she studying in 9<sup>th</sup> standard. Similarly, there is some discrepancy in the timeline given by her with respect to the incident that had happened and the frequency thereof. In her examination-in-chief she had stated that the appellant used to do '*gandi harkat*' daily, however, in the subsequent part of her examination-in-chief she explained that he had done it 3-4 times. Thereafter, in her cross-examination on a question put to her whether she had told the learned Metropolitan Magistrate about appellant committing the wrong act 2-3 times, she answered in the affirmative, however, on the very next leading question put by the learned counsel appearing on behalf of the accused that whether she had told the learned Metropolitan Magistrate that the appellant had done the wrong act once, she replied in affirmative. Thereafter, in a subsequent question again being put to her by the learned counsel appearing on behalf of the accused that whether she had told the learned Metropolitan Magistrate that the appellant had done the wrong acts with her 2-3 times she again answered in affirmative. Similarly, with regard to the identity of the appellant in her cross-examination, she answered that she did not know him prior to the incident nor his name. However, in her examination-in-chief she said she knew the appellant as he was residing in front of their house and used to come to their house. Similarly, in her statement in



examination-in-chief she said that the act was done upon her in winters, however, in her cross-examination she said it was done in summer. In her cross-examination she had stated that the appellant was called ‘Bhullan’ was told to her by her mother when she was studying in 5<sup>th</sup> class. These discrepancies in the statement of child witness who had undergone the trauma of medical termination of pregnancy cannot be sufficient to discard the same in view of the other corroborative evidences and circumstances on record as discussed hereinafter.

**21.** In the present case, the most incriminating evidence against the present applicant apart from the statement given by the survivor (PW-6) is the DNA report. As per the FSL report (Ex. PW-20/A), appellant and the survivor were found to be the biological parents of the *foetus*. Learned counsel appearing on behalf of the defense had argued before the learned Trial Court that the said DNA report cannot be read on account of the fact that there was a possibility of tampering with the DNA samples extracted from the survivor’s *foetus* and the appellant. It is the case of the appellant that the blood samples taken for the first time were sent to the FSL for examination on 07.04.2015 which were received back on 13.02.2018 as being inconclusive and, thereafter, the FSL requested for fresh blood samples for the second time on 04.07.2018, about 3 years later. It is further submitted that the samples were sent after a delay of 10 days and, therefore, there is a possibility of tampering with the same. It was also argued that the sample of the *foetus* would have been degraded after a gap of 3 years and, therefore, the DNA report cannot be relied upon.



**21.1** The Investigating Officer, W/SI Shashi (PW-23), in her testimony has clearly stated that on 04.07.2018, a request from the FSL requiring fresh blood samples of the survivor and the accused in the case was marked to her, and in pursuance of the same, she moved an application before the concerned Court on 10.09.2018 for the collection of blood samples of the appellant and the same was allowed *vide* order dated 10.09.2018. As per this witness, she moved an application for issuance of the production warrants to the appellant for taking his blood samples at Hindu Rao Hospital. Both the orders have been exhibited collectively as Ex. PW-23/C and the accused was, thereafter, produced in the Hospital and the blood samples were obtained *vide* MLC (Ex. 23/D). The same was taken into possession *vide* memo (Ex. PW-23/E). She states that the said samples were deposited with the MHC(M) as and when received. On 25.09.2018, the said samples were deposited at FSL Rohini *vide* road certificate no. 19/21/18(Ex.23/G) through Constable Ramesh Chand who in return handed over the receipt to MHC(M) (Ex.23/H). During the cross-examination of this witness no question or suggestion was put to this witness with regard to any tampering or non-depositing the same in the *Malkhana*. It is pertinent to note that the appellant has admitted the entries in the *Malkhana* under Section 294 of the Cr.P.C. *vide* his statement recorded on 24.05.2023.

**21.2** The doctor who conducted the DNA examination, Dr. Suminder Kaur (PW-20) was cross-examined on behalf of the appellant. A suggestion was put to her that the exhibits in the matter were not in a condition that the DNA could be generated out of them which was denied, however, nothing further was put to the witness to elicit any reason as to why the exhibits would have been



degraded. Nothing has been brought on record from the cross-examination of this witness to doubt the DNA report in the present case.

**22.** Another relevant circumstance is the various stands taken by the appellant through the trial. It is noted that, a suggestion was given on behalf of the appellant that there was some money dispute for the work done by the appellant on the *tehrvi* of her husband and for this reason, she developed enmity with him and lodged this false case. It was further put to her that since the appellant used to take liquor with her husband, she was not happy with this fact. He has stated that he has been falsely implicated on account of some monetary dispute with regard to the arrangement of *tehrvi* of the father of the survivor. In a suggestion put to the Investigating Officer (PW-22), it was stated that at the time of the incident, the survivor was about 18 years of age and that the relation between her and the appellant was consensual in nature. In fact, perusal of the impugned judgment also shows that the defense taken by the learned counsel for the appellant during the course of final arguments is that there was a consensual relationship between the appellant and the survivor. In his statement under Section 313 of the Cr.P.C., the appellant has notably taken no stand and has simply said that it is a false case.

**23.** The assertion on behalf of the appellant is that he was falsely implicated on account of the aforesaid reasons does not seem probable. Section 29 of the POCSO Act raises presumption as to offences committed by any person under Sections 3, 5, 7 and 9 of the POCSO Act. Sections 29 and 30 of the POCSO Act read as under: -



**“29. Presumption as to certain offences.**—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

**30. Presumption of culpable mental state.**—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.”

24. In the considered opinion of this Court, the defence taken by the appellant has failed to prove to the contrary to the presumption raised under the POCSO Act and the same could not be rebutted by the appellant.

25. The appellant has also been convicted for the offences punishable under Section 354A of the IPC and Section 12 of the POCSO Act which read as under:

**“[354A. Sexual harassment and punishment for sexual harassment.**— (1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
  - (ii) a demand or request for sexual favours; or
  - (iii) showing pornography against the will of a woman; or
  - (iv) making sexually coloured remarks,
- shall be guilty of the offence of sexual harassment.





(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

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**“12. Punishment for sexual harassment.**—Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”

**26.** In the present case, it has been alleged that prior to committing rape upon the survivor, the appellant had shown certain obscene pictures to her, and the learned Trial Court convicted the appellant for this under Section 354A of the IPC and Section 12 of the POCSO Act, however, during the course of the trial, no such pornographic material has shown to be recovered from the mobile phone of the appellant. Thus, the prosecution has been not been able to establish the offence punishable under Section 354A of the IPC and Section 12 of the POCSO Act had been committed by the appellant. In the considered opinion of this Court, the conviction under Section 354A of the IPC and Section 12 of the POCSO Act is liable to be set aside, and the appellant stands acquitted for the offence punishable under Section 354A of the IPC and Section 12 of the POCSO Act.

**27.** In the present case, the offences were committed in the month of December 2014, therefore, unamended provisions *qua* commission of offences



punishable under Sections 376(2)(i) & (n) IPC and Section 4 of POCSO Act would be applicable for awarding punishment.

28. In view of the aforesaid discussion, this Court is of the considered opinion that the survivor was a child defined under Section 2(d) of the POCSO Act and thus, the appellant is liable to be convicted for the offence punishable under Section 3(a) read with Section 4 of the POCSO Act which, prior to its amendment in 2019, read as under: -

**“3. Penetrative sexual assault.**—A person is said to commit “penetrative sexual assault” if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

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**4. Punishment for penetrative sexual assault.—**

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.”

29. Additionally, the conviction of the appellant is further upheld for the offences punishable under Sections 376(2)(i) & (n)/450/506 of the IPC. Section 376(2)(i) & Section 376(2)(n) of the IPC, as they stood prior to the amendment by Act 22 of 2018, read as under: -

**"376. Punishment for rape.-** (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.]



(2) Whoever,-

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(i) commits rape on a woman when she is under sixteen years of age; or

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(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

Sections 450/506 of the IPC read as under: -

**"450. House-trespass in order to commit offence punishable with imprisonment for life.**—Whoever commits house-trespass in order to the committing of any offence punishable with <sup>1</sup> [imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine."<sup>3</sup>

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**"506. Punishment for criminal intimidation.**—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

**If threat be to cause death or grievous hurt, etc.**—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or <sup>1</sup> [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

**30.** Section 42 of the POCSO Act, prior to its amendment by Act 22 of 2018 as substituted by Act 13 of 2013, reads as under: -

<sup>3</sup> As substituted by Act 26 of 1955, s. 117 and the Sch., "for transportation for life" (w.e.f. 1-1-1956).



**“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, 376A, 376C, 376D, 376E, section 509 of the Indian Penal Code (45 of 1860), 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.”

**31.** In view of the above, since the punishment provided for under Section 376(2)(i) & (n) of the IPC is greater than the punishment provided under Section 4 of the POCSO Act, the appellant is liable to be sentenced under the said provision. *Vide* the order on sentence dated 23.12.2023, the appellant has been sentenced to undergo rigorous imprisonment for a period of 30 years along with the fine of Rs. 10,000/- for the offence punishable under Section 6 of the POCSO Act.

**32.** Learned counsel appearing on behalf of the appellant had submitted that at the time of passing of the order on sentence, it has been recorded that as per the inquiry conducted by Delhi Central District Legal Services Authority, the wife of the appellant was doing labour work for a livelihood and she was residing in a hut with 4 children. It was further recorded that the appellant had two girls of marriageable age and two minor sons who were dependent on him.

**33.** Learned Trial Court while sentencing the present appellant for a period of 30 years under Sections 376(2)(i) and (n) of the IPC has recorded that the offence committed by the appellant was heinous in nature and, therefore, the sentence awarded was justified. There is no doubt that the offence committed by the present appellant is extremely grave. As already noted hereinabove,



Sections 376(2)(i) and (n) of the IPC were punishable with rigorous imprisonment for a term which shall not be less than 10 years, but extendable upto imprisonment for life, which shall mean imprisonment for remainder of the person's natural life and shall also be liable to fine. The minimum prescribed sentence under the aforesaid provision is 10 years and the same is further extendable. It is further noted that as per the nominal roll, the appellant has been working as a *Safai Sahayak* and his overall conduct at the jail is satisfactory. He has been in continued judicial custody since the date of the arrest, *i.e.*, 06.04.2015 till today. In view of the same the sentence awarded to the appellant is reduced to rigorous imprisonment for a period of 20 years.

### **CONCLUSION**

**34.** In the light of aforesaid discussion, the present appeal is partly allowed and disposed of by modifying the impugned judgment of conviction dated 26.10.2023 and order on sentence dated 23.12.2023 in the following manner: -

- (i) The appellant thus, stands convicted for the offences punishable under Section 3 read with Section 4 of the POCSO Act and Sections 376(2)(i) and (n), 450, 506 of the IPC;
- (ii) The appellant stands acquitted for the offences punishable under Section 354A of the IPC and Section 12 of the POCSO Act;
- (iii) The appellant is sentenced to rigorous imprisonment for a period of twenty years (20) for the offence punishable under Section 376(2)(i) and Section 376(2)(n) of the IPC along with a fine of Rs. 10,000/- and in



default of payment of fine, to undergo further simple imprisonment for a period of 2 months;

(iv) The order on sentence *qua* the offences punishable under Sections 450/506 of the IPC passed by the learned Trial Court is upheld;

(v) All the sentences shall run concurrently and benefit of Section 428 of the CrPC be given to the appellant;

**35.** The present appeal is disposed of in the aforesaid terms along with all pending applications, if any.

**36.** Copy of the judgment be communicated to the concerned Jail Superintendent for necessary information and compliance, *forthwith*.

**37.** Copy of the judgment be also sent to the Secretary, Delhi High Court Legal Services Committee, who shall apprise the appellant regarding the legal remedy and assistance of legal aid counsel available to him in respect of the present judgment.

**38.** Judgment be uploaded on the website of this Court *forthwith*.

**AMIT SHARMA, J.**

**JULY 11, 2025/kr/nk/sn**