



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

% Reserved on : 08.08.2025  
Pronounced on : 17.09.2025

+ **CRL.A. 283/2020**

**JAHANGIR**

.....Appellant

Through: Mr. Prashant Mehta, Mr. Charanpreet Singh, and Mr. Pranav Singh, Advocates.

versus

**STATE (NCT OF DELHI)**

.....Respondent

Through: Ms. Shubhi Gupta, APP for State. Sowjhanya Shankaran, Ms. Anuka Bachawat, Ms. Charu Sinha, Advocates for victim.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

### **JUDGMENT**

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 29.11.2019 and the order on sentence dated 06.12.2019 passed by the learned Additional Sessions Judge-04, Special Judge (POCSO), North-West District, Rohini Courts, Delhi in Case No. 53667/2016 arising out of FIR No. 517/2016 registered at P.S. Subhash Place under Section 376 IPC and Sections 6/8 POCSO.

Vide the order on sentence, the appellant was directed to undergo rigorous imprisonment for a period of 10 years alongwith fine of Rs. 10,000/-, and in default thereof to undergo simple imprisonment for 30 days, for the offence punishable under Section 6 POCSO. Benefit under Section



428 Cr.P.C. was extended to the appellant.

2. The latest nominal roll on record dated 27.07.2025 reflects that the appellant had undergone 8 years, 9 months and 3 days of incarceration and earned remission of 1 year, 3 months and 27 days, and that he was thereafter released from jail on 28.06.2025 upon completion of the substantive sentence as well as the sentence in default of payment of fine. The intimation report dated 11.07.2025 under the signatures of the Deputy Superintendent, Central Jail No. 8/9, Tihar, New Delhi, also confirms his release.

Learned APP for the State, on instructions, submits that despite efforts, the police have not been able to trace the appellant since his release. A status report in this regard under the signatures of SHO, P.S. Subhash Place, is on record. Learned counsel for the appellant submits that, in the absence of any instructions to the contrary, he will press the present appeal on merits. Accordingly, the Court has proceeded to hear submissions on the merits of the appeal.

3. The brief facts of the prosecution case, as noted by the Trial Court, are reproduced hereunder:-

*“The case of the prosecution is that on 26.09.2016, FIR No. 517/16 under Sections 376 IPC & 6/8 POCSO Act was registered at P.S. Subhash Place against the accused herein for committing penetrative sexual assault upon the victim. The present FIR was registered on the complaint filed on 25.09.2016, by the complainant/Karan who stated therein that the complainant is a property dealer. Today at 10.00 pm, he returned from his office and started driving his i 20 car. He was parking his car on main road M Block near Bharat Ghar where often many auto rickshaws are parked. The headlights of his car were on and he observed some hadbdahat in auto rickshaw(fat fat sewa). He turned off the headlights of his car and reached near auto rickshaw bearing no.*



*DL 1W 0509 and found that a five year old girl was caught hold by a 40 years old male. The girl was naked and she was trying to save herself. The accused was licking her private parts. The complainant separated the accused from the child by pulling his hair and scolded him. On hearing the noise, people gathered there and they gave beatings to the accused. The accused was arrested on 26.09.2016. After completion of investigation, the charge sheet was filed.”*

4. The Trial Court framed charges vide order dated 08.02.2017 under Sections 5(m), (n) and (p) POCSO, punishable under Section 6 POCSO, against the appellant, to which he pleaded not guilty and claimed trial.

5. In trial, the prosecution examined a total of 12 witnesses to prove its case. The complainant/*Karan*, an eye witness to the incident, was examined as PW-6. The victim, aged about five years at the time of incident, deposed as PW-3. The mother of the victim, who reached the spot upon learning of the incident, was examined as PW-4, and the aunt of the victim as PW-11. *Parvez Alvi*, who informed the police at 100 number, testified as PW-2. PW-5/*Shyam* and PW-7/*Tinku @ Tara Chand* partially corroborated the testimony of PW-6. WSI *Vinita*, the I.O., was examined as PW-12. *Gagan Kalra*, the registered owner of the auto-rickshaw bearing registration no. DL 1W 0509, was examined as PW-8. ASI *Chet Lal* was examined as PW-1 to prove the FIR, and Dr. *Anil Ranjan* as PW-9 to prove the MLCs of the appellant and the victim.

The appellant, on the other hand, in his statement recorded under Section 313 Cr.P.C., claimed innocence and false implication. However, no defence evidence was led before the Trial Court.

### **CONTENTIONS**

6. Learned counsel for the appellant submits that, firstly, the appellant had a quarrel with the complainant on the issue of parking and also with the



mother of the victim due to a marital dispute between the two, on account of which he has been falsely implicated. Secondly, it is urged that the parking spot in question is located far from the residence of the complainant/PW-6, and therefore, he had no plausible reason to be present there. It is further submitted that as per the MLC, no injury marks or swelling were noted except on the lower lip, and no FSL report is available on record. Additionally, the victim, in her testimony, only deposed that the appellant removed her underwear, and the statement of the complainant/PW-6 has not been corroborated by the child victim.

7. Learned APP for the State, duly assisted by learned counsel for the victim, submits that the appellant's plea of a matrimonial dispute with the child victim's mother is a bald assertion, not substantiated by any documentary evidence on record. It is further submitted that the statement of the complainant recorded under Section 161 Cr.P.C. shows that he was a resident of WZ-273, Shakurpur, and that he habitually parked his vehicle at the same place every day. He had no enmity with the appellant, denied any quarrel with him, and his testimony is natural, consistent, and corroborated by PW-5 and PW-7. As regards the child victim/PW-3, it is urged that while her statement may not be very detailed, she nonetheless stated that the appellant was a bad person who removed her underwear, and her demeanour, as recorded by the Trial Court, lends credence to the prosecution case.

8. I have heard the learned counsels for the parties and perused the Trial Court Record.

### **WITNESSES**

9. At the time of her deposition, the child victim, examined as PW-3,



was about five years old. She stated that her father was a bad man because he had removed her underwear. She further deposed that he made her lie down inside a rickshaw and put her to sleep. During further questioning, she was unable or unwilling to elaborate upon the incident in question. When asked whether her father was present in Court, she pointed towards the wooden partition behind which the appellant was present.

On being recalled for cross-examination, the child victim again stated that her father was not good to her and did not play with her. It is apposite to reproduce the following extract from the child victim's cross-examination:-

*“On 22.09.2017 the witness was recalled and was further cross-examined by the ld defence counsel wherein she deposed as follows :*

*Q: Tumhare papa kaise hain?*

*A: Papa achhe nahin hain.*

*Q: Papa apke sath khelte hain ?*

*A: Nahin.*

*Q: Kya papa ne apke sath ko ganda kaam kiya tha ?*

*A: (the child is not responding on the question. She is even refusing to accept sweets. She does not want to answer the question).*

*Q: Papa ne tumhare sath koi galat kaam nahin kiya na?*

*A: (the child looks behind through the wooden partition for a glance and after seeing her father, she turns her head away and does not want to see his sight)*

*Court observation: (despite the best efforts of all the support persons, ld Addl PP for the State and even counsel for the accused to make the child comfortable to say anything about the incident, the child was not interested in communicating at all. She was otherwise playful but closes herself on the aspect of any enquiry pertaining to her father. In these circumstances, it was not proper to expose the child further for any emotional or mental trauma in saying or remembering anything about which she is not comfortable).”*

10. The complainant/PW-6, an independent and nonpartisan eye witness, deposed that on 25.09.2016 at about 10:00–10:30 p.m., he had returned from



his office and was parking his car when he noticed an auto-rickshaw parked on the same road. With the headlights of his car on, he saw movement inside and small hands appearing to seek help. On approaching, he found the appellant, aged about 40–42 years, with a minor girl aged about 5–6 years. The child was without clothes, and the appellant was licking her private parts excitedly, due to which she was crying and shivering. PW-6 pulled the appellant out by his hair and released the child from his clutches. About 100–200 persons gathered, and on his request one boy retrieved the child's clothes from nearby. The appellant was beaten by the public. As the child indicated the direction of her house, 2–3 persons took her there. Soon thereafter, PW-4, the child's mother, arrived and disclosed that the appellant, who was the child victim's stepfather, had taken the child earlier that evening on the pretext of buying her eatables. PW-6 further stated that the appellant was under the influence of liquor when apprehended and identified him in Court.

In his cross-examination, PW-6 stated that his residence is about 6–7 kilometres from the spot. He deposed that he knows *Shyam*/PW-5, and that on the night of the incident *Shyam* was present near the spot with 2–3 friends. PW-6 confirmed that he parks his vehicle at the same place every day. He clarified that he did not himself call the police at 100 number, as he was occupied in rescuing the child. He further stated that he did not give any beatings to the appellant, but covered the child with some clothes, while her clothes were put on by someone else from the public. PW-6 remained at the place of incident between 10:00 and 10:45 p.m., during which time the police arrived, and PW-5 and his friends accompanied the child to her house. He denied suggestions of any quarrel with the appellant or that he



and his friends had beaten him. He further denied that he had not witnessed anything wrong or that he had falsely implicated the appellant.

11. PW-5/*Shyam* deposed that on 25.09.2016 at about 10:00-10:30 p.m., while standing with some friends near Mother Dairy, he heard cries and saw his friend PW-6 apprehending a person from an auto-rickshaw. Inside, he noticed a minor girl aged about 4-5 years without clothes. Public persons had gathered, and one of them handed over clothes which were then put on the child. PW-5, along with his friend *Tinku @ Tara Chand*/PW-7, took the child in search of her house and handed her over to her mother. Thereafter, they returned to the spot, where the police had arrived. PW-5 correctly identified the appellant in Court. In cross-examination, he denied the suggestion that he was not present at the spot or that he had deposed falsely at the instance of PW-6 or the police.

PW-7/*Tinku @ Tara Chand* similarly deposed that on hearing PW-6 calling out, he rushed to the spot with PW-5 and others, where he saw a minor girl aged about 4-5 years without clothes and one person being apprehended by the public. He, too, stated that someone from the public retrieved the girl's clothes from a park grill and made her wear them. Along with PW-5, he went to search for the house of the child and later came to know that she was a resident of Shakurpur. PW-7 also identified the appellant in Court and denied the suggestion that he was deposing falsely at the instance of PW-6.

12. The mother of the victim was examined as PW-4. She deposed that she was about 15 years of age when the victim child was born to her and that she also has a younger daughter. Earlier, they resided at Nabi Karim, where the appellant was employed in a purse manufacturing factory. At that time



also, when the victim was younger, the appellant had tried to molest her, for which PW-4 had made a complaint to the police, though no further action was taken as her brother-in-law did not support her and she herself was not strong enough. She further stated that she had delivered another child about 20-22 days prior to the incident of 25.09.2016. On that evening, the appellant took the child victim on the pretext of buying her something from the market. When the child did not return till about 10:00-10:30 p.m., PW-4 became worried and stepped out, whereupon neighbours informed her that PW-6 had brought her daughter back in a distressed condition, with injuries on her face. PW-6 also told her that he had caught the appellant red-handed committing a wrong act upon the child and rescued her. The appellant was apprehended by members of the public and handed over to the police. PW-4 added that, upon speaking to her daughter, she narrated the incident committed by her stepfather and further stated that he had removed her clothes and his own clothes also and threatened her not to disclose the same to her mother or else he would kill her. The child was thereafter taken to hospital for her medical examination, accompanied by her aunt, as PW-4 herself was not medically fit owing to a recent caesarean delivery.

In her cross-examination, PW-4 admitted that she was not an eye-witness but denied the suggestions that she had tutored the child, that the appellant had not been caught red-handed, or that the case was instituted in collusion with her as she intended to sever her matrimonial ties with him.

13. The aunt of the victim was examined as PW-11. She deposed that at the time of the incident she was residing with her family, and that the appellant, her brother-in-law, had come to live with them about a month prior as her sister (PW-4) had recently delivered a baby. On the date of the





incident, the appellant, in a drunken state, took the victim child, aged about 5–6 years, on the pretext of taking her for outing but did not return. Around 11:00 p.m., some boys brought the child back and informed about the incident. The clothes of the child were handed over by her to the police and she identified them in Court when produced as case property.

In her cross-examination, PW-11 admitted that her statement was not recorded by the police at the time but denied the suggestions that she had deposed falsely at the instance of the child's mother or the I.O., or that the appellant had not taken the child out, had not been drunk, or that the clothes produced in Court did not belong to the victim.

14. Dr. *Anil Ranjan* was examined as PW-9 and he proved the MLC of the appellant (Ex. PW-9/A), noting an abrasion on the left eyebrow and swelling around the left eye, and the MLC of the child victim (Ex. PW-9/B), which recorded no external injury. In cross-examination, he admitted that neither of them had been examined in his presence and that he had no personal knowledge of the MLCs.

15. PW-1/ASI *Chet Lal* proved the registration of the FIR. PW-2/*Parvez Alvi* stated that he had called the police upon noticing a crowd beating a person, and denied the suggestion that a false complaint had been filed. PW-8/*Gagan Kalra*, owner of the concerned auto-rickshaw, confirmed its seizure and release on indemnity bond. PW-10/Ct. *Manoj* took the *rukka* for registration of the FIR and proved the arrest and personal search memos of the appellant. PW-12/WSI *Vinita Prasad*, the I.O., proved the preparation of the *rukka*, the site plan, the arrest of the appellant, the seizure of the child's clothes, and the recording of statements under Section 164 Cr.P.C., and denied suggestions of having conducted a false or biased investigation.



### **ANALYSIS**

16. At the outset, on a careful appraisal of the record, this Court is of the considered view that the testimony of the child victim/PW-3, though not detailed, is relevant. She stated that her father was a bad man because he had removed her underwear, and during her deposition she consistently refused to engage with questions regarding the incident despite sustained efforts by the support persons and counsel, even though she was otherwise in a playful mood. Her demeanour before the Trial Court, as contemporaneously recorded, though of limited value since she did not narrate the incident fully, cannot be discarded outright in light of the other material on record considered hereinafter.

17. The complainant/PW-6, an unrelated and uninterested witness, gave a consistent and cogent account of what he witnessed while parking his vehicle after returning from work. He deposed that he saw the appellant committing a wrong act upon the child victim inside an auto-rickshaw and intervened to rescue her. His testimony withstood the test of cross-examination, wherein he denied any quarrel or prior enmity with the appellant. His version finds partial corroboration in the evidence of PW-5 and PW-7, both of whom testified that they reached the spot, saw the child without clothes, and observed that the appellant had been apprehended by public persons. The MLC of the appellant, which recorded abrasions and swelling, corroborates that he had been beaten by members of the public, consistent with the ocular account.

18. PW-2 confirmed that he had called the police at 100 number upon noticing a crowd, and denied the suggestion that a false complaint had been filed. PW-4, the mother of the child victim, deposed that the appellant had



taken the child away earlier in the evening on the pretext of buying her something, and that she was later informed the child had been brought back with visible injuries and in distress. PW-11, the aunt, similarly stated that the appellant, who was in a drunken state, had taken the child out and that she was returned later that night.

19. The minor inconsistencies across the accounts of the prosecution witnesses, such as the precise sequence of events or who assisted the child with her clothes, are of little consequence. They do not go to the root of the matter or undermine the reliability of the prosecution case as a whole. The defence version, premised on an alleged quarrel with the complainant and his friends and on supposed marital discord between the appellant and PW-4, is clearly moonshine and has remained wholly unsubstantiated. No material has been placed on record to support these assertions, and the suggestion of collusion between the complainant, his friends, and the child victim's mother, without any evidence to that effect, is both improbable and without basis.

20. At this stage it is apposite to note that Section 29 POCSO creates a presumption of guilt against the accused once the foundational facts of the case stand established. A three-Judge Bench of the Supreme Court in Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, reported as (2025) 2 SCC 399, has held that Section 29 comes into play once such foundational facts are proved. It holds as follows:-

*“35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the Pocso Act. Section 5 of the Pocso Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the Pocso Act defines what penetrative sexual assault is...”*



21. The age of the child victim and the identity of the appellant are not in dispute. The complainant/PW-6, an unrelated and uninterested witness, furnished a credible and reliable account of catching the appellant red-handed committing a wrong act upon the child victim inside an auto-rickshaw and intervening, which withstood the test of cross-examination and was corroborated in material particulars by the testimonies of PW-5 and PW-7. No material has been produced to show that the child was tutored or that her mother and/or the complainant and his friends bore any motive to falsely implicate the appellant. The suggestions of a quarrel and/or of matrimonial discord are bald assertions, unsupported by documentary proof or credible testimony. There is nothing on record to indicate any prior acquaintance or collusion between the complainant, his friends, and the child victim's mother and aunt. The minor discrepancies highlighted by the defence are inconsequential and do not affect the core of the prosecution case.

22. On these facts, the foundational facts of the prosecution case are undoubtedly established, thereby attracting the presumption under Section 29 POCSO. This Court, as such, finds no merit in the present appeal, and the same is accordingly dismissed. The impugned judgment and order on sentence are upheld.

23. A copy of this judgment be communicated to the Trial Court.

**MANOJ KUMAR OHRI**  
**(JUDGE)**

**SEPTEMBER 17, 2025/nb**