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

Date of decision: 12.03.2025

+ **CRL.A. 121/2023**

BALJEET SINGH

.....Appellant

Through: Ms. Inderjeet Sidhu, Adv.

versus

STATE NCT OF DELHI & ANR.

.....Respondent

Through: Mr. Sunil Kr. Gautam, APP

Mr. Pradeep Gahalot, APP

SI Archana, PS Delhi Cantt.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is an appeal seeking setting aside of the impugned judgment dated 07.10.2022 and order on sentence dated 23.12.2022 passed in SC No. 8485/2016 in FIR No. 327/2015 registered at PS Delhi Cantt. under Section 6 of POCSO Act by the learned ASJ-01, Special POCSO Court, Patiala House Courts, New Delhi.
2. The appellant has been convicted for offences punishable under Section 6 of POCSO Act and sentenced to 10 years rigorous imprisonment and fine.
3. The facts are that on 26.06.2015, an FIR was registered under Section



10 of POCSO Act on the allegation that the appellant had sexually assaulted the victim by putting his finger into her vagina.

4. The information was received at PS Delhi Cantt. *vide* DD No. 37B dated 26.06.2015 indicating that the appellant had misbehaved with the victim at House No. 351, Kotwali Road, Gopinath Bazar, Delhi Cantt., Delhi.
5. The SI proceeded to the place of incident for conducting inquiry on the complaint.
6. The mother of the victim met the SI at the above-mentioned address and informed that the victim daughter was aged about five and a half years and was sexually assaulted by her uncle i.e. the appellant.
7. The victim was sent to the DDU Hospital along with her mother for a medical check-up. She was taken to the Police Station where her statement was recorded.
8. The victim has informed the police officials that the appellant had removed her pants and inserted his finger into her vagina. She also stated that her mother saw this act and shouted at him and that is when the appellant ran away from the spot.
9. The FIR was registered but the appellant was not found on his house on that day but was arrested on 29.06.2015 from Hari Nagar, Delhi.
10. The FIR is exhibited as Ex. P/AD1.
11. Charges were framed on 07.10.2015 and the appellant pleaded not guilty and prayed for trial.
12. The prosecution examined 4 witnesses, and the respondent did not lead any evidence.
13. After going through the entire evidence material on record, the



impugned judgment was passed.

14. Ms. Sidhu, learned counsel for the appellant appointed by the DHCLSC states that the statement of the PW-1 i.e. the mother and PW-2 i.e. the complainant/victim are inconsistent and cannot be relied upon. She states that benefit of doubt must be given by the appellant.
15. She further states that the ingredients of offence of aggravated sexual assault under Section 6 of POCSO have not been made out and there are major contradictions, inconsistencies and improvements in the statements of material witnesses.
16. It is stated that the presumption under Section 29 read with Section 30 of POCSO Act as such cannot be attracted since the foundational facts are to be proved beyond reasonable doubt. This defence of the appellant has not been considered by the learned Trial Court.
17. I have heard the learned counsel for the parties and perused the documents on record.
18. In the present case, the testimony of both the PW-1 i.e. the mother and PW-2 i.e. the complainant/victim are consistent regarding the incident. The same are reproduced as under:-

04.04.2016

PW-1 Smt. Dolly, W/o Sh. Ashok Kumar, Aged about 23 years, R/o House no. 51B, Servant Quarters, Kotwali Road, Gopi Nath Bazar, Delhi Cantt.

On SA

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I do not remember the exact date. However, it was summer season in



the year 2015. In the morning hours I went to the house of my employer while leaving my all three daughters in the servant quarters. I used to come to my room in order to see my children. It was about 10/11 AM I came to my room in order to see my children. I saw my victim daughter aged about 6 years was watching some movie in my mobile phone. My uncle i.e. accused Baljit was sitting near her. Pant of my victim daughter was put off (witness states that pant utre hue thee). Accused was inserting his fingers in the private part of my victim daughter. At that time the door of the room was opened so that I was able to see the aforesaid act of accused. I shouted and I went to the room of my aunty (wife of accused). Accused was residing in servant quarter which was situated just opposite to our house. On seeing me accused ran away from the spot. I told all the facts to wife of accused. My aunty scolded the accused and gave two slaps on the face of accused. I called my brother and told all the facts to him. I also called my husband and my mother. My brother came to my residence in the afternoon. My brother had called at no. 100. Police reached there. My daughter was taken to DDU hospital for her medical examination and her statement was recorded by the IO. After that from the hospital we came to our house where IO prepared site plan at my instance. Counseling of my daughter was made by one NGO.....

XXX by Sh. Akbar Siddique, Ld. Counsel for the accused from Legal Aid.



It is correct that at the time of incident my youngest daughter was around 1 ½ years old. I used to go to work at about 9:30 AM. It is correct that my employer is an army officer. I used to come back by 12:30 PM after finishing my work. Vol. I used to visit my room during these hours in order to see my children. I did not take my children anywhere prior to the incident. My statement was recorded by the police. It is correct that I had stated in my statement that on the day of incident my daughters had gone to the house of accused prior to the incident. My daughters had gone to the house of accused with their own. Accused is residing in servant quarter of house no. P-10. The distance between our house and house of accused is at a distance of about 5/10 minutes walking.

I do not remember as to when my daughters had come back from the house of accused. Vol. I had heard the voices of my daughters when I was working in the kothi. I cannot tell if my daughters had come with their own or someone had left them from the house of accused. My father was staying with us and he used to take care my daughters whole day. However, he had gone somewhere on the day of incident. I am using only one mobile. I used to leave my mobile phone on the fridge of my room during my working hours.

At the time when I saw the accused he was inserting his two fingers in the vagina of my victim daughter aged about 6 years. It is correct that at that time my victim daughter was watching movie in my mobile phone.

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(Camera Proceedings)

PW-2 Prosecutrix X, D/o Y, R/o Z, aged about 6 years.

Accused Baljit Singh has been made to sit behind one side view mirror screen so that he is not visible to the witness but he can hear and watch the proceedings from behind it and may also communicate with his counsel if required.

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Examination in chief by Ld. APP for the State

Without oath

Q. Where is your school?

Ans. In Gopinath Bazar.

Q. As to who others are staying with you in your home?

Ans. I am residing with my maternal grand father, father, mother and two sisters.

Q. As to what was happened with you?

Ans. My mother had gone for work in the kothi, my papa had gone somewhere outside for work, my nana had gone for work. I alongwith other two sisters were watching cartoon on TV.

Q. What happened next?

Ans. Baljit Nana came in the room.

Q. Then what happened?

Ans. I was showing photograph of "takla" (bald person) to my Baljit Nana on mobile phone of my mother.

Q. Then what happened?

Ans. Nana removed my pants and inserted finger in my private part



(susu main hath dala).

Q. Then what happened?

Ans. My Nana was sitting on the bed where I was present.

Q. Then what happened?

Ans. My mother reached there. On seeing my mother, Baljit Nana had ran away from there. My mother had shouted.

Q. Then what happened?

Ans. My Mama (maternal uncle) had called the police. I told the facts to the police. was taken to hospital where my medical examination was conducted.

Q. Then what happened?

Ans. I put my thumb impression on my statement. Ink was put on my thumb and after that I put the same on my statement. Witness is shown a thumb impression at point X. She stated that she had put the thumb impression at the same spot on the paper. Vol. My mother was also standing with me. The statement is Ex. PW 2/A.

My statement was also recorded by one Judge Sahib.

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XXX by Sh. Akbar Siddique, Ld. Counsel for the accused from Legal Aid.

Q. Did you go to the house of accused prior to the incident?

Ans. Yes.

Q. With whom you had gone to the house of accused?

Ans. With my mother.

Q. When you returned back to your house from the house of accused?



Ans. I do not remember. However, I had come to my house with my mother.

Q. Whether your mother had provided food to you and your sisters after coming back from the house of accused?

Ans. Yes

Q. As to where your mother had gone after providing food to you your sisters?

Ans. In the kothi.

Q. As to when your mother came back in the room?

Ans. I do not remember.

Q. Whether you had gone to school on the day of incident?

Ans. Yes.

Q. Whether your other sister had also gone to school?

Ans. No.

Q. Which cartoon you were watching?

Ans. Tom and Jerry.

Q. Whether the accused used to visit your house frequently?

Ans. Yes. Mostly in the morning hours.

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19. The fact that the mother of the victim saw the incident has been duly stated by the prosecutrix in her 164 Cr.P.C statement (P/AD5). Her deposition before the Court is consistent and has attracted the confidence of the Court.
20. The learned counsel for the appellant has pointed out the inconsistency in the statement of PW-1 as well as the prosecutrix that PW-1 in her



testimony had stated that prior to the incident, she did not take her daughters to the house of the accused. However, the victim had deposed that she had gone to the house of the accused before the incident with her mother.

21. The testimony of PW-1 and the prosecutrix in this regard reads as under:-

04.04.2016

PW-1 Smt. Dolly, W/o Sh. Ashok Kumar, Aged about 23 years, R/o House no. 51B, Servant Quarters, Kotwali Road, Gopi Nath Bazar, Delhi Cantt.

XXX by Sh. Akbar Siddique, Ld. Counsel for the accused from Legal Aid.

.....I did not take my children anywhere prior to the incident. My statement was recorded by the police. It is correct that I had stated in my statement that on the day of incident my daughters had gone to the house of accused prior to the incident. My daughters had gone to the house of accused with their own.....

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On 04.04.2016

(Camera Proceedings)

PW-2 Prosecutrix X, D/o Y, R/o Z, aged about 6 years.



XXX by Sh. Akbar Siddique, Ld. Counsel for the accused from Legal Aid.

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Q. With whom you had gone to the house of accused?

Ans. With my mother

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22. To my mind, the said fact is neither relevant nor germane to the offence committed by the appellant.
23. In the present case, the prosecutrix was of a tender age and was deposing after a lapse of almost 1 year.
24. The minor inconsistency with regard to the above testimony does not shake the credibility of the testimony either of PW-1/mother or PW-2/victim.
25. To my mind, the said inconsistency has correctly been appreciated by the learned Sessions Court in paragraph 23, wherein it has been held as under:-

“23. In the opinion of this court, the above noted contradiction is immaterial and does not affect the case of the prosecution. Court has to be mindful of the circumstances under which a minor girl who was merely 5 years old was brought to testify before it. Further, court cannot overlook the fact that the minor victim had to testify regarding facts which took place with her almost a year back. The mere fact that her testimony did not match with her mother's on this point does not discredit her worthiness as a prosecution witness. Be that as it may, the suggestions put to the victim and her mother in this regard are of no use as these facts appear to be irrelevant as far as the defence of the accused is concerned.



Furthermore, the mother of the victim had admittedly testified that the victim and her sister had gone to the house of the accused on their own before the incident took place and thus, the presence of the victim at the house of the accused before the incident stands admitted and makes no difference to the fact of commission of offence by the accused. On the other hand, accused did not suggest to PW-1 or PW-2 that he was not present at the house of the victim at the time of the incident. There was no plea by the accused that he was present at some other place at the time of the incident.”

26. The learned Sessions Court has correctly appreciated the testimonies, the documents on record and rightly held the appellant guilty of offences under Section 6 of POCSO Act.
27. It has also been correctly held by the learned Sessions Court that the Court needs to be conscious of the age of the victim and the societal atmosphere she is being raised in. Additionally, that it would be not reasonable to expect a 5 year old child victim/prosecutrix to appreciate the difference between a photo and a video, in the disturbing circumstances under which her statement was being recorded.
28. The testimony of the victim/prosecutrix that the appellant had inserted his finger into her vagina and the same has been witnessed by PW-1/ the mother of the victim is the foundational fact and the same has been proved by the prosecution.
29. As per Section 29 of the POCSO Act, the burden must shift to the appellant to show that he did not commit the offence.
30. To my mind, the appellant in the present case has failed to rebut the presumption and thus no benefit can be given to the appellant, the same



has been correctly appreciated by the learned Sessions Court.
Paragraph 36 of the impugned judgment reads as under: -

“36. In the instant case, the testimony of the victim stands corroborated by the deposition of her mother. The testimony of the victim is otherwise trustworthy. Defence has failed to pinpoint any failure or laxity in the investigation by the police. Prosecution has established the foundational facts required u/s 29 r/w Sec 30 of POCSO Act to prove that the accused had inserted his finger into the vagina of the victim on 26.06.2015 at her house and thus, he was guilty of having committed aggravated penetrative sexual assault upon her. There is no dispute from the side of the accused over the age of the victim. She was admittedly less than 12 years of age at the time of the offence and thus, in view of the cogent evidence led by the prosecution, it has been proved that the accused was guilty of the offences he had been charged with. On the other hand, accused failed to rebut the presumption which lies against him by virtue of Sec 29 and 30 of the act. His defence is proved to be baseless. Accordingly, in view of the foregoing reasons, this court convicts the accused Baljeet, S/o Sh. Avtar Singh for committing offences u/sec 6 of POCSO Act (as on the date of commission of the offence).”

31. For the said reasons, I find no infirmity either in the judgment or in the order of sentence.
32. Accordingly, the present appeal is dismissed.

JASMEET SINGH, J

MARCH 12, 2025 / (MS)

(Corrected and released on 04.04.2025)