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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 27.10.2025*+ **CRL.A. 123/2025 & CRL.M.(BAIL) 215/2025**

JAI MANGAL MEHTO

.....Appellant

Through: Mr. R.K. Bhardwaj and Mr.
Muntazir Mehndi, Advs.

versus

STATE (GOVT. N.C.T. OF DELHI))

.....Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State along with
SI Neelu and SI Sangeeta.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this appeal, the appellant seeks setting aside of the judgment of conviction dated 07.10.2024 [hereafter '*impugned judgment*'] and order on sentence dated 03.12.2024 [hereafter '*impugned order on sentence*'] passed by the learned Additional Sessions Judge-01 (POCSO) South-West, Dwarka Courts, New Delhi [hereafter '*Trial Court*'] in Sessions Case No. 233/2022, whereby the appellant was convicted for commission of offence punishable under Section 18 read with Section 5(m)(n) of the Protection of Children from Sexual Offence Act, 2012 [hereafter '*POCSO Act*'] and Section



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511 read with Section 376AB of the Indian Penal Code, 1860 [hereafter '*IPC*']. The appellant was sentenced to undergo rigorous imprisonment for a period of ten years alongwith payment of fine of ₹10,000/- for the commission of offence punishable under Section 18 read with Section 5 (m)(n) of POCSO Act, and in default of payment of fine, to undergo simple imprisonment for thirty days.

2. The present case presents the story of victim 'X', who is only nine years of age. She narrates her harrowing experience which was traumatic mentally and devastating physically. She informed the police that she was sexually assaulted while sleeping in the presumed safe environment of the room of her *Mausi*, by her maternal uncle/*Mama*, who is the appellant herein. The incident came to light when the victim's mother, who is also the complainant, lodged a formal complaint alleging that in the intervening night of 18th and 19th February 2022, her daughter had gone to sleep in a room situated on the upper floor of her maternal Aunt/*Mausi*'s house at about 3:00 AM, at around 4:30 to 5:00 AM, when she had gone to that room, she had seen her brother, i.e., the appellant herein, coming out of the room while zipping up his pants. The complainant further noticed that her daughter was asleep and that there was some substance on her clothes. She has alleged that the accused/appellant had attempted to commit rape upon the victim. Consequently, an FIR was registered under Sections 376/511 of IPC and Sections 6/18 of the POCSO Act.



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3. On 20.02.2022, the statement of the victim was recorded under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], wherein she stated that when she had woken up, she had seen her mother talking to her maternal uncle, i.e., the appellant herein. She further stated that her clothes were dirty and that she did not know what conversation had taken place between her mother and her maternal uncle. The victim also identified the accused.

4. After completion of investigation, chargesheet was filed against the accused. Thereafter, charges were framed for commission of offence under Section 18 read with Sections 5(m) and 5(n) of the POCSO Act, and under Sections 376AB and 511 of IPC. After conclusion of trial, the accused was convicted for the commission of offences under Section 18 read with Sections 5(m) and 5(n) of the POCSO Act, and under Section 511 read with Section 376AB IPC, *vide* impugned judgment dated 07.10.2024, and was sentenced on 03.12.2024 to undergo rigorous imprisonment for a period of ten years along with payment of a fine of ₹10,000/- for the aforesaid offences.

5. The learned counsel for the appellant submits that the impugned judgment is based on presumption and conjecture, as the MLC dated 19.02.2022 records that the hymen of the victim was intact, thereby ruling out any penetrative assault. It is argued that the victim's deposition contains material contradictions – in her statement under Section 164 of Cr.P.C., she stated that her mother



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was talking to “an uncle”, whereas in Court she referred to the appellant, indicating that the child was tutored. It is further submitted that the victim herself deposed that other relatives were present in the room, yet none were examined by the prosecution. The alleged bedsheet used by the victim was never seized, and her clothes had admittedly been changed by her mother before medical examination, rendering the FSL findings unreliable. The possibility of tampering with the semen stains on the lower, which remained in the mother’s custody, cannot be ruled out. The learned counsel further argues that the mother (PW-2) admitted she had not witnessed the incident and had only seen the appellant coming out of the room zipping his pants. The grandfather (PW-4) also had no personal knowledge of the occurrence. It is urged that the complaint itself was written in consultation with the Investigating Officer. It is further contended that DW-1, the appellant, had deposed that he had been administered liquor during a family celebration, was heavily intoxicated, and unaware of the events. He was taken upstairs by relatives and later beaten by family members. His testimony remained unchallenged in cross-examination. Reliance is also placed on Section 23 of the Bharatiya Nyaya Sanhita (BNS) to contend that an intoxicated person lacking soundness of mind cannot be held criminally liable. It is further submitted that DW-2, the wife of the appellant, also supported the defence and stated that the appellant had done nothing wrong. The learned counsel submits that there is no eyewitness to the alleged offence, nor did the victim raise any alarm, which clearly indicates



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that no offence was committed. Thus, it is prayed that the impugned judgment be set aside and the appellant be acquitted of the alleged offence.

6. The learned APP for the State, on the other hand, argues that the testimonies of the prosecution witnesses are consistent, credible, and corroborated by medical and scientific evidence. It is contended that the medical findings and FSL report lend full support to the prosecution version and to the testimony of the victim. It is further argued that the minor discrepancies pointed out by the learned counsel for the appellant are insignificant and do not affect the core of the prosecution case. The chain of evidence is complete, and no material infirmity or illegality has been shown in the findings of the learned Trial Court. Accordingly, it is prayed that the impugned judgment and order on sentence call for no interference and the appeal deserves to be dismissed

7. This Court has **heard** arguments addressed on behalf of the appellant as well as the State, has perused the material available on record.

8. In the present case, the appellant was charged for commission of offence under Section 18 read with Section 5(m) and 5(n) of the POCSO Act and under Section 511 read with Section 376AB of IPC for an attempt to commit penetrative sexual assault on a child under twelve years of age, and that these statutory provisions and their penal consequences have been placed before the Learned Trial Court



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and are the basis of the impugned conviction.

9. Before averting to the facts of the present case, this Court notes that Sections 29 and 30 of the POCSO Act create a statutory presumption in favour of the prosecution once the victim testifies to the commission, abetment or attempt of a sexual offence covered by Sections 3, 5, 7 or 9, and that the operation of these presumptions shifts the burden to the accused to rebut the same by raising a plausible and acceptable defence.

10. This Court notes that the foundational facts required to invoke the presumption under Section 29 of the POCSO Act are, (i) that the victim was a child below twelve years of age, (ii) that she testified to the occurrence, and (iii) that the accused was alleged to have committed or attempted to commit the sexual offence.

11. This Court notes that the victim child, who has deposed as PW-1 before the learned Trial Court, has consistently stated that she had gone to sleep in the upper room at about 3:00 AM and that on waking she found her clothes '*gande*' (soiled). The witness had identified the accused in court. No effective suggestion was put to the victim child to the effect that the accused was not present in the room; accordingly, her evidence on presence and the state of her clothes stands unshaken on material points.

12. This Court further notes that the mother of the victim child, PW-2 before the learned Trial Court, has deposed having seen the accused coming out of the room, wherein the victim was sleeping,



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zipping his pants, and that she had observed some substance on the child's clothes. It is further noted that the father of the victim child who has deposed as PW-3 before the learned Trial Court, has corroborated the statement of the complainant that he had seen the accused coming out of the room while closing his zip of the pant he was wearing. These independent testimonies, when read together, establish the presence of the accused at the scene and the incriminating circumstances immediately following the alleged attempt to rape.

13. This Court observes that the forensic evidence that has been placed on record reveals that the DNA profile generated from the stains of a substance found on the lower - clothes worn by the child at the time of alleged incident had matched with the DNA profile of the accused, and this scientific evidence was not rebutted by defence evidence nor was it effectively discredited in cross-examination, before the learned Trial Court. The unchallenged concordance of ocular testimony and forensic report, in this Court's view, materially strengthens the prosecution's case.

14. The learned counsel for the appellant has, *inter alia*, pointed out certain contradictions and omissions in the prosecution case, namely: (i) that the MLC of the victim records her hymen to be intact, which, according to him, rules out any sexual assault; (ii) that the investigating agency failed to seize the bedsheet allegedly used by the victim; (iii) that the mother of the victim had changed the child's



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clothes prior to medical examination, thereby rendering the forensic evidence doubtful; and (iv) that several relatives were present in the house but were not examined by the prosecution.

15. This Court however is of the opinion that the MLC recording an intact hymen does not, in the facts of the present case, negate the possibility of an attempted sexual assault. It is well-settled that the presence or absence of a hymenal tear cannot be treated as conclusive proof of either commission or non-commission of a sexual offence, especially when the charge is one of ‘*attempt*’ under Section 18 of the POCSO Act. The medical findings must be read in conjunction with the totality of the evidence, particularly the presence of semen stains on the victim’s lower garment, which strongly corroborate the prosecution case. In this regard, it would be apposite to refer to the following observations of the Hon’ble Supreme Court in ***Deepak Kumar Sahu v. State of Chhattisgarh***: 2025 INSC 929:

“5.5.6 The credible and reliable evidence of prosecutrix could not be jettisoned for want of corroboration including the corroboration by medical report or evidence. The Court observed in ***Manga Singh (supra)*** that “in absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix”. It was stated that it is well settled that in the cases of rape it is not always necessary that external injury is to be found on the body of the victim.

5.5.7 In ***Wahid Khan vs. State of Madhya Pradesh***, [(2010) 2 SCC 9], this Court repelled the contention of the appellant that since the hymen of the prosecutrix was found to be intact, it cannot be said that an offence of rape has been committed. The Court refused to accept such contention in light of the definition of offence of rape in Section 375 of the Indian Penal Code. It was further observed that it is the consistent view of this Court that even the slightest penetration is sufficient to make out an offence of rape.”



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16. As regards the non-seizure of the bedsheet and the change of clothes by the mother prior to medical examination of the victim, this Court observes that such acts, by themselves, do not create a reasonable doubt about the integrity of the prosecution evidence. The conduct of the mother, who found her nine-year-old daughter's clothes soiled and changed them before taking her to the hospital, appears natural and humanly understandable. Moreover, the forensic report linking the DNA profile of the accused with that of the semen found on the victim's lower garment effectively dispels the suggestion of any break in the evidentiary chain.

17. This Court further notes that the defence's suggestion of manipulation or planting of evidence also remains wholly speculative. No affirmative material was brought on record to show that the exhibits were tampered with or that the investigating agency or the complainant was motivated to falsely implicate the appellant. The accused had full opportunity to adduce independent evidence to establish such tampering but failed to do so. Mere conjectures or remote possibilities cannot displace the statutory presumption under Section 29 of the POCSO Act.

18. The learned counsel for the appellant has also argued that the accused was in a state of intoxication at the relevant time and therefore lacked the requisite intent to commit the offence.

19. In this regard, this Court notes that the defence of intoxication and lack of recollection was raised by the accused in his statement



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under Section 313 of Cr.P.C. as well as in his deposition as DW-1. However, the medical report on record does not record any signs of intoxication or injuries consistent with the accused's version of being beaten or of suffering broken teeth. Thus, the total absence of any medical record in this respect renders this argument implausible and unacceptable.

20. This Court is further of the opinion that even if it is assumed that the appellant was under some level of intoxication, such a plea cannot automatically exonerate his criminal liability. As per settled position of law, intoxication absolves a person only when it is shown that it was of such degree as to render him incapable of forming the necessary *mens rea*. No such evidence has been led in the present case. On the contrary, the presence of the accused at the spot, his conduct immediately thereafter, and the forensic evidence linking his semen to the victim's garments (lowers) conclusively establish his role in the commission of alleged offence.

21. As regards the contention of the learned counsel for the appellant that certain witnesses, including other family members allegedly present in the house at the time of the incident, were not examined by the prosecution, this Court is of the view that non-examination of such witnesses, who are only peripheral in nature, does not vitiate the prosecution's case when the testimonies of the material witnesses – the victim and her parents – are found to be cogent, credible, and consistent, and when their version stands duly



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corroborated by the medical and forensic evidence on record.

22. This Court also is of the view that the appellant herein has taken shifting and mutually inconsistent defences at various stages – i.e. from complete denial of the alleged incident, to a plea of intoxication and lack of memory, and even an alleged dispute with the family members. Such contradictory stands, when weighed against the consistent account of the victim and her parents and the scientific evidence connecting the appellant's DNA with the semen detected on the victim's garment, erode the credibility of the defence and fail to discharge the reverse onus placed upon the accused under Section 29 of the POCSO Act.

23. Accordingly, this Court finds that the learned Trial Court has committed no error disbelieving the version of defence and accepting the prosecution evidence, which inspires confidence and remains unshaken on material particulars.

24. This Court notes that the elements constituting the offence of attempt to commit penetrative sexual assault, in the context of a child of about nine years of age, are made out on the evidence – there was an act towards commission (presence, attempt and genital contact evidenced by semen), the requisite territorial and factual nexus is established, and the accused's intention to commit the offence is borne out by the surrounding facts and forensic connection.

25. This Court observes that the conclusions drawn by the learned Trial Court as to credibility, motive (or the absence of a viable



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motive for false implication), and the cogency of the prosecution's chain of evidence are sustainable, and there is no available material to persuade this Court that the conviction of appellant is rested on incorrect appreciation of evidence.

26. In view of the foregoing, the requirements for upholding conviction under Section 18 read with Section 5(m)/(n) POCSO Act and Section 511 read with Section 376AB of IPC are satisfied beyond reasonable doubt.

27. Thus, considering the consistent and credible testimonies of the victim and her parents, the corroborative forensic evidence linking the appellant to the offence, and the failure of the appellant to substantiate any plausible defence or rebut the statutory presumption under Section 29 of the POCSO Act, this Court finds no infirmity in the findings recorded by the learned Trial Court.

28. The prosecution has successfully established the appellant's guilt beyond reasonable doubt, and the conviction and sentence awarded warrant no interference by this Court.

29. Accordingly, the present appeal, along with pending application, is dismissed.

30. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
OCTOBER 27, 2025/ns