



2025:DHC:11984



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

% Reserved on : 31.10.2025
Pronounced on : 24.12.2025
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+ **CRL.A. 135/2020**

RAMESH

.....Appellant

Through: Mr. Mohit Verma and Mr. Hritik Verma,
Advocates

versus

THE STATE (N.C.T OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Priyanka
Mr. Sidhant Kumar, Amicus Curiae with
Mr. Parth Yadav, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. Having been convicted under Section 376(2)(i) IPC as well as Section 363 IPC, the appellant herein was sentenced to undergo RI for a period of 30 years along with payment of fine of Rs.10,000/-, in default whereof he would undergo 3 months SI, for the offence under Section 376(2)(i) IPC; and RI for a period of 7 years along with payment of fine of Rs.8,000/-, in default whereof he would undergo 2 months SI, for the offence under Section 363 IPC. The present appeal has been preferred by the appellant seeking setting aside of the

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aforesaid.

2. The investigation was set into motion when a call at 100 number was received on 15.05.2014. It was informed that one boy had “misbehaved” with a girl and he had been apprehended at *C-II/2015* near *Banda Park, Badi Masjid, Madangiri, New Delhi*.

3. DD No. 30(A) came to be recorded and on receipt of the said information, the police team headed by W/SI *Komal Rathi* (I.O.) reached the spot. The accused was found apprehended by public persons. The victim/minor child aged 3 years, as well as her uncle, also met the I.O. The statement of the child victim’s uncle was recorded, who alleged that on Sunday at about 4:40 PM, he was taking rest when his niece, i.e., the victim, along with her sister, Baby ‘A’, were playing outside the house. After some time, Baby ‘A’ came inside weeping. On being asked, she told that the child victim had been taken away by someone. He immediately rushed out and asked some persons sitting in the park if they had seen any child with a man. At that time, he heard the crying of a child from a dilapidated room near the park, and when he reached there, he found the child victim lying on the floor and the accused standing near her. On seeing the complainant, he got terrified and started adjusting his clothes. The complainant alleged that the accused had misbehaved with the child. The child victim was taken for medical examination and her statement under Section 164 Cr.P.C. also came to be recorded. The exhibits seized during investigation were also sent for forensic examination. On completion of investigation, the chargesheet came to be filed under Sections 363/354 IPC and Section 8 POCSO but charges were initially framed under Sections



363/354/376/367 IPC and Section 8 POCSO. The accused pleaded not guilty and claimed trial.

4. The prosecution, in support of its case, examined a total of 19 witnesses; the material witnesses being the child victim herself, examined as PW-1; her sister, Baby 'A', examined as PW-4; the victim's mother, examined as PW-2; and the child victim's uncle, examined as PW-8. Dr. *Richa Vatsa*, who was examined as PW-5, had examined the child victim and exhibited her MLC. One public person, namely *Manoj*, was examined as PW-6. The appellant's medical examination report was exhibited through Dr. *Nidhi Jarodia* (PW-13) as well as through Dr. *Asit Kumar Sikri* (PW-7). The FSL report was exhibited through *L. Babyto Devi*, Assistant Director, Biology, FSL, Rohini, who was examined as PW-17. The I.O of the case, SI *Komal Rathi*, examined as PW-15. The learned Metropolitan Magistrates who had recorded the statements of the child victim and her sister were examined as PW-9 and PW-10 respectively. The other witnesses were police officials who deposed on various aspects of the investigation.

5. Learned counsel for the appellant raised multifold contentions. It was contended that though the appellant has been convicted for the offence under Section 376(2)(i), even on a reading of the deposition of the child victim, no case under the aforesaid Section is made out, as the child victim had only stated about the appellant slapping her, taking off her underwear, and pinching her in the vaginal area. It is next contended that the Trial Court amended the charge to under Section 376(3) IPC and Section 6 POSCO on 11.11.2019, on an application filed by State, without due opportunity being given to the appellant.



It was stated that Section 376(3) IPC was not even existing in the statute book on the date of the alleged offence. Lastly, it is contended that even the MLC and the FSL report do not support the case of prosecution.

6. The contentions are opposed by the learned APP for the State as well as Mr. Sidhant Kumar, learned *Amicus Curiae* appointed for the victim. Learned *Amicus* contended that even if the victim had not stated about the offence of rape being committed, the medical examination report, as per which the hymen was found torn, is sufficient to uphold the conviction under Section 376 IPC by placing reliance on the decision in State of Rajasthan Vs. Chatra¹. Learned *Amicus* submitted that in the absence of categorical testimony about the allegation of rape, the circumstantial and medical evidence pointing to the offence, if available, can be relied upon to convict the accused. Though the appellant did not examine any defence witness, he claimed false implication in his statement recorded under Section 313 Cr.P.C.

7. During investigation, the age proof of the child victim was calculated and exhibited as Ex. PX1. The statement of the appellant was recorded on 22.10.2019 under Section 294 Cr.P.C., in which he did not dispute the age of the child victim. Even in the present appeal, the age of the child victim remains uncontested, and hence the victim is held to be a “child” within the meaning of Section 2(d) POCSO.

8. The Trial Court, after putting preliminary questions to the child victim and being satisfied with her competency, permitted her examination; and the same was recorded without oath. The child victim stated that one day an uncle

¹ (2025) 8 SCC 613



took her to the park after taking her in his lap. He slapped her, took off her underwear and also pinched her. She pointed to her vaginal area and stated that the accused had pinched her there. He had also threatened her. Her mother had taken her to Court, where her statement was recorded. Her statement under Section 164 Cr.P.C. was exhibited as PW-1/A. The child victim also identified the appellant.

In cross-examination, the counsel for the appellant had pointed that in her statement under Section 164 Cr.P.C., the child victim had pointed towards her anus area and claimed that she was scratched there. On this, a Court question was put to the child victim, asking her as to where the accused had pinched her. The child victim pointed towards her anus area. In further questions put to her on behalf of the appellant, she stated that the accused had taken her to the park in the evening when she was playing outside her house with other children. She denied the suggestion of tutoring. She also denied that her father used to take liquor with the appellant or that her uncle was not liking the said fact or that he had threatened the accused not to do so else he would be implicated in a false case. She was confronted with her statement under Section 164 Cr.P.C., where she had not stated that any threat was extended by the appellant.

9. The child victim's sister, Baby 'A', aged 8 years, was examined as PW-4. The Trial Court, before proceeding to record her statement (without oath), put preliminary questions to her and was satisfied with her competency to depose. She stated that she had two sisters, one of whom is the child victim. On the date of incident, when she woke up, she saw her sister playing with other



children in the street outside their house. At that time, one person who was residing nearby came and showed Rs.10/- currency note to the child victim. After giving the said note to the child victim, he took her in his lap and went away. She followed the person up to the grocery shop and then ran back to the house to inform her uncle. The uncle immediately went out in search of the child victim. She had seen the said person taking the child victim towards the “*Bada Park*”.

In her cross examination, she stated that when a Rs.10/- note was shown to the child victim, she was standing near her house. Four other children were also playing nearby, and 2-4 women were also sitting near that place. The grocery shop was open at the time. She stated that the women sitting nearby had not seen the accused taking away the child victim. She denied deposing in Court on the instance of her mother or uncle.

10. The victim’s uncle, deposing as PW-8, stated that on the day of the incident he was resting in his house, when his niece, Baby ‘A’, came and told him that one person had taken away the child victim from the street. She further told her that the said person had taken the child victim towards “*Bada Park*”. He rushed towards the “*Bada Park*” and found some boys playing. On being asked, they denied having seen any person with a minor girl. At that time, he heard the sound of crying coming from a dilapidated structure adjacent to the park. He rushed towards the said place, and the boys that were playing in the park also followed him. On reaching the structure, he saw the child victim lying on the ground and the appellant standing upright, trying to adjust his clothes. He slapped the appellant; and in Court, he correctly identified him. He further



deposed that public persons had gathered at the spot and that one of them had called the police.

In cross-examination, he was confronted with his earlier statement wherein he had not stated that the accused had taken the child victim towards “*Bada Park*”. He stated that the appellant was known to him as he was residing in the same street that the witness had been residing in since childhood. He stated that he did not know if his brother, i.e., the child victim’s father, used to take drinks with the appellant and also stated that he had never objected to the same. He denied the suggestion that as the appellant and the victim’s father had continued to take drinks together despite his objections, the appellant was falsely implicated.

11. The child victim’s mother, during her deposition as PW-2, stated that she had taken the child victim to the hospital, accompanied by police officials, and the victim’s statement under Section 164 Cr.P.C was recorded by the concerned Judge. She, in her cross-examination, admitted that her husband and the appellant used to do the work of whitewashing. Both of them used to take alcohol together and that her brother-in-law, i.e., the victim’s uncle, had objected to the same on a number of occasions. She denied that she had tutored the child victim to depose in a particular manner.

12. The public person who had first met the child victim’s uncle in the “*Bada Park*”, namely *Manoj*, was examined as PW-6. He deposed that though he did not remember the day and month, but on the day of the incident in the year 2014, he was playing cricket in the park. There was a public toilet adjacent to the park and at about 1:00 or 2:00 PM, he saw a crowd of public persons



there. He saw that one male person along with one female person were searching for a girl child. They asked him if he had seen any person who had brought the girl child to the park, to which he said “*dhoond lo*”. On a question being put to him regarding his reply to the question asked by the said persons, he answered that he did not reply as to whether or not he had seen anyone. He said that he had not seen any person with a girl child in the park; and thereafter, he had started playing with his friends. When he saw public persons beating one person near the toilet, he called the police. He identified the appellant as the person who was given beatings by the public.

As the witness was not deposing in accordance with his statement recorded during investigation, the public prosecutor was permitted to put leading questions. He admitted that the incident may have occurred on 15.05.2014. He denied the suggestions that he had seen the accused committing any indecent act with the victim. He also denied that on seeing the same, he had made a call at 100 number. He further denied the suggestion that the police had recorded his statement in this regard. He denied the suggestion that he had been won over by the accused.

In cross-examination on behalf of the appellant, he stated that he had never seen the appellant prior to the day of incident. On that day, the appellant was surrounded by public persons and given beatings.

13. Dr. *Richa Vatsa* (PW-5), who exhibited the MLC of the child victim, deposed that on genital examination of the child victim, she found a scratch mark present on the victim’s right forearm, just above the wrist. She also stated that a contusion was found present on medial side of the child victim’s labia



majora all around hymen. The hymen was torn. The vaginal swab could not be collected as the child victim was not comfortable.

In cross-examination, she admitted that in the MLC (Ex. PW-5/A) she had not mentioned the cause of hymenal tear. She further admitted that a contusion may be caused due to sexual abuse or other injuries that may be caused due to a fall. She also admitted that it is not necessary for the hymen to be torn in all cases due to sexual assault on the victim.

14. The FSL report was exhibited through the testimony of Ms. *L. Babyto Devi*, Assistant Director, Biology, FSL, Rohini, examined as PW-17. She deposed that no male DNA profile could be generated from the exhibits of the child victim.

15. The MLC of the appellant was exhibited through Dr. *Nidhi Jarodia*, examined as PW-13, who stated on examination that she observed breath of alcohol on examination of the appellant. She also took a blood sample of the appellant.

16. Dr. *Asit Kumar Sikri*, examined as PW- 7, stated that on 16.05.2014, the appellant was brought for a potency test. He had prepared an MLC of the appellant, which he exhibited as Ex. PW-7/A.

17. The I.O. of the case, SI *Komal Rathi*, during her deposition as PW-15, stated that on the day of incident, she had reached the spot and found the child victim in the company of her uncle. The appellant was also apprehended from the spot. He was in an injured condition. She, as well as other police officials examined as prosecution witnesses, deposed on various aspects of the investigation carried out by them.



18. The appellant, in his statement recorded under Section 313 Cr.P.C., denied the prosecution case. He stated that he and the father of the child victim used to work as painters and also take alcohol together. On the day of the incident, he and the father of child victim were taking alcohol in the dilapidated room near the park. The child victim had followed her father to the park. At that time, the father of the victim had gone to get more liquor, and in the meantime, the uncle of the child victim came along with 4-5 persons and blamed the appellant for bringing the father of the victim as well as the victim to the park. When the victim's uncle came, the victim was standing at some distance from him. The uncle of the victim started accusing him of bringing the victim along with him and started giving beatings to him. The other public persons gathered there also started giving beatings to him to the extent that he became unconscious. He stated that then he was taken to his house.

19. The law on the appreciation of the testimony of a child victim is well settled. The testimony of the victim of a sexual assault does not require any corroboration. The only precaution which the Court requires to bear in mind while assessing the testimony of a child victim is that it must be reliable, that the demeanour of the witness must be like that of any other competent witness, and that there is no likelihood of the victim being tutored. Recently, in State of Madhya Pradesh vs. Balveer Singh², the Supreme Court laid down various principles for assessing and appreciating the testimony of a child victim.

20. Though the child victim had only stated about being pinched on her vaginal/anal area by the appellant, the Trial Court apparently framed a charge

² 2025 SCC OnLine SC 390



for rape based on the MLC report of the victim. The deposition of the child victim recorded in Court, however, did not point towards her being raped. Though in her Court deposition the child victim had initially stated that she was pinched around the vaginal area, she later clarified that she was pinched in the anal area. The closest witness, stated to have seen the incident, i.e., the independent person *Manoj*, had turned hostile. In his testimony, he denied seeing the incident despite leading questions in said regard being put to him by the learned APP for the State. However, he admitted to having seen the appellant at the spot and also admitted the factum of beatings being given to the accused by public persons. The appellant's presence at the spot is further fortified by the victim's uncle, who also deposed as to having seen the child victim lying on the ground and the appellant standing upright, adjusting his clothes. However, the child victim's uncle admittedly did not witness any offence being committed. The child victim's sister, Baby 'A', deposed as to seeing the appellant take away the child victim. She also identified the appellant in Court.

21. From the above, it is clear that it was the appellant who had taken away the child victim to "*Bada Park*" and committed the offence of pinching her, which finds corroboration in the medical evidence on record. Though the appellant has taken a defence of false implication, stating that he had been falsely implicated due to him taking liquor with the child victim's father despite objections by the victim's family, the appellant's presence at the spot has also been spoken of by an independent person, *Manoj*. The appellant has not been able to discredit this independent witness.



22. At this stage, this Court also takes note of the fact that after the cross-examination of the material witnesses, the Trial Court, on an application for the same being filed by the State, altered the charge from Section 8 POCSO to Section 6 POCSO, just before the appellant's statement under Section 313 Cr.P.C. came to be recorded. No opportunity was given to the appellant to re-examine the witnesses. Further, a perusal of the proceedings of the Trial Court shows that on the said day, the Bar was on strike, and the application came to be allowed only in the presence of the accused. The order further refers to the contentions made by the learned counsel for the accused. Though the appellant has claimed prejudice on this aspect; however, this Court is of the considered opinion that as the charge initially framed was under Section 376 IPC, the amendment of charge from Section 8 to Section 6 POCSO did not cause any prejudice to the appellant. Although it is contended that the order was not passed in the presence of regular counsel, the same is not apparent from a reading of the order. The framing of charge under Section 376(3), however, is improper, as the said Section was inserted in the Act with effect from 21.04.2018. Vide the said sub-Section, minimum punishment was enhanced to 20 years. Notably, as on the date of the incident, the minimum punishment under Section 376 IPC, as well as under Section 6 POCSO, was 10 years. The Trial Court clearly committed an illegality, on this aspect.

23. Coming back to the testimony of the victim, her sister, and the other evidence on record, the offence of Section 363 IPC against the appellant stands proved. Coming to the contention that on reading the statement of the child victim recorded during investigation and her Court deposition during trial, no



case under either Section 376 IPC or Section 6 POCSO is made out. The child victim had stated about being pinched in the anal area, which would make out a case under Section 9 POCSO, punishable under Section 10 POCSO.

24. The learned APP for State and learned *Amicus Curiae* have contended that even in the absence of statement of the victim satisfying the ingredients of Section 6 POCSO, the medical report can be relied upon to uphold the conviction for rape, and in this regard they have relied upon the MLC of the child victim as well as the forensic examination report. A perusal of the forensic examination report shows that it does not support the case of prosecution on the aspect of rape. Concededly, though the blood of the child victim was found on her underwear and semen stains of the appellant were found on his own underwear, no male DNA profile was generated from the blood detected on the vulval swab & smear of the child victim as well as the underwear of the child victim.

25. Learned *Amicus Curiae* as well as learned APP for State have relied on the decision of the Supreme Court in *Chatra* (supra). A perusal of the aforesaid decision shows that in the said case, the child victim in her Court deposition had remained silent, on being questioned had only shed tears, and nothing regarding commission of the offence in question was elicited in her testimony. The Court noted the testimony of the other witness, who had seen the accused bent down and “seated” upon the victim. The garment worn by the accused was found in loose, open condition and he ran out on seeing the concerned witness. The Court further noted that there was injury, not only on the genital part of the victim, but also on the accused. In these circumstances, the Supreme Court set



aside the decision of acquittal by the High Court and convicted the accused.

26. In the present case, the victim has consistently stated about only being pinched. Pertinently, there is no other witness who claimed to have seen the incident. As noted above, the public person, *Manoj*, turned hostile. The victim's uncle had only stated about seeing the victim lying on the ground and the appellant standing upright, adjusting his clothes.

27. The incident is alleged to have occurred at about 4:40 PM on 15.05.2014. The appellant was arrested at the spot and taken for his medical examination thereafter. His MLC was prepared in the intervening night of 15/16.05.2014 itself, and the same reveals that upon local examination, smegma was found present on his penis.

28. At this stage, a gainful reference may be made to the decision in Aman Kumar and Ors. Vs. State of Haryana³, wherein the Supreme Court, holding that penetration is *sine qua non* for the offence of rape, held as under:

“7. ... In rape cases, if the gland of the male organ is covered by smegma, it negatives the possibility of recent complete penetration. If the accused is not circumcised, the existence of smegma around the corona gland is proof against penetration, since it is rubbed off during the act. ...”

29. The forensic report also does not lend any support to the allegation of rape.

30. On a cumulative appreciation of the evidence on record, this Court is of the considered opinion that no offence under Section 376(3) or Section 6 POCSO is made out. The appellant's conviction is accordingly altered to

³ Decision dated 10.02.2004 in Criminal Appeal No. 1016 of 1997.



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Section 9 POCSO, punishable under Section 10 POCSO, and he is sentenced to rigorous imprisonment for a period of 7 years for the same. The sentence of fine and default sentence is however, maintained.

31. The sentence under Section 363 IPC is upheld. The sentences of fine and default sentences are also upheld.

32. In case the appellant has already undergone the substantive sentence as well as the default sentence, he shall be released immediately unless required in connection with any other case.

33. Before parting, this Court records its appreciation for Mr. Sidhant Kumar, the learned *Amicus Curiae* appointed to represent the victim, who ably assisted the Court.

34. A copy of this judgment be communicated to the Trial Court and the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 24, 2025

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