



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

% Reserved on : 04.09.2025
Pronounced on : 08.09.2025

+ **CRL.A. 470/2020 & CRL.M.A. 3318/2023**

MOHD. RAJU @ RAJUAppellant
Through: Mr. Kanhiya Singhal, Mr. Prasanna,
Mr. Rishabh Bharadwaj and Ms.
Avantika Shankar

versus

STATE NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State, Mr.
Nitin Saluja and Mr. Sushrut Sharma,
for respondent no. 2

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgement of conviction dated 29.01.2020 whereby the appellant was convicted under Section 6 read with 5(j) of POCSO Act and order on sentence dated 04.02.2020 passed by the ASJ (POCSO Act), South East, Saket Courts in SC No. 1811/2016.

Vide order on sentence, the appellant was directed to undergo rigorous imprisonment for a period of 14 years and also to pay a fine of Rs.1,500/- for offence punishable under Section 6 read with section 5(j) of POCSO Act and in default of payment of fine, he was directed to undergo simple imprisonment for a period of six months.



2. The prosecution case, in a nutshell was that on 13.05.2014, information was received in P.S. Govind Puri that the prosecutrix, who was minor and pregnant had been admitted in ESI hospital by her parents vide MLC number 456/2014 which was recorded vide DD no. 11-A and the same was entrusted to SI Jitender and MLC of the prosecutrix was handed over to him. The statement of the prosecutrix was recorded in the hospital. She stated that the appellant was her *fufa (Uncle)* who lived nearby and his meals were prepared at her house and she used to deliver them sometimes, along with her sister. About 2-2½ months prior, the appellant called her and her sister for cleaning the utensils at his house. When they reached his house in the evening, after they washed the utensils, the appellant sent prosecutrix's sister to buy cigarettes for him and then he committed rape upon the prosecutrix. He also threatened not to tell about the incident to anyone. However, after some time the prosecutrix's menstruation stopped and she became pregnant, whereafter she disclosed the incident to her parents.

3. Vide order dated 09.10.2015, charges were framed under Section 6 read with 5(j) of POCSO Act, to which the appellant pleaded not guilty and claimed trial. During the trial, in total, fourteen prosecution witnesses were examined. The prosecutrix 'Y' was examined as PW1, her sister 'T' who had accompanied her as PW2 and the mother of prosecutrix was examined as PW3. Mr. *Jarnail Singh*, the landlord of the appellant was examined as PW9. The IO SI *Kala Joshi* was examined as PW14. The rest of the witnesses were formal witnesses who deposed about various aspects of the investigation. In defence, the statement of the appellant was recorded under section 313 CrPC, wherein he denied the prosecution's case, and stated that he had been falsely implicated in the present matter.



4. Learned counsel for the appellant submits that the appellant is innocent and the Trial Court has erred in convicting him. It is submitted that there are material contradictions between the prosecution witnesses. While the prosecutrix stated that she was washing utensils inside the house, the IO had deposed that there was no such place inside. It is further stated that though the prosecutrix named one *Sameer* in her statement under Section 164 CrPC, however no investigation was carried out qua him. It is contended that the prosecutrix got pregnant because of this *Sameer* and not the appellant.

Alternatively, it is pleaded that if this Court is inclined to dismiss the appeal on merits, the appellant be released on the period already undergone. It is submitted that the appellant has undergone more than 12 years and 8 months including remission. Reliance is placed on the decision of Supreme Court in Sonadhar v. State of Chattisgarh, decided on 06.10.2021 in **SLP (Crl) No. 529/2021**. It is submitted that the appellant belongs to poor strata of society and needs to provide for his wife and six children and that he has no criminal antecedents.

5. Learned APP for the State, duly assisted by the learned counsel for the prosecutrix, has supported the impugned judgement. It is submitted that the prosecutrix has given a clear and consistent deposition supporting the case and her version is corroborated by the FSL report of the aborted foetus, which shows that the appellant was the father. It is submitted that the contradictions pointed out are minor and do not affect the prosecution case.

6. The victim being a minor was not disputed before the Trial Court. The prosecutrix was examined as PW1. She was aged around 14 years at the time of the incident. She supported her initial complaint that she and her



sister were called to the appellant's house for cleaning of utensils. The appellant sent her sister away on the pretext of buying cigarettes and removed the prosecutrix's leggings and committed rape on her. When her sister returned they went home and she did not disclose this incident to anyone. Later, when she did not get her periods, she disclosed the incident to her mother. She also deposed that though she didn't remember the exact date, even prior to this incident the appellant used to touch her body. She identified the appellant in court and stated that he is her uncle who had committed rape on her.

7. Pertinently, the prosecutrix had not supported the prosecution story in her Statement under Section 164 Cr.P.C wherein she stated that she had met her friend *Sameer* who took her away and offered her cold drink and sweets whereafter she got unconscious and he dropped her home. She found out that she was pregnant when her health had worsened. Naturally, she was confronted with this statement at the time of her court deposition where she stated that she was pressurised by the wife of the appellant and his brother *Guddu Chacha* to change her statement and it was *Guddu Chacha* who asked to introduce *Sameer* in her statement. In her cross examination, suggestion was made to her that the appellant used to earn more than her father and support them financially, which she denied. She denied having any friendship or physical relations with *Sameer*.

8. The sister of prosecutrix was examined as PW2. She corroborated prosecutrix's statement on all material aspects, such as going to the appellant's house to wash utensils on the date of the incident and being sent away by the appellant to buy cigarettes. She deposed that after returning, she saw that the prosecutrix was afraid and they returned home. She correctly



identified the appellant. In her cross, she stated that she had never heard that her father took any money from the appellant.

9. The mother of the appellant was examined as PW3. She deposed that in May 2014 she and her husband had taken the prosecutrix to ESI hospital, Okhla wherein they were informed that she was two months pregnant and they were referred to ESI hospital at *Basai Darapur* where the pregnancy was terminated. She had stated that the prosecutrix had told her that it was the appellant who committed the wrong act with her. She also denied the suggestion that her husband used to borrow money from the appellant. The father of the prosecutrix, examined as PW4, deposed on similar lines.

10. The MLC of the prosecutrix was exhibited as PW7/A and proved by Dr. Lata, Sr. Resident, Department of Obstetrics & Gynecology, ESI Hospital, Basai Darapur, New Delhi (PW7). The MLC records in the history that the prosecutrix was brought in by her parents on 13.05.2014 and alleged sexual assault by her uncle (appellant) 2 months back at her uncle's place. It was further recorded that the patient and parents wanted Medical Termination of Pregnancy (MTP). PW7 deposed that the pregnancy was terminated on 16.05.2014 and 3 samples of the foetus were taken out of which two were handed over to the IO and one was sent to the Pathology lab of the hospital.

11. Ms. Poonam Sharma, Assistant Director (Biology), FSL Rohini, was examined as PW11. She deposed that the DNA fingerprinting profiling (STR analysis) performed on the exhibits provided were sufficient to conclude that Ex. 1 (blood sample of prosecutrix) and the alleles from the source of Ex.2 (blood sample of appellant) are biological mother and father of the source of Ex. S-2 (product of conception in normal saline.) In other



words, the DNA present in the sample of the aborted foetus matched with the appellant as well as the prosecutrix. Though a barrage of technical questions regarding the technique used were put to her during cross examination, her answers to the same were satisfactory and did not affect her credibility or credibility of the FSL report.

12. The appellant has contended that there are material contradictions in the statement of prosecution witnesses. Though, the IO in her cross examination has stated that the victim told her that she had washed utensils outside the room, both PW1 and PW2 have stated that the place of washing utensils was inside the room. PW9, the landlord deposed that the tenants used to wash the utensils inside the room itself and there was no separate arrangement. In my view, the same is insignificant and does not affect any vital part of the prosecution case. Though the appellant had taken a defence that the father of the prosecutrix had taken Rs. 60,000/- from him, however no proof was furnished to substantiate this contention. There was no mention of any *Sameer* in his statement under Section 313 Cr.P.C. either. Moreover, the prosecutrix has explained his introduction of said name in the statement under Section 164 on account of pressure from the appellant's relatives.

13. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts. A three Judge Bench of the Supreme Court in *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat*¹ has held that section 29 of the POCSO Act comes into play once the



foundational facts are established. 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.”

14. Gainful reference in this regard may also be made to the decision of a Co-ordinate Bench of this Court in Veerpal v. State², wherein it was held as under:-

“20. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability.”

In view of the categorical deposition of the prosecutrix, corroborated in material terms by PW2, and the MLC as well as FSL report, the prosecution has been able to lay the foundation of the facts and under and thus brought into play Section 29 of the POCSO Act, and that presumption the appellant has miserably failed to rebut. He has been unable to shake the credibility of any of the witnesses who supported the prosecution case by thorough examination or pointed any fatal gaps in the prosecution case or explained the findings in the MLC or the FSL report. The defence taken by the appellant is untenable and rightly discredited by the Trial Court.

¹ (2025) 2 SCC 399

² 2024 SCC OnLine Del 2686



15. However, Vide CRL.M.A. 3318/2023, the appellant has prayed for release on period undergone. In the said application it is stated that the appellant is working as a *Sahayak* in the Tailoring Section, earning around Rs 7,000/- and that his family comprises of his wife and 6 children who are residing at his native place in Bihar. Subsistence of the family is based on income from selling goats and goat milk by his wife and his elder son working part time in a mobile shop.

16. The appellant has faced trial since 2014. A perusal of the nominal roll dated 28.08.2025 would show that the appellant has undergone more than 12 years and 8 months, including remission. He is working as a *Sahayak* and his jail conduct is stated to be satisfactory. Nothing has come on record to show any other involvements of the appellant.

17. The law with regard to release of the appellant in cases where the convict has undergone more than half of the sentence was laid down by the Supreme Court in Sonadhar v. State of Chhattisgarh decided on 06.10.2021, in **SLP (CRL)No. 529/202**. The relevant portion of the same is extracted hereinafter:-

“We thus issue the following directions:

a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.

b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.

c) We are of the view that in fixed term sentence cases, an endeavour be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their



infractions and agree to disposal of the appeals on the basis of sentence undergone.

d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts. Our aforesaid additional directions are based on a premise that at times if a convict has actually done of what he is accused of and he is remorseful, he may be willing to accept his acts and suffer a lesser sentence. We make it clear that the objective is not to compel or extract acceptance from such convicts depriving of the right of appeal. "

18. Having regard to the aforesaid facts and the law discussed as above, it is evident that the appellant has undergone a substantial part of his sentence. This Court is, therefore, of the opinion that the ends of justice would be met if the substantive sentence awarded to the appellant is reduced to the period already undergone. However, the sentence of fine of Rs.1500/- imposed by the Trial Court, as well as the default sentence in case of non-payment, shall stand maintained.

19. The appeal is partly allowed to the aforesaid extent. The appellant is directed to be released from jail forthwith, subject to him depositing the fine amount within 2 weeks, failing which, he would be serve his default sentence. CRL.M.A. 3318/2023 is also disposed of in the above terms.

20. A copy of this order be communicated to the Trial Court as well as to the concerned Jail Superintendent, for information and necessary compliance.

**MANOJ KUMAR OHRI, J
(JUDGE)**

SEPTEMBER 08, 2025

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