



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ CRL.A. 761/2025 & CRL.M.(BAIL) 1183/2025

T.M ZHYMES

.....Appellant

Through: Ms. Neha Kapoor and Mr. Kashal
Mehta, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Hitesh Vali, APP for the State
along with SI Amisha Kumari, PS SJ
Enclave, N.D.

Ms. Liyi Manli Noshi, Ms. Shagun
Pahashar, Mr. Dani Uja and Ms.
Anailu Hakuag, Advocates for the
Complainant.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. This appeal under Section 415 of the Bharatiya Nagarik Suraksha Sanhita¹ (corresponding to Section 374 of the Code of Criminal Procedure, 1973²) arises from SC No. 7729/2016 relating to FIR No. 93/2016 dated 27th January, 2016, registered at P.S. Safdarjung Enclave for the offence under Section 363 of the Indian Penal Code, 1860³. By judgment dated 30th

¹ "BNSS"

² "CrPC"

³ "IPC"



November, 2024, the Additional Sessions Judge (SC – POCSO), South District, Saket Courts, New Delhi has convicted the Appellant under Sections 376(2)(i) and 366 of IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012⁴. By a separate order dated 24th February, 2025, the Appellant has been sentenced to rigorous imprisonment for fourteen years and a fine of INR 50,000/- (in default, simple imprisonment for five months) for the offence under Section 376(2)(i) IPC and rigorous imprisonment for ten years with a fine of INR 10,000/- (in default, one month's simple imprisonment) for the offence under Section 366 IPC. The sentences were directed to run concurrently.

FACTUAL MATRIX

2. The case of the prosecution is as follows:

2.1. On 27th January, 2016, at about 10:06 PM, information regarding a missing girl was received at P.S. Safdarjung Enclave. The inquiry was marked to ASI Rajkumar who, along with Ct. Sanjay, reached the spot and met the Complainant (the victim's cousin). The Complainant reported that the victim, a minor 'B' aged about 14 years, had gone to the market around 6:00 PM and had not returned.

2.2. FIR under Section 363 IPC was registered and investigation commenced. The child's particulars were uploaded on ZIPNET, and hue-and-cry notices were circulated. On 28th January, 2016, while the police and the Complainant were near Humayunpur Red Light reviewing CCTV footage, the Complainant saw the victim on the road. She was taken to hospital for medical examination and inquiry. The doctor collected exhibits which were seized by the Investigating Officer. In her 161 CrPC statement,

⁴ "POCSO"



the victim stated that she was taken in a red car to an unknown location, wrongfully confined, administered an unknown substance, and sexually assaulted, before being dropped near Humayunpur Red Light. She also produced a handwritten slip allegedly given by the assailant, containing a mobile number and an e-mail ID, which was seized.

2.3. CDR of the mobile number written on the slip were obtained and verified, whereafter the Appellant was arrested on 3rd February, 2016. On the same day, the victim was produced before the Metropolitan Magistrate and her 164 CrPC statement was recorded. Based on investigation, Sections 328/376/354-B/368 IPC and Sections 4/6 of the POCSO Act were added.

2.4. On 19th December, 2017, charges were framed against the Appellant under Sections 366/368/34/376(2) IPC and Section 6 of the POCSO. The Appellant pleaded not guilty and claimed trial.

2.5. The Appellant admitted various documents under Section 294 CrPC, as tabulated below:

Ex. No.	Document / Description	Date	Author / Issuer
PX	FIR No. 93/2016 (registration record)	—	HC Kanwar Singh
PX-1	DD No. 41-A (reg. 27th January, 2016)	27 th January, 2016	—
PX-2	MLC of accused No. 23369/2016	3 rd February, 2016	Dr. Wasim Saifi
PX-3	Potency test report of accused	3 rd February, 2016	Dr. Jitender Pratap Singh
PX-4	Proceedings of recording victim's Section 164 CrPC statement	3 rd February, 2016	Metropolitan Magistrate
PX-5	CDR of mobile No. 80145-71493 (27 th –30 th January, 2016)	27 th –30 th January, 2016	Service provider
PX-6	CAF for mobile No. 80145-71493	—	Service provider
PX-7	Certificate under Section 65B, Evidence Act	—	Authorised officer
PX-8	Seizure memo: Maruti Alto HR-	—	Investigating Officer



Ex. No.	Document / Description	Date	Author / Issuer
	26-AY-0938		
PX-9	Reading certificate (Children Academy, Manipur)	—	Headmaster, Children Academy
PX-10	Attested admission/withdrawal register (DOB: 13th July, 2002)	—	Children Academy (attesting authority)

2.6. In view of these admissions, the Court, on 27th April, 2018, dropped corresponding formal witnesses.

2.7. The prosecution then examined 15 witnesses:

PW. No.	Name / Description	Role / Deposition
PW1	The Prosecutrix	Victim; alleged sexual assault; statement under Section 164 CrPC; identified accused.
PW2	Complainant/Cousin of victim	Reported victim missing; present when victim found; present at hospital; confirmed slip containing accused's details to IO.
PW3	Ct. Roshan	Took victim hospital; confirmed medical examination of victim and seizure of slip
PW4	Dr. Nishi Choudhary, Safdarjung Hospital	Proved MLC and MLE report of sexual violence; saw Dr. Swati Gupta prepare MLC and confirmed her signature and writing.
PW5	Ct. Satender Kumar	Took accused for medical exam and potency test; confirmed receiving accused's MLC.
PW6	Ct. Prem	Participated in investigation and arrest of accused; confirmed his disclosure statement.
PW7	D.S. Paliwal, Sr. Scientific Officer (Biology), FSL Rohini	Concluded DNA profile generated from victim's white top (exhibit 3b) was similar to DNA profile of accused; proved report and genotype data of exhibits.
PW8	ASI Raj Kumar	Got FIR registered; messaged regarding the victim missing on ZIPN; present when victim recovered; seized paper slip; present in arrest of accused.
PW9	Rajiv Sharma, Owner of Alto	Exchanged his Alto with Ford on 26 th April,



PW. No.	Name / Description	Role / Deposition
	bearing No. HR-26-AY-0938	2015 at Astro Ford showroom, and handed over relevant documents.
PW10	SI Asha, Investigating Officer	Examined victim; recorded victim's 161 CrPC statement with assistance of translator; seized sexual-assault exhibits; present at arrest of accused; proved site plan; confirmed recovery of red Alto car, sending of exhibits to FSL, and filing of chargesheet.
PW11	Sarita, Senior Scientific Assistant, FSL Rohini	Proved copy of original questioned writings (Ex. PW-11/B) and report No. 662/DOC/RFSL (Ex. PW-11/C).
PW12	Yashpal, landlord of accused	Deposed that he was caretaker since 2009, and that the accused began living on rent around February 2016; within a week or 10 days police inquired about him; accused's police verification was still pending.
PW13	ASI Mukesh Kumar, MHC(M)	Proved deposit, handling of case property.
PW14	Dr. J Haokip, Medical Officer, Kangpoki, Govt. of Manipur	Verified birth certificate of victim through SDM office; sent verification report (Ex. PW-14/A) to IO via WhatsApp.
PW15	Dr. Leimapokpam Bobby, Medical Officer, Gynaecologist, Chandel District, Govt. of Manipur	Issued Birth Certificate (Ex. PW-15/B) for the Prosecutrix based on SDM verification order (Ex. PW-15/A); confirms date of birth as 13 th July, 2002.

2.8. After closure of prosecution evidence, the incriminating circumstances were put to the Appellant under Section 313 CrPC. He denied the allegations and opted to lead defence evidence, and examined himself as DW-1.

2.9. Upon appraisal of the evidence, the Trial Court held that the prosecution proved the ingredients of Sections 366 and 376(2)(i) IPC and Section 4 POCSO, and convicted and sentenced the Appellant as follows:



Sr. No.	Offence convicted under	Period of sentence	Fine imposed	Default sentence
1.	Section 376(2)(i) IPC	14 years' rigorous imprisonment	INR 50,000	5 months' simple imprisonment
2.	Section 366 IPC	10 years' rigorous imprisonment	INR 10,000	1 month's simple imprisonment
3.	Section 4 POCSO Act	No separate sentence in view of Section 71 IPC read with Section 42 POCSO	—	—

2.10. Both the sentences were directed to run concurrently. As regards compensation, the Complainant (victim's cousin) apprised the Court that the victim is married and residing with her in-laws, who are unaware of the pendency of the case. Contacting her for preparation of the VIR or for compensation may adversely affect her marital life. Thus, keeping the welfare of the victim in view, the Trial Court did not pass any order on compensation.

CONTENTIONS OF THE APPELLANT

3. The submissions advanced by Ms. Neha Kapoor, counsel for the Appellant, are summarised as follows:

3.1. The case is a result of prior animosity and motivated implication. The victim was working as an unpaid domestic help in the house of the Complainant, was unhappy staying in Delhi, and wanted to return to Manipur. The Appellant had earlier assisted her by providing his mobile number and email address for contacting her family. This act of assistance has been misused against him. The Complainant and his wife bore grudge against the Appellant, particularly due to his strained relations with the



Complainant and his cousin John, with whom he had an altercation earlier. The fact that John was not examined as a witness indicates suppression of material facts that could reveal the underlying conspiracy.

3.2. The Complainant's wife acted as an interpreter during the medical examination of the prosecutrix. This raises serious concerns regarding the accuracy and neutrality of the victim's first version, particularly because the victim is not conversant with Hindi or English, as per the prosecution's own case.

3.3. The victim's statements are riddled with contradictions, material improvements, and inherent improbabilities. No allegation of rape, digital penetration, or physical assault was recorded in the MLC or at the first instance before the police. These allegations surface for the first time in her 161 CrPC statement, diminishing their weight.

3.4. The narrative of kidnapping is highly improbable. The prosecutrix claims she was pulled into an Alto with conventional doors, which makes a sudden abduction improbable, even more so when the Appellant was allegedly seated beside her at the time. The location was a busy market frequented by members of the North-East community, yet the prosecutrix claims not to have seen anyone from her community.

3.5. The victim shifts ground across her 161 CrPC statement, 164 CrPC deposition, the MLC, and her testimony in court. In her 164 CrPC statement, she said the Appellant dropped her home; in court she claimed she met PW-2 and the police on the way back. In 161 CrPC, she asserted she remembered her address, which contrasts with earlier claims of helplessness. The 164 CrPC statement was recorded on 2nd February, 2016, which afforded the family time to influence her. On this footing, the victim cannot



be treated as a ‘sterling witness’, and her testimony, absent independent corroboration, ought not to find a conviction.

3.6 The manner and timing of her return are also at odds. The MLC records that she was dropped at home around 1:30 PM by a car driver, whereas PW-8 places her walking near a traffic signal in the evening. Section 164 speaks of the Appellant dropping her home; the in-court version differs again. These are not minor lapses in memory but go to the core sequence of events.

3.7. There are material contradictions between PW-1 and PW-2. PW-2 claims the prosecutrix was his cousin, whereas the prosecutrix (PW-1) refers to PW-2 and his wife as “*uncle*” and “*aunt*”. PW-2 states that she went to buy bananas, while PW-1 says she was looking at earphones. PW-2 claims she knows English, Kuki, and some Hindi; however, the prosecution story relies on her inability to understand Hindi or English, necessitating translation through the Complainant’s wife.

3.8. The medical evidence does not support the prosecution case. There were no external or internal injuries, no scratches, no swelling, and no signs of intercourse or digital penetration. There was no hymen tear or bleeding/injury. The FSL report (Ex. PW-7/A) also found no traces of intoxicants, sedatives, or any tranquilizing substance in her blood, contrary to the allegation that she was drugged. Moreover, the doctor who prepared the MLC, Dr. Swati Gupta, was not examined. The age of the victim was never proved through admissible and reliable evidence.

3.9. The electronic trail is tenuous. The CDR/location chart (Ex. PX-5) and mobile phone evidence relied on by the prosecution is unreliable and unconnected to the Appellant. The CAF form (Ex. PX-6) does not link the



relevant phone number to the Appellant. The personal search memo (Ex. PW-6/A) shows the Appellant was found only with a Nokia handset without any SIM. No witness proved that the mobile number allegedly used in the incident belonged to the Appellant. The paper slip allegedly recovered was also surrounded by contradictions, its seizure memo (Ex. PW-1/B) contradicts PW-2's version, no purse containing the slip was ever seized, and PW-2 admitted to having the slip since 28th January, 2016, despite the Appellant being arrested only on 03rd February, 2016.

3.10. The investigation is marred by serious lapses. The prosecution failed to prove ownership or possession of the Alto car by the Appellant. PW-9, the car owner, did not state that he handed the vehicle to the Appellant. No fingerprints or incriminating material were recovered from the vehicle, and the prosecutrix was never shown the car for identification. Additionally, the prosecution failed to prove the Appellant's residence at the alleged address in Kishangarh. Although CCTV cameras existed in the area, the Investigating Officer (PW10) admitted that no CCTV footage was collected at any stage. However, PW-8 ASI Raj Kumar contradicted this by stating that the police had checked CCTV cameras in the area, implying that footage was available and should have been secured. This contradiction shows that either the IO failed to investigate properly, or PW8 was misinformed, but in either case, the failure to seize CCTV footage, despite availability, amounts to an investigative lapse. No public or independent witness from the market or neighbourhood was examined despite the area being crowded.

3.11. There was an unexplained delay in sending crucial exhibits to the FSL. The victim's clothes and the Appellant's blood sample remained in



police custody for several days, as evidenced by the Store-Room Register entries (Ex. PW-13/A and Ex. PW-13/B) and Road Certificate (Ex. PW-13/D), before being sent for examination, increasing the possibility of tampering. Reliance is placed on the judgment of the Supreme Court in ***Rahul v. State of Delhi Ministry of Home Affairs & Anr***, (2023) 1 SCC 83, wherein the Court held that mere exhibiting of an FSL/DNA report does not prove its contents, particularly where samples remain in the *Malkhana* for prolonged periods, raising the likelihood of tampering. The present case suffers from identical infirmities: the samples were seized and kept in police custody for several days, the chain of custody is unexplained, and neither the Trial Court nor the prosecution examined the scientific basis of the FSL findings or whether proper procedures were followed.

3.12. Without prejudice, the Appellant submits that even if this Court upholds the conviction, the sentence may be reduced to the statutory minimum. He was approximately 27 years old at the time of the incident, has no criminal antecedents, currently suffers from depression and diabetes, and is the sole caretaker of his 67-year-old ailing mother.

CONTENTIONS OF THE STATE AND COUNSEL FOR VICTIM

4. The submissions advanced by Mr. Hitesh Vali, APP for the State, and Ms. Liyi Manli Noshi, counsel for the victim, are as follows:

4.1. The age of the victim stands proved from school records (Ex. PX-9) and admission register (Ex. PX-10), which indicate the victim's date of birth as 13th July, 2002. These documents were admitted by the Appellant under Section 294 CrPC. Identity of the accused is established as the victim consistently named him from the earliest statements, the Section 164 CrPC



statement, and the recovery/seizure memos already exhibited. Once age, identity, and the sexual acts are *prima facie* shown, the presumptions under Sections 29 and 30 of the POCSO Act operate. The Appellant has not rebutted them even on a preponderance of probabilities.

4.2. The victim's account is clear and steady across her statements under Section 161, Section 164, and her court testimony. Minor variations are natural and do not affect the core narrative of kidnapping, confinement, and repeated sexual assault. The testimony of the prosecutrix, by itself, can sustain conviction in law.

4.3. The cousin of the victim, Complainant (PW-2), provides immediate post-incident disclosure evidence. The seizure of the paper slip bearing the Appellant's details, CDRs, and the recovery of the vehicle lend circumstantial support. The Appellant's own potency/MLC examination do not aid his defence.

4.4. MLC and FSL results are not exculpatory. Absence of injuries or intoxicants does not negate allegations of penetrative sexual assault. The nature of the acts alleged does not invariably leave injuries, and a lack of forensic recovery is legally not decisive.

4.5. Alleged lapses, non-collection of some CCTV, non-examination of certain public witnesses, or timing differences, are, at best, irregularities that do not go to the root when the substantive ocular evidence is trustworthy. The chain of custody is adequately proved through road certificates and *Malkhana* records.

4.6. The translation of the victim's statement, at the time of her medical examination, by a relative of the Complainant does not, *per se*, undermine credibility, particularly where later the victim's own statement under Section



164 CrPC and her sworn testimony are consistent. The Appellant's plea of tutoring is purely speculative.

4.7. The conduct of supplying a paper slip with the Appellant's name, number and email is not inconsistent with guilt. Offenders may attempt post-event contact or control. The narrative urged by the Appellant is contrived and does not displace the proven core facts.

4.8. The Appellant's alternate plea of reduction in the period of sentence is opposed. The aggravating factors, the victim being a minor, repeated sexual assault, wrongful confinement, and breach of trust by the Appellant, justify the sentence imposed.

ANALYSIS

5. This appeal arises from a conviction in a case where the law and the facts ask the Court to tread with care. The allegations concern a child. The record contains evidence that, if accepted, speaks of a serious violation of bodily autonomy. However, the gravity of the accusation cannot become a substitute for proof. A first appeal against conviction carries a duty to re-examine the evidence in full, and to decide for itself whether the charge has been established beyond reasonable doubt. The Court will, therefore, test each plank of the Appellant's challenge against the record as it stands, within the POCSO framework, including the presumptions that arise once the prosecution proves the foundational facts, and the manner in which those presumptions may be rebutted by the defence.

Age of the victim and statutory presumptions under POCSO Act

6. The age of the victim is not in real contest. The school records (Ex. PX-9) and the admission-withdrawal register (Ex. PX-10), which record her



date of birth as 13th July, 2002, were admitted by the Appellant under Section 294 CrPC. These are contemporaneous entries made in the ordinary course, long before the criminal process began, and no contrary material has been produced to displace them. The birth certificate (Ex. PW-15/B) issued by the competent authority is in the same vein and reinforces the school record. On this material, the victim was a “*child*” within the meaning of Section 2(1)(d) POCSO at the relevant time.

7. Once minority is established, the next inquiry concerns the operation of the statutory presumptions contained in Sections 29 and 30 of POCSO. These provisions do not relieve the prosecution of its initial burden. The prosecution must first prove the foundational facts, which include the age of the child, the identity of the accused, and the occurrence of the act constituting the offence, to the standard of proof required in a criminal trial. On such foundational facts being proved, Section 29 raises a presumption that the accused committed the offence, and Section 30 adds a presumption as to culpable mental state. Both presumptions are rebuttable, and the accused may rebut them on a preponderance of probabilities. The defence case, therefore, must be assessed not at the level of mere denial or conjecture, but on whether it rebuts the prosecution version with a plausible alternative consistent with the record.

The victim’s testimony

8. The Appellant has urged that PW-1 (the victim) is untrustworthy, that her narrative has improved over time, and that, in the absence of independent corroboration, her evidence cannot sustain conviction. The governing principles are settled. A conviction for sexual offences can rest on the sole testimony of the prosecutrix/victim if it inspires confidence and



withstands scrutiny. Corroboration is not a rule of law. It is, at most, a rule of prudence invoked where the testimony falls in the grey zone. ***Rai Sandeep v. State (NCT of Delhi)***⁵ explains the idea of a “sterling witness”. In ***State of H.P. v. Sanjay Kumar @ Sunny***⁶, the Supreme Court reiterated that courts ought not to insist on routine corroboration in every case. The approach is neither to start with suspicion nor to accept it as credulous. The court tests the evidence for intrinsic consistency, coherence with surrounding circumstances, and resilience in cross-examination.

9. PW-1’s evidence does not fracture on any material aspect. The core of her account remains steady across her statements and deposition before the Court. She speaks of being taken away in a vehicle, being wrongfully confined at an unknown place, being subjected to sexual assault, being dropped back near the place where she was ultimately noticed, and being handed a handwritten slip containing a name, mobile number and email address, which the police seized (Ex. PW-1/B). Her statement under Section 164 CrPC (Ex. PX-4) captures the substance of this version, including the post-occurrence conduct of the perpetrator in leaving behind contact particulars. In court testimony, she reiterated her version and narrated the incident that she alleges occurred. The variations highlighted by the defence are, on a plain reading, at the periphery. They concern descriptive details and sequence, not the occurrence itself or the identity of the person she attributes it to.

10. The defence has also attempted to build a case of contradiction by comparing the history recorded in the MLC, the 161 CrPC statement, the

⁵ (2012) 8 SCC 21.

⁶ (2017) 2 SCC 51.



164 CrPC statement, and the deposition of the victim before court. That submission runs into a foundational difficulty. Contradictions are not established by argument. They must be proved in the manner required by Section 145 of the Indian Evidence Act, 1872. The witness must be confronted with the precise previous portion relied upon, and the contradiction must be brought on record. *Tahsildar Singh v. State of U.P.*⁷ remains the controlling authority on this discipline. Once this lens is applied, much of what is labelled as “*contradiction*” is revealed to be either an omission that is not of such magnitude as to discredit the witness, or a variation that does not touch the spine of the prosecution case.⁸

11. Two particular aspects of defence narrative merit direct engagement at this stage:

(i) “*No allegation at the first instance*”: The argument that PW-1 did not narrate every detail at the earliest moment, or that the medical record is not a verbatim reproduction of a full narrative, does not, by itself, render her later account suspect. The first medical interaction is not a judicial deposition. It records the history for clinical purposes. The record here also reflects the practical circumstance that the victim’s version at the hospital was conveyed through an interpreter. That fact, far from being a reason to discard the evidence, is a reminder that the earliest recording may be compressed, translated, and filtered through the demands of medical triage. In matters related to sexual offences, the suffered experience is often traumatic for survivors, particularly children, and there is often a possibility, that they may not disclose everything in one single breath.

⁷ AIR 1959 SC 1012.

⁸ See: *C. Muniappan v. State of T.N.* (2010) 9 SCC 567; *Shyamlal Ghosh v. State of W.B.* (2012) 7 SCC



(ii) “*Improbability*” and “*conduct*”: The submission that an offender would not leave behind a slip with contact details, or that the surrounding conduct is unusual, rests on an assumption about how perpetrators invariably behave. Courts are slow to convict or acquit on such *a priori* notions. The record has to be judged on what it proves. Here, the slip is a contemporaneous circumstance seized by the police (*via* Ex. PW-1/B), and the victim has consistently attributed its origin to the perpetrator. Whether the defence can supply an innocent explanation is a matter addressed separately. At this stage, the existence of the slip and its seizure do not dilute the credibility of PW-1. They are a circumstance that sits naturally with her narrative of being told to contact the perpetrator thereafter.

12. The record also shows that PW-1’s evidence was recorded in the Vulnerable Witness Deposition Complex through video link, with a support person, Ms. Usha Sharma, and with an interpreter, Ms. Thangnunnemi Gangte, arranged for the proceedings, with express instructions that the interpreter must translate faithfully and must not prompt or influence the witness. The safeguards adopted at trial are designed precisely to secure free narration by a child witness and to insulate the testimony from suggestion. This answers the insinuation that the witness’s account is a product of tutoring.

13. PW-1’s testimony clears the essential threshold of reliability on the material particulars. She remains consistent that the accused accosted her, took her away, confined her, subjected her to sexual assault, and later returned provided her a slip bearing his material particulars before dropping her near the area from where she met the complainant and the police. It is

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coherent, identifies the Appellant without wavering, and is trustworthy. The answers elicited in cross about distances, presence of public persons, or her inability to recall features of the room are not of a kind that discredit the occurrence of the incident itself. They reflect the limits of recollection of a child describing a sudden and frightening incident. The testimony, read as a whole, carries the ring of truth and inspires confidence, and there is no judicially proved contradiction that warrants discarding it.

14. The Court is conscious that the Appellant has also attacked the prosecution case on medical and forensic aspects, electronic links, the paper slip, alleged investigative lapses including lack of CCTV and public witnesses, and supposed motive for false implication. Those grounds are dealt in the succeeding sections. For present purposes, the testimony of PW1 remains a dependable foundation, and the Court sees no error in the Trial Court treating it as such.

Medical and forensic material: effect and weight

15. The Appellant has placed heavy emphasis on three facets: the absence of external or internal injuries, the FSL finding that no intoxicant was detected, and the submission that the medical material does not affirm sexual assault. That line of attack proceeds on an incorrect premise. PW-1 has consistently alleged digital penetration. That act, by itself, answers the statutory description of penetrative sexual assault under Section 3 POCSO. It also falls within the expanded definition of “*rape*” in Section 375 IPC, which expressly includes insertion of any object or any part of the body. Once the nature of the act alleged is kept in view, the expectation of injuries, bleeding, or hymenal rupture loses much of its force. The Supreme Court has repeatedly cautioned that absence of injury is not a safe ground to



discard an otherwise credible account of sexual assault. *Ranjit Hazarika v. State of Assam*⁹ and *B.C. Deva v. State of Karnataka*¹⁰ are clear that medical opinion does not dilute trustworthy ocular testimony, and that a conviction can rest on a reliable victim testimony even where medical evidence is inconclusive.

16. The victim went missing on 27th January, 2016. She was recovered a day after on 28th January, 2016, and samples were drawn thereafter. Thus, the absence of information about the presence/absence of any intoxicant cannot *per se* be held as exculpatory. Detection of sedatives depends on multiple contingencies, including the nature of the substance, dosage, time-lag between administration and sampling, and metabolic clearance. A negative/silent toxicology report does not logically translate into a positive inference of falsity. It only means the particular screening did not detect a tranquiliser in the sample examined. This Court is therefore unable to accept the Appellant's submission that the prosecution story falls to the ground merely because the FSL did not detect an intoxicant. The evidentiary centre of gravity in this case remains the victim's account, assessed on its own merits, and not the presence or absence of a laboratory confirmation of intoxication.

17. The argument that the doctor who first examined the victim was not produced also does not carry the Appellant far. The medical record forms part of the prosecution evidence and has been proved through the doctor examined as PW-4, Dr. Nishi Choudhary, who identified the document and the signatures of the authoring doctor, Dr. Swati Gupta. The defence had the

⁹ (1998) 8 SCC 635.

¹⁰ (2007) 12 SCC 122.



opportunity to cross-examine the deposing witness on the contents and also had procedural remedies to seek summoning of the author, if it considered it indispensable. No such serious prejudice is demonstrated. In any case, the medical record here is not being used as the decisive link to prove penetrative assault. It is being read as a surrounding circumstance. On that limited use, the non-examination of the authoring doctor does not dent the prosecution case.

18. The plea of tampering, founded on the time taken to send exhibits to the FSL, has also been urged with reference to the decision in ***Rahul v. State of Delhi***. Indeed, the prosecution must establish the integrity of the chain of custody, and that unexplained gaps can undermine forensic reliance. The record, however, does not disclose such a break in custody. The seizure, sealing, deposit, and dispatch are reflected in the *Malkhana* record and the road certificate placed on record (Ex. PW-13/A, Ex. PW-13/B and Ex. PW-13/D). The seals were tracked. The movements were documented. The argument remains at the level of possibility, not proof. The decision in ***Rahul v. State of Delhi*** does not lay down that every delay is fatal. It underscores that courts must examine whether the delay creates a real doubt about integrity. On the material here, that threshold is not crossed.

19. Put simply, the medical and forensic material in this case is not the sort that can either conclusively establish guilt or conclusively negate it. It is substantially neutral on the core question. Neutrality in medical results is a common feature in sexual-offence cases, particularly where the allegation is digital penetration and the victim is a child. The Trial Court therefore committed no error in declining to treat the absence of injuries or intoxicant as a reason to discard the victim's testimony, once her oral evidence was



found reliable on material particulars.

20. With the medical and forensic material thus placed in its proper evidentiary setting, the focus shifts to the remaining circumstantial links relied upon by the prosecution, namely, the handwritten slip stated to have been handed over to the prosecutrix, the call records sought to be traced to it, and the recovery and use of the vehicle. The Court must also test, in the same breath, the defence critique of investigation, including the non-collection of CCTV footage and the absence of independent public witnesses. These facets do not replace the ocular account. They either lend assurance to it or, if found wanting, may affect the overall confidence with which the prosecution story can be accepted.

Electronic and documentary links, CCTV and the paper slip

21. The Appellant has questioned the reliance placed on the call records and subscriber details on the footing that the number does not stand in his name and no SIM was recovered. This line of attack does not carry the matter far. The CDR, the CAF and the accompanying certificate under Section 65B of the Evidence Act (Ex. PX-5 to PX-7) were admitted by the Appellant under Section 294 CrPC. Once admitted, they do not require formal proof. Pertinently, these records are not treated as a standalone basis of conviction. They are examined as a supporting circumstance, to be read with the ocular version and the contemporaneous recovery.

22. In that context, the handwritten slip assumes a sharper evidentiary significance. It is not a document manufactured later in the course of investigation. It is part of the victim's earliest account and was seized contemporaneously (Ex. PW-1/B). The slip contains the Appellant's name, a phone number and an email address. The defence suggestion in cross-



examination that contact details handed over by the Appellant, though sought to be dressed up as an innocent ‘help’ gesture, amounts to an admission of the act that connects him to the victim at the relevant time. The absence of seizure of a purse does not weaken this link. The incriminating circumstance is the slip itself, its contemporaneous seizure, and its unshaken provenance, none of which was dismantled through expert evidence or any credible alternative explanation supported by material.

23. The challenge based on non-collection of CCTV footage and the non-examination of independent public witnesses stands on a different footing. These are, at best, lapses in investigation. They may invite closer scrutiny of the prosecution version, but they do not, by themselves, erase reliable evidence already on record. The law does not set a premium on investigative perfection. The court tests whether the proven core of the prosecution case is trustworthy. If it is, omissions such as failure to lift CCTV footage or to associate every passer-by do not mandate acquittal. Here, the prosecution case rests principally on the victim’s evidence, supported by the contemporaneous seizure of the slip and other surrounding circumstances. The alleged investigative gaps do not create a rupture in that core narrative.

Alleged inconsistencies: materiality

24. The defence has drawn attention to (i) the earliest history referring to more than one person, (ii) differences on the route or manner in which the prosecutrix returned, and (iii) minor variations on timing. These points do require careful attention in an appeal of this nature. The law, however, does not treat every variation as a contradiction, nor does it permit a witness to be discarded on account of peripheral imprecision. A child’s recollection of exact sequencing, timings, and route is rarely photographic, particularly



after a distressing event of sexual assault. What the Court must examine is whether the central narrative remains steady.

25. When the evidence is read as a whole, the core remains intact. The victim consistently attributes the sexual act to the Appellant, describes the nature of the act, and explains the circumstances in which she came into his company and thereafter returned. The references to others in the earliest history, and the small divergences on the precise manner of return, do not dislodge that central attribution. In *Sanjay Kumar @ Sunny*, the Supreme Court reiterated that minor discrepancies are not a ground to reject the consistent core of a child's testimony, particularly when the surrounding circumstances lend corroboration. The present case falls within that framework. The variations highlighted by defence do not strike at the root of the prosecution case and do not create a reasonable doubt about the Appellant's involvement.

26. The answers given by the Appellant under Section 313 CrPC are, in substance, bare denials. When questioned regarding the paper slip, the Appellant stated that he had handed over the slip containing his personal particulars to the complainant's wife as he was a driver with her. This explanation was reiterated when the Appellant entered the witness box as DW-1. However, this version was never put to PW-1, nor was it put, in substance, to PW-2 or to the investigating witness through whom the seizure and handling of the slip were proved. Even so, in the grounds of the present appeal, it is contended that the Appellant had offered to help the victim by giving his mobile number and email address which has been misused later on. This stance, however, has not been taken anywhere in his testimony as or in his statement under Section 313 CrPC.



27. In these circumstances, it cannot be stated that the paper slip is a stray or collateral feature. It is a contemporaneous circumstance that connects the Appellant with the victim immediately after the occurrence. In that setting, a self-serving explanation offered by the accused, unsupported by any independent material and advanced in a form that the prosecution witnesses were never confronted with, does not displace the proved chain of circumstances. DW-1's version does not meet the threshold of preponderance of probabilities to rebut the presumptions under Sections 29 and 30 of POCSO. It also does not create a reasonable doubt once PW-1's testimony is read as a whole and alongside the surrounding links proved on record.

Charged offences

28. The Appellant has urged that the offence under Section 366 IPC is not made out for want of intent. The submission is unpersuasive. Section 366 does not require proof of an express declaration of intent. The intent is gathered from conduct and attendant circumstances. The evidence establishes that the minor was taken from her surroundings, removed to another place, and kept under the Appellant's control in circumstances that culminated in sexual assault. That factual matrix supplies the necessary link to the statutory requirement of taking or detaining a female with the object of sexual assault.

29. The conviction under Section 376(2)(i) IPC also admits of no infirmity. The material related to age, as already discussed, establishes that the victim was below sixteen years at the relevant time, which attracts the enhanced clause. As per the provisions of POCSO, the act described by PW1 satisfies the definition of penetrative sexual assault under Section 3



POCSO, since even minimal penetration by any body part is sufficient in law to constitute the offence. The applicable punishment provision is Section 4. The Trial Court's course of recording conviction under Section 4, though the charge included a graver POCSO provision, is traceable to the settled principle that, where the major offence is not proved to the hilt but the minor offence is made out, conviction for the minor offence is permissible under Section 222(2) CrPC. The sentencing structure was then kept consistent with Section 42 POCSO read with Section 71 IPC, so that the Appellant is not punished twice for the same act.

Conclusion

30. Taking the record as a whole, the prosecution has proved the foundational facts beyond reasonable doubt. The minority of the victim stands proved through the school record and admission register (Ex. PX-9 and Ex. PX-10), which were admitted under Section 294 CrPC and remain unshaken. The identity of the Appellant is firmly anchored in the victim's consistent attribution, her 164 CrPC statement (Ex. PX-4), and the contemporaneous seizure of the slip containing the Appellant's particulars (Ex. PW-1/B). The act complained of, as described by PW-1, fulfils the ingredients of penetrative sexual assault under Section 3 POCSO, and the conviction under Section 4 is legally sustainable.

31. Once these foundational facts are proved, the presumptions under Sections 29 and 30 of POCSO come into play. The defence allegation on call records, the absence of CCTV, the non-seizure of the purse, references to unnamed persons, and perceived imperfections in investigation, do not dislodge the consistent core of the victim's evidence, nor do they rebut the



statutory presumptions even on a balance of probabilities. They remain, at best, peripheral features which do not generate a reasonable doubt about the Appellant's guilt. The Trial Court's appreciation of evidence follows settled principles governing sexual-offence prosecutions, including the approach to contradictions, the evidentiary value of a credible prosecutrix/victim, and the limited role of corroboration as a rule of prudence. No perversity or legal infirmity is shown warranting interference in appeal. The convictions under Sections 366 and 376(2)(i) IPC, read with Section 4 of the POCSO Act, are accordingly affirmed.

Proportionality of Sentence

32. The Appellant stands convicted under Sections 366 and 376(2)(i) of the IPC and under Section 4 of the POCSO Act. For the offence under Section 376(2)(i) IPC, the statute prescribes rigorous imprisonment of not less than ten years, extendable to imprisonment for life. The Trial Court has imposed rigorous imprisonment for fourteen years.

33. Sentencing calls for an individualized assessment. The object is not retribution alone. The sentence must denounce the crime, deter like conduct, and protect children, yet remain proportionate to the proved facts and the offender's circumstances. Appellate interference is warranted where the sentence discloses an error of principle or where the upward departure from the statutory minimum is not supported by reasons that are clear on the record, resulting in a punishment that is unduly harsh in the facts of the case. The aggravating features are plain. The victim was a child. The prosecution version accepted at trial speaks of taking the child away from a public place, wrongful restraint or confinement, and sexual violation. The conduct strikes



at bodily autonomy and dignity, and the law views such offences with the sternness they deserve.

34. Even so, sentencing cannot proceed on gravity in the abstract. The record does not attribute to the Appellant the use of a weapon or physical brutality beyond what is inherent in the offence proved. The Appellant was about 27 years of age at the relevant time and has no prior criminal antecedents. The nominal roll placed before this Court records a substantial period of incarceration of nine years and six months already undergone and reports satisfactory jail conduct in the recent period. Medical material placed on record indicates that the Appellant has been under mental and physical health stress. He has 67-year-old ailing mother, which adds weight to the mitigating factors in his favour. It must be emphasised that these factors do not dilute the offence, but they remain relevant to the length of custodial punishment once guilt stands affirmed.

35. The Trial Court has chosen a term four years above the statutory minimum. On the material available, reasons of the kind that ordinarily justify an enhanced term beyond the minimum do not emerge with sufficient clarity. In the overall conspectus, the minimum sentence of ten years under Section 376(2)(i) IPC adequately satisfies the ends of justice in this case. It preserves deterrence and denunciation, and it remains proportionate, without foreclosing the prospect of reform.

36. Consequently, the conviction is affirmed. The substantive sentence for the offence under Section 376(2)(i) IPC is modified to rigorous imprisonment for ten years. The sentence imposed for the offence under Section 366 IPC, and the fines and default sentences, are left undisturbed.

37. The substantive sentences shall run concurrently.



38. The Appellant shall be entitled to set-off for the period of custody already undergone, in accordance with law. Directions for continued anonymisation of the victim's identity shall remain in force.
39. Disposed of along with pending application(s), if any.
40. Copy of the order be sent to the Trial Court and concerned Jail Superintendent, for necessary information and compliance.

SANJEEV NARULA, J

DECEMBER 18, 2025

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