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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 07.11.2025*+ **CRL.A. 812/2025& CRL.M.(BAIL) 1248/2025**

DEEPAK

.....Appellant

Through: Mr. Gulab Singh, Advocate

versus

STATE GOVT. OF NCT OF DELHI & ANR. ...Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Mahendra Patel, P.S. Narela**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The appellant, by way of this appeal, seeks setting aside of the judgment of conviction dated 10.01.2025 [hereafter '*impugned judgment*'] and order on sentence dated 10.03.2025 [hereafter '*impugned order on sentence*'] passed by the learned Additional Sessions Judge-01, (POCSO/Children's Court), North District, Rohini Courts, Delhi [hereafter '*Trial Court*'] in Sessions Case No. 57780/2016, whereby the appellant was convicted for commission of offence punishable under Section 377 of the Indian Penal Code, 1860 [hereafter '*IPC*'], and sentenced to undergo rigorous imprisonment for a period of ten years alongwith payment of fine of ₹5,000/- for the



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commission of said offence, and in default of payment of fine, to undergo simple imprisonment for one month.

2. The facts of the case are that on 15.07.2012, an information was received at Police Station Narela *vide* DD No. 26A to the effect that rape had been committed on a girl aged about four years. Upon receipt of this information, the police officials had reached Baba Saheb Ambedkar Hospital, where they had met the victim 'P' and her mother. The victim had been taken to the hospital by S.I. Pradeep Thagra, to whom the investigation was initially marked; however, on the same day, it was transferred to S.I. Santosh Kumari. The Investigating Officer (I.O.) collected the MLC of the victim and recorded the statement of the victim's mother. In her statement, the victim's mother stated that she was working as a house-help in various houses and, on 15.07.2012, at about 2:45 PM, when she had returned home, she had found that her children were not present. She had started searching for them when her neighbours, Kavita and Savitri, had informed her that they had seen the victim 'P' with the present appellant, who was residing on the upper floor of the complainant's house. The victim's mother, along with the said neighbours, had gone to the room of the appellant and had seen that the appellant had lowered the half-pant (*capri*) of the victim as well as his own pants and underwear, and was touching his erected penis to the back and private parts of the victim while the victim was crying. On seeing them, the appellant had run away from the spot. The victim had informed her mother that the appellant had called her



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to his room on the pretext of watching television and, after removing both her pants and his own, had inserted his penis into her anal region, causing her pain. The victim's mother thereafter had made a call to the police at number 100. On the basis of her statement, the FIR bearing no. 375/2012 was registered at Police Station Narela, Delhi for commission of offence under Section 377 of IPC.

3. During investigation, the I.O. prepared the site plan, recorded the statements of the witnesses including the victim, seized the case property, and arrested the appellant. The medical examination of the victim as well as the appellant was conducted, and the collected samples were sent to the Forensic Science Laboratory (FSL) for analysis.

4. Upon completion of investigation, the chargesheet was initially filed against the appellant for the offence punishable under Section 377 IPC before the Court of Metropolitan Magistrate-01, Rohini Courts, Delhi. The learned Magistrate framed charge for the said offence, and the prosecution examined six witnesses. During the course of trial, it was observed that certain allegations also indicated commission of the offence of rape. Consequently, the case was committed to the Court of Sessions. Thereafter, the learned Sessions Court proceeded to record the evidence of the remaining prosecution witnesses, i.e. PW-7 onwards till PW-19. Subsequently, it came to the notice of the learned Trial Court that no fresh charge had been framed against the appellant for the offence under Section 376 IPC.



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Accordingly, a charge under Sections 376(2)/377 IPC was framed, to which the appellant pleaded not guilty and claimed trial.

5. During trial, the prosecution examined nine witnesses, including the victim and her parents. The statement of the appellant was recorded under Section 313 Cr.P.C., wherein he denied the allegations and claimed innocence but did not lead any defence evidence. After hearing final arguments, the learned Trial Court convicted the appellant for the offence under Section 377 of IPC, but acquitted him for offence under Section 376(2) of IPC, concluding as under:

“31. Now coming back to the case of prosecution. As per earlier observations, the PW5 victim, PW2 victim’s mother and PW 1 Kavita have been found to be reliable witnesses. Their testimonies have also been supported by the observations of doctor during victim’s internal medical examination and also by FSL report. The internal medical examination has verified the fact that penetrative act was committed in the anal region of victim some hours before the said examination, and same is also supported by the FSL report, in which blood was found in the rectal swab and clothes of victim. The internal medical examination and FSL report are conclusively proving that penetrative act in the anal region of victim had taken place and since it is proved that said act has taken place with victim, then there is no reason for victim and her mother to falsely implicate accused. Hence, prosecution has duly proved that accused inserted his penis in the anus of victim.

32. Now coming to the charge framed against accused. Accused is facing trial for the offence u/s 376(2) IPC and Section 377 IPC. As per definition of rapc, applicable in the year 2012, a man is said to commit rape who has sexual intercourse with a woman. In that definition, the penetrative act in the anal region of a female victim was not covered in the offence of rape, rather it was an unnatural sexual offence. There is no evidence on record to suggest that accused inserted his penis in the



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vagina/ front side of the victim and thus the offence of rape is not made out against the accused. Hence, accused is acquitted for the offence of rape punishable u/s 376(2) IPC.”

6. The learned counsel appearing for the appellant has assailed the impugned judgment and order on sentence on the ground that they were passed mechanically and without proper appreciation of the evidence on record, which has resulted in miscarriage of justice. It is contended that DD No. 26A dated 15.07.2012 recorded at P.S. Narela (Ex. PW9/A) mentions that at about 9:30 p.m., a four-year-old girl had been raped by three boys, whereas in the complaint dated 16.07.2012 (Ex. PW5/A), specific allegation was made against the appellant of committing an unnatural act with the child victim. It is urged that this inconsistency has not been properly appreciated by the learned Trial Court. It is further argued that there was an unexplained delay of one day in registration of the FIR, as the alleged incident occurred on 15.07.2012 while the FIR was registered on 16.07.2012. The learned counsel submits that as per the complaint (Ex. PW5/A), the complainant had stated that although she had initially called at 100 number, she did not pursue the matter due to fear of social stigma and had not got the child medically examined. Only after consulting her husband did she again contact the police and lodge a complaint. This conduct, according to the appellant, casts serious doubt on the prosecution version. It is further argued that there is no independent witness to the alleged incident and that the conviction is based solely on the testimonies of the child victim and her mother, which suffer from material contradictions. The learned counsel points out that as



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per the MLC (Ex. PW13/A), the parents had given the history that the appellant had committed anal intercourse with the victim, whereas in her deposition, PW-2, the mother of the victim, stated that she had seen the appellant inserting his penis into the vagina of the victim. This, it is contended, constitutes a material contradiction and improvement. Similarly, PW-1 Kavita, in her statement under Section 161 of Cr.P.C., stated that she had seen the appellant taking the victim and committing unnatural intercourse with her, whereas in her examination-in-chief, she deposed that the victim herself told her that the appellant had taken her to his room, removed her clothes and inserted his penis into her vagina, due to which she felt pain. This variation, according to the appellant, strikes at the root of the prosecution story. It is further submitted that PW-2 admitted in her testimony that she had initially refused to get her daughter medically examined and had agreed only later. The delay in her consent for medical examination, according to the appellant, also raises serious doubt about the genuineness of the prosecution case. The learned counsel also refers to the contradiction between PW-2 and PW-3: while PW-2 stated that she had informed her husband about the incident over the phone, PW-3 deposed that he came to know of the occurrence only after reaching home. Reliance is also placed on the testimony of PW-10, Dr. Rajesh Kumar, Medical Officer, S.R.H.C. Hospital, who admitted in his cross-examination that “no sign of sexual assault was observed on the MLC of the victim.” It is contended that the medical evidence thus completely negates the



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prosecution case of any sexual assault upon the victim, and that the conviction of the appellant under Section 377 of IPC is wholly unsustainable in law.

7. The learned APP for the State, on the other hand, argues that the learned Trial Court has correctly appreciated the evidence on record. It is stated that the judgment is well-reasoned and based on a proper evaluation of the testimonies of the prosecution witnesses, the medical evidence, and the material collected during investigation. It is submitted that the MLC of the victim clearly records the injury on the anal region of the child, who was about five years of age at the time of the incident, which lends strong corroboration to the case of the prosecution that the appellant had subjected the minor victim to an unnatural sexual act. The learned APP further submits that the mother of the victim had seen the appellant committing the act and she had immediately raised an alarm, upon which the appellant fled from the spot. Her version is further supported by PW-1 Kavita, an independent witness, who deposed that she had seen the appellant taking the victim to his room shortly before the incident. It is further argued that minor inconsistencies or variations in the statements of witnesses are bound to occur due to the passage of time and do not detract from the substance of the prosecution case. It is also contended that the testimony of the child victim, being natural and truthful, requires no further corroboration and is sufficient to sustain the conviction. It is, therefore, argued that the learned Trial Court has rightly appreciated the evidence and has returned a well-founded



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finding of guilt. Thus, it is prayed that the present appeal be dismissed.

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

9. To put the matter in perspective and to appreciate the sequence of events, it is relevant at the outset to take note of the testimonies of some of the police witnesses.

10. ASI Ishwar Singh was examined as PW-7, who has deposed that on the date of the incident, at about 9:35 PM, the wireless operator had come to the DD Room and informed him regarding receipt of information about the commission of rape with a four-year-old girl in Swatantra Nagar, Bawana. The said PCR call was marked to SI Pradeep Thakran through W/Ct. Raj Bala, and the information was reduced into writing in the daily diary *vide* DD No. 26A.

11. SI Pradeep Thakran was examined as PW-9. He has deposed that on the same evening, at about 9:35 PM, he had received information regarding the incident, pursuant to which he, along with Ct. Raj Bala, had gone to the spot. On reaching the spot, he had found that the family of the victim was residing as tenants on the ground floor of the house. The mother of the victim had narrated the details of the incident to him. He has further deposed that immediately after the incident, the mother of the victim had made a call at 100 number, which was recorded in the police station *vide* DD



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No. 63B, and SI Kamal had attended the said call and taken the victim to SRHC Hospital, Narela, along with her parents. However, at the hospital, the parents of the victim had initially refused internal medical examination of the child. Later that night, the parents had again made a call, which was recorded *vide* DD No. 26A. He has deposed that the victim was then taken to SRHC Hospital for her medical examination at about 11:20 PM, where MLC No. 1225/12 (Ex. PX-10) was prepared. As the doctor competent to conduct an internal examination was not available at SRHC Hospital, the victim was referred to BSA Hospital. She was taken there at about 2:00 AM, where her complete medical examination, including internal examination, was conducted *vide* MLC No. 143/12 (Ex. PX-7). In the meantime, W/SI Santosh Kumari of P.S. Alipur had reached BSA Hospital along with Ct. Vijay.

12. Inspector Santosh Kumari (then SI) was examined as PW-8 before the learned Trial Court. She has deposed that upon receiving instructions from senior officers, she, along with Ct. Vijay, had gone to P.S. Narela *vide* DD No. 28 (Ex. PW9/B), and thereafter proceeded to BSA Hospital. At that time, the medical examination of the victim was in progress. She had recorded the statement of the victim's mother (Ex. PW5/A), on the basis of which the FIR was registered at P.S. Narela. She has further deposed that she had prepared the site plan of the place of incident and arrested the appellant thereafter.

13. Coming now to the material testimony forming the foundation



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of the prosecution case, the victim 'P' herself was examined as PW-5. She has deposed before the learned Trial Court that on the day of the incident, the appellant had called her to his room on the pretext of watching television, as there was no television in her house. On his asking, she had gone to his room, where the appellant had removed his pants as well as hers and thereafter inserted his penis into her anus, due to which she had felt severe pain. She has further stated that she had cried and told her mother about the incident, after which her mother had taken her to the hospital.

14. The victim's mother 'A', who was examined as PW-2 before the learned Trial Court, has deposed that on 15.07.2012, she had returned home at about 2:00 to 2:30 PM and found that her daughter as well as her husband were not present at home. She has deposed that she had enquired from her neighbours, Kavita and Savitri, who were sitting outside their houses, about the whereabouts of her daughter. They informed her that they had seen the victim being taken by the appellant to his room situated on the first floor of the same house. She has deposed that thereafter, she, along with Kavita and Savitri, had gone to the appellant's room and had seen that both the appellant and the victim were without clothes, and that the appellant had inserted his penis into the anus of the victim and was committing "*galat kaam*" with her while the victim was crying. She has deposed that upon seeing her, the appellant had run away from the spot and that the victim had then disclosed the details of the incident to her. Thereafter, she had called the police, but out of fear



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and embarrassment, they had not initially pursued the matter. Later, they had again called the police, and the present FIR was registered after the medical examination of the victim was conducted.

15. In her cross-examination, PW-2 has denied the suggestion that about a week prior to the incident, she had an altercation with the mother of the appellant. She has also deposed that neither she nor her family members used to visit the house of the appellant or his family.

16. PW-3, the father of the victim, has deposed before the learned Trial Court that when he had reached home on the day of the incident at about 2:30 to 3:00 PM, his wife had informed him about what she had seen earlier that afternoon regarding the appellant committing anal intercourse with the victim. He has deposed that they had initially called the police but, due to embarrassment, had not pursued the complaint. Subsequently, they had decided that the appellant should be taught a lesson so that he would not repeat such an act with any other child, and therefore, they had again called the police that night.

17. PW-1 Kavita, an independent witness, has deposed that on 15.07.2012, when she had gone to buy some household items from a nearby shop, she had seen the appellant taking the victim upstairs to his room. She has further deposed that later, the victim's mother came to her crying and informed her that the appellant had committed a wrongful act with the victim. Although PW-1 has not supported the prosecution case to the extent of being an eye-witness to the actual



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act, she has supported the version of the victim's mother (PW-2) that the appellant had taken the victim to his room. The fact that the victim's mother had approached PW-1 immediately after the incident and disclosed the incident lends credibility to the prosecution's case.

18. The testimony of PW-1, therefore, supports the prosecution version to the extent that the appellant had taken the victim to his room. The learned Trial Court has rightly observed that the deposition of PW-1 cannot be rejected merely on account of a few inconsistencies in some parts of her statement and has to be appreciated in the light of the overall evidence and the surrounding circumstances. The fact that PW-1 had informed the victim's mother that she had seen the appellant taking the victim to his room, and that PW-2 had deposed that Kavita had informed her of the same while she was searching for her daughter, mutually supports their testimonies. PW-1, being an independent witness.

19. Therefore, from the above testimonies, it stands established that the appellant herein had taken the victim to his room, and had thereafter subjected her to sodomy by committing anal intercourse with her.

20. Insofar as the medical evidence is concerned, the internal examination of the victim conducted at BSA Hospital revealed the following findings:

“Around the anal region, there is one tear present at the anal sphincter; no bleeding is present at the moment from the anal area; and a few other small tears are seen around



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the anal mucocutaneous junction, which is painful to touch.”

21. The CFSL report further corroborates the prosecution’s case, as it was found that blood stains on the victim’s pants matched the victim’s own blood. This clearly indicates that the child had been bleeding at the time of the incident. There was no plausible reason for a five-year-old child to have blood on her pants except as a result of the assault. The presence of tears around the anal area, as noted during the medical examination, and the detection of the victim’s blood on both the anal swab and her clothing, together confirm that bleeding had occurred from within the anal region.

22. The internal examination of the victim was conducted within twelve hours of the incident, and the presence of blood inside the anal area, as recorded in the MLC and confirmed through forensic analysis, clearly reveals that penetration had taken place. Furthermore, the doctor’s observation that the anal region was painful to touch and that the tears were recent and had not healed at the time of examination, when read together with the CFSL report and the testimonies of PW-2 (the mother of the victim) and PW-5 (the victim) regarding the victim having suffered pain during the assault, lends strong corroboration to the prosecution’s version of events.

23. *Therefore*, the medical evidence in the present case lends strong corroboration to the ocular evidence, i.e. the testimonies of the victim and her mother, both of whom have consistently deposed that



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the appellant had subjected the victim to anal intercourse.

24. As regards the *defence taken by the appellant* in his statement recorded under Section 313 Cr.P.C., that he had been falsely implicated in the case on account of frequent quarrels between the two families who were residing on different floors of the same house, this Court finds the said contention to be unmerited. Even if it is assumed that there had been some quarrels in the past, for which no evidence has been led by the appellant, such a circumstance cannot possibly justify or explain a false implication in an allegation as grave and heinous as committing sodomy with a five-year-old child. This contention, in any event, has to be tested in the light of the credible and consistent evidence led by the prosecution.

25. The argument regarding delay in registration of the FIR is also devoid of substance. The record reflects that the incident took place at about 2:30 PM, whereafter the victim's mother had immediately made a call at 100 number, pursuant to which the police reached the spot and took the victim and her parents to the hospital. However, the parents initially did not pursue the complaint due to fear of social stigma. Later, upon discussing the matter with her husband and reconsidering their decision, the victim's mother made another PCR call at about 9:35 PM on the same day, leading to registration of the FIR. This Court observes that in cases involving sexual offences, particularly where the victim is a child, hesitation or delay in reporting the matter to the police is not unusual. Victims and their



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families often remain in a state of trauma and apprehension, struggling with the fear of social embarrassment before gathering the courage to approach the authorities. The delay of a few hours in such circumstances is, therefore, neither unexplained nor fatal to the prosecution case.

26. As far as the argument regarding alleged inconsistencies between the testimonies of the victim and her mother recorded earlier before the learned Magistrate or Trial Court (prior to the committal of the case or framing of charge afresh) and those recorded before the learned Trial Court after initiation of fresh trial is concerned, this Court finds no merit in the said contention also. The learned Trial Court has rightly observed that once the trial commenced de novo, the witnesses were re-examined, and therefore, their statements recorded earlier could not be treated as substantive evidence. The following observation of the learned Trial Court is noteworthy:

“27. Ld. defence counsel has firstly mentioned about the contradictions in the version of prosecution witnesses. The Ld. Defence counsel compared the testimonies of prosecution witnesses with their earlier testimonies which were recorded when the trial of present case was conducted by Ld. MM. Since the matter was committed to the court of Sessions and the trial was started fresh before Sessions court in which prosecution witnesses were re-examined, therefore their earlier testimonies recorded before Ld. MM are not having any value and they are not considerable. In these circumstances, these testimonies of prosecution witnesses recorded before Ld. MM and before this court being Sessions Court are not comparable and thus it cannot be said that there is any contradiction in them....”

27. Furthermore, as far as the argument that semen was not



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detected on the private parts of the victim is concerned, this Court finds the same to be misconceived. The appellant stands convicted for offence under Section 377 of IPC, i.e. for the offence of unnatural sexual intercourse (sodomy), and ejaculation is not a necessary component of the said offence. The offence under Section 377 of IPC is complete even with the slightest degree of penetration, and the absence of semen or ejaculation does not dilute the culpability of the act. In the present case, the victim as well as her mother have deposed against the appellant, that he had penetrated his penis inside the anus of the victim, and she had suffered pain due to the same. The medical evidence also corroborates the same. The learned Trial Court has rightly held that the non-detection of semen on the private parts of the victim or her clothing is of no consequence, particularly when the act was interrupted midway. This Court, therefore, finds no reason to take a view different from that of the learned Trial Court.

28. This Court also notes that, as rightly observed by the learned Trial Court, the offence in question pertains to the year 2012, when the definition of rape under Section 375 of IPC did not include penetration into the anal region. At that time, such an act was covered under Section 377 of IPC, which dealt with the offence of unnatural sexual intercourse. Since there is no evidence on record to indicate that the appellant had inserted his penis into the vagina of the victim, the learned Trial Court has correctly convicted the appellant for the offence punishable under Section 377 of IPC and acquitted him of the charge under Section 376(2) of IPC.



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29. As far as the quantum of sentence is concerned, it is pertinent to note that the victim in the present case was only five years old at the time of the incident, when she was subjected to forced anal intercourse by the appellant, who was residing in the same building as the victim's family. The act committed by the appellant is of a grave and abhorrent nature, reflecting complete disregard for the dignity and innocence of the child victim. The offence punishable under Section 377 of IPC provides for imprisonment for life, or imprisonment of either description for a term which may extend to ten years, along with fine. Considering the age of the victim, the relationship of proximity between the parties, and the gravity of the act committed, this Court finds that the sentence of ten years' rigorous imprisonment awarded to the appellant by the learned Trial Court is just, proper, and commensurate with the gravity of the offence committed by him.

30. Therefore, for the reasons recorded in above discussion, this Court finds no merit in the appeal. The impugned judgment of conviction as well as the impugned order on sentence is upheld.

31. The appeal alongwith pending application is accordingly disposed of.

32. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
NOVEMBER 07, 2025/ns