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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: 12th February, 2025

+ CRL.A. 635/2024 & CRL.M.(BAIL) 1207/2024

JAMAL

.....Appellant

Through: Ms. Aishwarya Rao, Advocate

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with Mr.
Lalit Luthra & Ms. Divya Yadav,
Advs. with SI Ashish Sharma, PS
Nand Nagri.
Ms. Anu Narula, Adv. (DHLSC) for
Survivor

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Background

2. The present appeal has been filed by the Appellant-Jamal challenging the impugned judgment dated 30th October, 2023. Vide the said judgment the Appellant has been found guilty of kidnapping and committing aggravated penetrative sexual assault upon the child victim and convicted under Section 6 of the POCSO Act¹ read with Sections 376(2)(j) and 363 IPC by the learned Trial Court.

3. Vide the order on sentence dated 03rd January 2024, the Appellant has been sentenced for '*Imprisonment for life which shall mean imprisonment for remainder of his natural life*' as per Section 376(2)(j) and seven years

¹ Protection of Children from Sexual Offences



rigorous imprisonment under Section 363 IPC, which shall run concurrently.

The operative portion of the order on sentence reads as under:

“8. In order to fairly assess the quantum of fine to be paid by convict in the present matter, I have perused the Affidavit of the convict as to his income and assets and report of Secretary, DLSA (Shahdara). As per affidavit of the convict, before going to jail, he was working as a scrap dealer / labourer and he was earning about Rs.300/- per day. Further, his mother is financially dependent upon him. The convict has no movable or immovable property in his name. Considering financial condition and capacity of convict, fine of Rs.5,000/- (Rupees Five Thousand Only) each is imposed upon him for the offence punishable under Section 376(2)(j) IPC and u/s 363 IPC. In case of default in payment of fine, he shall undergo further simple imprisonment of two months. In accordance with the affidavit of Ld. Special/Addl. PP for the State, the convict shall pay fine amount of Rs.12,369/- (Rupees Twelve Thousand Three Hundred and Sixty Nine only) to State towards the expenses incurred by the prosecution.

Sl. No.	Offence	Substantive Sentence	Fine	Sentence in default of payment of the fine
1.	U/s 376(2)(j) IPC	Imprisonment for life which shall mean imprisonment for remainder of his natural life.	Rs.5,000/-	2 months SI
2.	U/s 363 IPC	RI for 7 years	Rs.5,000/-	2 months SI”



4. In addition, the Trial Court has awarded compensation of a sum of Rs.10,50,000/- under the Delhi Victim Compensation Scheme, 2018, out of which interim compensation of Rs.1,00,000/- was disbursed to the Prosecutrix on 2nd July, 2018. However, the remaining amount of Rs.9,50,000/- was to be paid by DLSA (Shahdara), Karkardooma, Delhi, is yet to be disbursed.

Brief Facts

5. The brief facts of the present case are, that an incident occurred on 9th October, 2017, and a complaint was lodged at PS Nand Nagri regarding commission of wrong sexual acts by the Appellant with the daughter of the Complainant who was seven years old at that time.

6. Investigating Officer recorded the statement of child victim referred by the pseudonym 'S' to protect her identity, aged about 7 years. S stated that she was residing with her parents and studying in second class. She further stated that her father used to sell cups and glasses in exchange of shoes and the Appellant was her neighbour who used to work with her father in a shop.

7. It is her case that in the morning of 9th October, 2017, her mother sent her to bring money from the shop where her father was working and on the way to the shop, she met the Appellant who held her hand and took her to a park. She alleged that in the park he removed her lower (*pajami*) as also removed his lower (*pajami*) and committed wrong act with her with his susu (penis). When she started crying, the Appellant gagged her mouth with his hands and threatened to cut her neck if she would cry. Thereafter, she became unconscious and regained consciousness after sometime, and returned home and narrated the said incident to her mother.

8. SI Sangita endorsed her said complaint to prepare a *rukka* u/s.363/376(2)/506 IPC & 4 POCSO Act which was handed over to Ct. Vipin



for taking it to the police station and to register the FIR. Based upon the said *rukka*, he got the present FIR (Ex. PW 7/C) lodged under the said sections and investigation of this case was entrusted to SI Sangita. The **FIR No. 918/2017** was then registered against the Appellant under Sections 376(2)/363/506 IPC and Section 6 POCSO Act, at P.S. Nand Nagri on 9th October, 2017.

9. After lodging of the complaint, the Prosecutrix was examined in the GTB Hospital, Shahdara, Delhi and the observations were recorded in the MLC (Ex. PW 4/B). As per the MLC her hymen appeared to be freshly torn with surrounding erythema, no bleeding, and no genital injury marks. It was further recorded that there were bruises present over her left cheek of 0.5x1 cm, abrasion over 0.2 cm present near her right nostril at upper lip, and abrasion of 5 cm over the bilateral iliac crest.

10. The clothes of the Prosecutrix were also sealed and sent to the *malkhana* of PS Nand Nagri. Thereafter, on 12th October, 2017, the IO arrested the Appellant, and subsequently he was medically examined at GTB hospital and his blood and semen were seized. On the said date the statement of the Prosecutrix was recorded u/s 164 CrPC wherein she described the wrongful act committed with her in detail and also highlighted the point that one uncle helped her in returning home. After the said completion of investigation, a charge-sheet u/s. 363/376(2)506 IPC & 6 POCSO Act was filed against the Appellant in Court on 4th January, 2018.

11. The trial commenced thereafter before the learned Trial Court and the evidence of 15 prosecution witnesses were recorded, including the Prosecutrix (PW-1), her mother (PW-2), the Police officials including the concerned Investigating Officer (PW-13), and the Senior Resident Doctor (PW-4) from the GTB Hospital who conducted the medical examination of



the child victim and recorded his remarks in the MLC. The clothes of the Prosecutrix were also sent to the FSL along with the sample DNA of the Appellant. Suffice to state that the prosecution proved the FSL report (Ex. PW 14) to the effect that the DNA generated from the semen on the Prosecutrix's clothes match with the blood sample of the Appellant. The prosecution evidence was closed on 14th March, 2023.

12. The Appellant in his statement recorded under Section 313 Cr.P.C denied the incriminating facts and circumstances brought on the record against him by the prosecution. He stated that he was falsely implicated at the behest of the parents of the child 'S' since he had lent some money to her father, who had refused to pay back the said amount and had threatened to teach him a lesson for quarrelling with him. Thereafter, the Defence evidence was closed on 28th August, 2023.

13. The learned Trial Court came to the conclusion that the sole testimony of the child victim was of sterling quality and inspired confidence. Thus, the evidence on the record clearly established that the Appellant was guilty of committing aggravated penetrative sexual assault, since the child was below the age of 12 years at the time of incident, and falls within the purport of Section 5(m) of the POCSO Act.

14. It would be expedient to reproduce the observations recorded by the Id. Trial Court, which are set out below:

“43. The offence of penetrative sexual assault and rape are similarly worded except that in the former offence, the consent or will of the child victim is irrelevant and the child victim must be below the age of 18 years whereas for invoking provisions of rape, the consent or will of the victim has to be vitiated and victim can be a female human being of any age. Thus, it is



apparent that both the said offences are overlapping in certain situations. In case of forcible penetrative sexual assault on the child victim or if her consent is vitiated or if she is incapable of giving consent for the said act, the offence of rape is also attracted. However, in view of Section 42 POCSO Act, punishment to the offender is to be awarded only in one of the offences i.e. for the offence in POCSO Act or for rape under IPC whichever is greater in degree.

44. *In order to attract the provisions of POCSO Act, the prosecution is required to establish that the victim was a child at the time of the incident. Section 2(d) POCSO Act defines 'child' as any person below the age of 18 years. As per prosecution, the child victim (PW-1) was 07 years of age at the time of the present incident. In respect of age of the child victim, the accused has admitted the age documents of the child victim u/s 294 Cr.P.C as Ex. A-4. The said documents are certificate issued by Principal, EDMC Primary School dated 25.10.2017 i.e., school of the child victim. As per said certificate, the date of birth of the child victim is 01.01.2010. There is no reason to doubt the credibility of the said birth certificate. As per Section 94 (2) Juvenile Justice (Care & Protection of Children) Act, 2015, the date of birth certificate from the school of a child victim is to be given precedence/ preference over any other evidence. Thus, in the given circumstances and on the basis of the aforementioned unimpeached birth certificate Ex. A-4, the date of birth of the child victim is hereby held to be 01.01.2010. The present offence was committed on 09.10.2017. Hence, child victim was less than 12 years of age at the time of commission of the present offence. Thus, provisions of POCSO Act are attracted in this case. Further, as child victim was less than 12 years of age, in view of Section 5(m) POCSO Act, if the prosecution establishes the offence of penetrative sexual assault on the child victim,*



its graver form i.e. aggravated penetrative sexual assault is to be invoked against the accused in this case.

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53. As per said FSL report, human semen and blood was detected on the pajami of the child victim and the DNA generated from the said human semen matched with the DNA extracted from the blood of the accused. PW-4 Dr. Megha Jindal has proved the MLC of child victim dated 09.10.2017 as Ex.PW4/A and duly filled proforma for medico-legal examination of survivors/victims of sexual offence in this case as Ex.PW4/C. Ex.PW4/C reflects that worn frock and pajami of the child victim were collected by PW4 at the time of medical examination of the child victim which was conducted after 4-5 hours of the incident on 09.10.2017. PW-6 W/Ct. Mukesh has deposed that she received sealed exhibits of the child victim and sample seal from the GTB hospital on 09.10.2017 which in turn were seized by the IO vide seizure memo Ex.PW6/A. PW8 Ct. Vikam has testified that on 12.10.2017, he got the accused medically examined at GTB hospital and at the hospital, he was handed over sealed exhibits of the accused along with sample seal of the hospital which he handed over to SI Sangeeta who seized them vide seizure memo Ex.PW8/G PW-13 SI Sangeeta has deposed that she deposited the said sealed exhibits in the malkhana of PS Nand Nagri and the said fact is corroborated by PW12 ASI Jai Bhagwan, the then MHC(M) at PS Nand Nagri, who made an entry of the sealed exhibits of the child victim in Register no.19 at serial no. 4327 and entry of the sealed exhibits of the accused at serial No.4332 in the said register. PW12 has proved copy of the said entries as Ex.PW12/A (running in two pages) (OSR). Later on 23.10.2017, the said sealed exhibits and sample seals were handed over by PW12 to PW9 Ct. Deepak for their deposition in the FSL, Rohini vide RC no. 218/21/17. PW12 has proved the copy of said RC as Ex.PW12/B. PW9 Ct. Deepak has deposed that he



deposited the said sealed exhibits and sample seal in FSL, Rohini on 23.10.2017. All the aforementioned witnesses categorically deposed that the sealed exhibits remained intact till they were in their custody. The FSL report Ex.PW14/A reflects that at the time when the samples/parcels were opened for their examination, they were duly sealed with the seal of 'MLC GTB HOSPITAL SHD DELHI 95'. Thus, in view of the aforementioned established link of the chain from collection of the samples to the place of their examination i.e. FSL and in the wake of the intact seal on them at the FSL, it is apparent that the said samples remained untampered.

54. Admittedly, the FSL report is not a substantive piece of evidence but it is a corroborative piece of evidence. In the instant case, the collection, preservation and examination of the samples were done as per the standard protocol. Therefore, positive FSL report Ex.PW14/A necessarily links the accused with the offence and it further gives credence to credible ocular testimony of the child victim.

55. The MLC of the child victim Ex.PW4/A which was prepared after about 4-5 hours of the incident reflects that PW4 observed freshly torn hymen of the child victim at the time of her examination. Therefore, the said MLC also corroborates the version of the child victim that she was violated by the accused on the alleged date, time and place of the incident. The prompt reporting of this matter without any delay has further lend reliability to the version of the prosecution.

56. The offences of the present kind are normally committed in secrecy and at an isolated place. Therefore, possibility of corroboration of the incident/offence by an independent eye witness is a rarity. Therefore, examination of an independent eye witness to prove the case of the prosecution cannot be insisted upon in case the testimony of the child victim inspires confidence. In the instant case, neither there was any independent eye



witness nor any CCTV footage available at the place of incident to corroborate the version of the child victim. The perpetrator of the sexual offence against the child victim cannot be allowed to go scot-free merely on account of non-availability of an independent eye witness provided her testimony is clinching and of sterling quality.

57. There can be conviction on the sole testimony of the child victim when her deposition is found to be trustworthy unblemished, credible and her evidence is of sterling quality.....

59. The accused was working with the father of the child victim and he was previously known to her. Thus, there cannot be any confusion in the identity of the accused.

60. The accused has raised a vague defence for his alleged false implication in this case. He has asserted that the father of the child victim owed some amount towards him and he did not want to return it. He has asserted that therefore, he induced his daughter/child victim to falsely implicate in this case to avoid repayment of the same amount/loan. However, accused has failed to lead any evidence in that regard. Further, he has failed to specify the quantum of said amount, the date on which it became due and for what purpose the said amount was lend. Therefore, not only the said defence has remained unsubstantiated but it is apparently unbelievable and preposterous. Moreover the defence of the accused is apparently improbable as no father would misuse his minor daughter and tarnish her dignity just to avoid repayment of loan, even which has remained unproved. Therefore, the said alleged motive has remained vague and bare assertion. The said motive is not sufficient to hold that the child victim falsley implicated the accused all the more when the testimony of the child victim is held to be of sterling quality. Therefore, the defence of the accused is too far fetched and by no reasonable stretch of imagination, the



said alleged motive can be held to be probable. Hence, there is no established motive for the child victim to falsely implicate the accused in this case. Besides, as per section 29 POCSO Act, in case where a person is prosecuted for the offence committed under section 6 POCSO Act, the Special Court shall presume that the accused committed the offence unless the contrary is proved. In the instant case, the accused has failed to displace the said conclusive presumption.

61. In view of the above discussion, the prosecution has established its case beyond any reasonable doubt and accordingly, the accused Jamal is liable to be convicted for the offence of kidnapping of the child victim punishable u/s. 363 IPC, aggravated penetrative sexual assault defined u/s. 3(a) read with section 5(m) of POCSO Act and punishable u/s. 6 POCSO Act and for the offence of rape punishable u/s. 376(2)(j) IPC. Accordingly, ordered.”

15. The Trial Court, following the decisions in ***State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575*** and ***Sham Singh v. State of Haryana (2018) 18 SCC 34*** held that in such cases, the accused can be convicted even on the basis of the sole testimony of the Prosecutrix itself. The trial court also noted that the survivor was below 12 years of age and hence the Appellant is guilty of aggravated penetrative sexual assault.

16. Thereafter, the present appeal has been filed by the Appellant against the said judgment and order on sentence dated 30th October, 2023 and 3rd January, 2024, respectively. Appeal was admitted on 23rd July, 2024 and notice was issued on the same date.

Submissions

17. The submission of Ms. Rao, learned Counsel appearing for the Appellant through Legal Aid is that:



- i. the chain of evidence which led to the DNA testing of the clothes along with the DNA of the Appellant was not fully established. It was urged that the Appellant was arrested on 12th October, 2017 but the *malkhana* register (Ex PW 12/A) shows that the samples of semen and blood of the Appellant were deposited on 9th October, 2017, which raises an inference of fabricating and planting of evidence upon the Appellant;
 - ii. Secondly, it is her submission that there is also some discrepancy in the evidence as to where the Appellant was working with the father of the Prosecutrix, since the father of the Prosecutrix himself stated that the Appellant was not working with him and was working with one Mr. Nasir while on the other hand the Prosecutrix stated that the Appellant was working with her father; and hence it was urged that there is grave doubt as to the identity of the Assailant;
 - iii. In addition, there is a doubt cast as to how the Prosecutrix knew the Appellant since he was not working with the father.
18. On the other hand, Mr. Bahri, learned APP submits that:
- i. this is a gross case where the Prosecutrix testimony by itself is sufficient to convict the Appellant in as much as she has categorically testified that she was sexually assaulted by the Appellant, who was identified by her in the Court. Under such circumstances, there can be no doubt as to the identity of the Appellant.
 - ii. there has been no challenge to the testimony given by the Prosecutrix in her cross-examination.
 - iii. Id. APP argues that in such kind of cases, the statement of the Prosecutrix, being of sterling quality, alone is sufficient to convict the



accused. Reliance in this regard is placed on decision in the case of ***State of Punjab v. Gurmit Singh AIR 1996 SC 1393***.

iv. that the FSL report corroborates the sexual assault committed upon the Prosecutrix besides the MLC proven on the record, containing the observation that on the medical examination of the Prosecutrix, her hymen was found freshly torn, bruises over the left cheek and also the injuries her body were observed, which conclusively proves that the Prosecutrix was subjected to penetrative sexual assault by the Appellant.

19. Ms. Narula, learned Counsel appearing for the Complaint/child Victim submits that the Prosecutrix's father (PW-5) had clarified that the Appellant used to work with Mr. Nasir. It has also been clarified that the Prosecutrix's father had his own work and for extra earnings, he also used to work with Mr. Nasir. In effect, therefore, the father of the prosecutrix and the Appellant were working together. Therefore, there is no discrepancy in the testimony as alleged.

Analysis & Decision

20. Having considered the above stated submissions, MLC, FSL and testimonies of the Prosecutrix (PW-1) as also the mother (PW-2), there is no shred of doubt that it was the Appellant who had committed sexual assault upon the Prosecutrix. The testimony of the Prosecutrix is unshaken, of sterling quality and sufficient by itself to believe the prosecution case. PW-1's testimony is extracted below for read reference:

“My mother has sent me to bring money from my papa from the shop of my papa. Accused Jamal met me in Sunder Nagri. He took me to a park. He removed my pajamai and also removed his pant and lied down on me



and put his susu in my susu and touched my susu and also hit me with dandi (stick) and thereafter gagged my mouth with his hand when I cried and thereafter told me that if I cry then he will cut my neck and left. Thereafter, some other person saw me crying, dropped me at my house and I told about the incident to my mother. I was taken to the hospital where I was examined by the doctor. I had also come to the court where one aunty asked me about the incident.”

21. The mother of the Prosecutrix (PW-2) also testified that her daughter was in a very disturbed condition when she came back from the park, where the Appellant had taken her and that her clothes were covered in mud and grass. PW-2 also identified the clothes of the Prosecutrix that she wore at the time of the incident.

22. This Court in ***Rakesh @Diwan v. The State (GNCT of Delhi), 2021:DHC:2415***, under similar circumstances reiterated the judgment of ***Dattu Ramrao Sakhare and Others v. State of Maharashtra (1997) 5 SCC 34*** and ***State of Rajasthan v. Om Prakash (2002) 5 SCC 745*** wherein the Court observed that if the testimony of the child victim inspires confidence and is reliable then it is sufficient for conviction. The relevant portion of the said judgment has been extracted below:

*“15. Insofar as the sufficiency of the statement of child victim in convicting an accused is concerned, it has been repeatedly held that if the testimony of the child victim inspires confidence and is reliable, it is sufficient to record the conviction. In ***Dattu Ramrao Sakhare and Others v. State of Maharashtra*** reported as (1997) 5 SCC 341, the Supreme Court held that conviction on the sole evidence of the child witness is permissible, if the witness is found competent and the testimony is trustworthy. Similarly, in ***State of Rajasthan v. Om****



Prakash reported as (2002) 5 SCC 745 while reversing the decision of the High Court and upholding the conviction of the appellant, the Court held:-

"13. The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is a well-settled proposition. In State of Punjab v. Gurmit Singh reported as (1996) 2 SCC 384, referring to State of Maharashtra v. Chandraprakash Kewalchand Jain reported as (1990) 1 SCC 550 this Court held that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. It has also been observed in the said decision by Dr. Justice A.S. Anand (as His Lordship then was), speaking for the Court that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

14. In State of H.P. v. Gian Chand reported as (2001) 6 SCC 71 Justice Lahoti speaking for the Bench observed that the court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being



relied on, then the testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined."

16. Similarly, in *State of Himachal Pradesh v. Sanjay Kumar alias Sunny reported as (2017) 2 SCC 51*, while relying on the testimony of a child witness to restore the conviction, the following observations were made:-

"31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except



in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma v. State of H.P). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove."

23. Additionally, it is observed from the statement of PW-3 (neighbour of the Prosecutrix), that there was no delay in reporting of the crime, as her sons mobile phone was used to call the police. Subsequently, registration of the FIR and medical examination of the Prosecutrix was conducted with promptness.

24. The MLC and FSL report also corroborates with the statement of the Prosecutrix(PW-1), and her mother (PW-2). The MLC shows the injury marks on the Prosecutrix aligns with the statement of the Prosecutrix as to how the act was committed. The MLC is extracted below for read reference:



O/S: conscious oriented
 afebrile
 P.R. - 114/m -
 B.P. - 90/60 mm Hg
 P.A. - 100% SpO2
 Wt - 5.5 kg
 Respir. - 20/min
 P/A - soft
 no tenderness
 no lump

C/O/Rg On Admission:
 1. - Laceration on
 left cheek
 2. - Ecchymosis present
 no bleeding
 no laceration
 labial exam - absent
 breast - not developed
 Anus - not developed
 112 - left hand

Abrasion present
 over left cheek
 ~ 0.5 cm
 Abrasion over
 ~ 0.2 cm near
 left nostril at
 upper lip
 Abrasion at
 upper lip a well
 ~ 0.2 cm
 Abrasion ~ 5 cm long
 over bilateral iliac
 crest (horizontally)
 on flanks

Identification marks:
 1. mark on right arm
 lateral aspect from armpit to
 axillary process.
 2. mark on right index finger

Regime (marked)
 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 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- v. abrasion over 0.2 cm present near her right nostril at upper lip, and;
 - vi. abrasion of 5 cm over the bilateral iliac crest.
26. Even as per the FSL report dated 17th May, 2018, the DNA generated from the clothes of the accused and the clothes of the Prosecutrix were similar. The same can be ascertained from the result of the FSL report, which is as under:

RESULTS

“DNA profile generated from the source of exhibit '4' (Gauge cloth piece of accused) is similar with DNA profile generated from the source of exhibit '3' (Baby pajami).

However DNA profile generated from the source of exhibit '1o' (Blood sample of victim) is similar with DNA profile generated from the source of exhibits '1i', '1j1', '1j2', (swabs and slides of victim).”

27. We also find that the plea raised by the Id. counsel for the Appellant, that the semen and blood samples were deposited with the *malkhana* on the date of incident itself i.e., 09th October, 2017 is misconceived and not sustainable. There is no challenge to the testimony of IO, PW-13 that the Appellant was arrested on 12th October, 2017 at about 09.00 a.m. *vide* arrest memo Ex.PW-8/A and such information was given to his family. Thereafter, the Appellant was produced for medical examination in Guru Teg Bahadur Hospital, Shahdara at about 02.20 p.m. where samples of his semen, pubic hair, blood and *pajama* were taken and seized by the IO *vide* MLC Ex.PW-8/E.
28. The sealed parcel was deposited in the *malkhana* by PW-8 Ct. Vikram, whose signatures appear on the seizure memo Ex.Pw-8/F regarding samples taken from the Hospital *vide* entry No. 4332 on 12th October, 2017.



29. The evidence on record clearly establishes the guilt of the accused. The trial court judgement is well-reasoned and has appreciated the entire evidence. The trial court has also analysed the evidence thoroughly and arrived at the right findings and conclusions.

30. In view of the foregoing discussion, we find that the impugned judgment holding the Appellant guilty and convicting him under the aforesaid provisions does not suffer from any illegality, perversity or incorrect approach in law. However, insofar as the impugned order on sentence dated 3rd January, 2024 is concerned, evidently the incident took place on 09th October, 2017 and at that time, the punishment for penetrative sexual assault as provided under Section 6 of the POCSO Act was “*rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine*”. This provision has thereafter been amended in 2019 and a higher punishment has been prescribed with effect from 16th August, 2019², which “*prescribes rigorous imprisonment for not less than twenty years but may extend to imprisonment for remainder of natural life.*”

31. There is no gain-saying that Article 20(1) of the Constitution of India, 1950, prohibits the application of *ex post facto criminal laws* and awarding of a sentence harsher or greater than what was prescribed by the law prevailing

² **6. Punishment for aggravated penetrative sexual assault.**-- (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.



at the time of the commission of the offence. Resultantly, the present case would be governed by the POCSO Act as it stood on the date of incident *i.e.*, 9th October, 2017. Reliance in this regard can be placed on the decision of the Supreme Court in ***Shatrughna Baban Meshram v. State of Maharashtra, (2021) 1 SCC 596***. The said case pertains to the act of sexual assault upon a minor child, punishable under Section 376 IPC and Section 5 read with Section 6 of the POCSO Act, which was committed on 11th February 2013 when the Criminal Law (Amendment) Ordinance, 2013 was in force and the punishment for commission of an offence under the aforesaid provision was increased by way of amendment. In the aforesaid backdrop, the following observations came to be made by the Supreme Court:

“16. An imposition of life sentence simpliciter does not put any restraints on the power of the executive to grant remission and commutation in exercise of its statutory power, subject of course to Section 433-A of the Code. But, a statutory prescription that it “shall mean the remainder of that person's life” will certainly restrain the executive from exercising any such statutory power and to that extent the provision concerned definitely prescribes a higher punishment ex-post facto. In the process, the protection afforded by Article 20(1) of the Constitution would stand negated. We must, therefore, declare that the punishment under Section 376(2) IPC in the present case cannot come with stipulation that the life imprisonment “shall mean the remainder of that person's life”. Similar prescription in Section 6 of the Pocso Act, which came by way of amendment in 2019, would not be applicable and the governing provision for punishment for the offence under the Pocso Act must be taken to be the pre-amendment position as noted hereinabove.”

[emphasis supplied]

32. In the above stated case it was observed that if an act has been committed prior to the amendment of 2019 in the POCSO Act, then the



governing provision must be taken as the pre-amendment position. The Supreme Court in *SLP(Crl.) Diary No(s).9597/2020* titled *State of Telangana v. Polepaka Praveen @ Pawan* also observed that retrospective effect cannot be granted to punishments which are to operate prospectively.

33. It is also to be considered that the argument of the Id. Counsel for the Appellant to reduce the quantum of punishment of the Appellant cannot be considered. Considering that the Prosecutrix is a minor child of 7 years old, such matters cannot be taken leniently. The Supreme Court in *Nawabuddin v. State of Uttarakhand (2022) 5 SCC 419* interpreted the Statement of Objects and Reasons of the POCSO Act, 2012, which has been enacted keeping in mind Article 15 and 39 of the Constitution of India, which is with respect to securing the tender age of children. The Court further held that any act of sexual harassment, sexual assault on children have to be dealt in a stringent manner and not leniently. The relevant portion of the judgment reads as under:

“17. Keeping in mind the aforesaid objects and to achieve what has been provided under Articles 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency



shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.

18. Children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas.

19. As observed and held by this Court in State of Rajasthan v. Om Prakash [State of Rajasthan v. Om Prakash, (2002) 5 SCC 745 : 2002 SCC (Cri) 1210] , children need special care and protection and, in such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. In Nipun Saxena v. Union of India [Nipun Saxena v. Union of India, (2019) 2 SCC 703 : (2019) 1 SCC (Cri) 772] , it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracisation and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.”



34. In view of the above stated, keeping in mind that the incident took place in the year 2017, prior to the amendments in the year 2019, the extant provisions of the POCSO Act prior to the amendment will be applicable in the present case. Thus, the sentence of the Appellant can only be extended for imprisonment for life and not for the remainder of his natural life as has been awarded by the Trial Court. Accordingly, the conviction is upheld with the modification that the sentence of the Appellant shall be imprisonment for life. With this modification, the conviction and the sentence awarded by the Trial Court is upheld.

35. This Court also notices that out of the compensation which has been awarded, only Rs.1 lakh is stated to have been paid to the Victim. The DLSA, North-East shall accordingly verify the compensation awarded and the compensation paid and upon verification, shall pay the remainder compensation to the victim within a period of 30 days.

36. List this matter on 7th April, 2025 for recording compliance regarding the payment of compensation.

37. The petition is accordingly disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

FEBRUARY 12, 2025

Rahul/ks