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

+ **CRL.A. 563/2016**

JANKI

.....Appellant

Through: Ms. Manika Tripathi, Advocate
(DHCLSC) with Mr. Gautam Yadav,
Advocates.

versus

STATE

.....Respondent

Through: Mr Pradeep Gahalot, APP for State
with SI Pravin Singh P.S.
Kanjhawala, Delhi.
Ms. Tanya Agarwal and Mr. Krishna
Kumar Keshav, Advocates (M:
9205868644) for victim.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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12.08.2025

1. The present appeal has been instituted under Section 374 Cr.P.C. against the impugned judgment of conviction dated 16.12.2015 and order on sentence dated 19.12.2015 passed by the learned ASJ-01 (North-West), Rohini District Courts, New Delhi, in the case arising out of FIR No. 244/2013 registered under Sections 376(2)/376(c)/506 IPC at P.S. Kanjhawala.

Vide the aforesaid order on sentence, the appellant was directed to undergo RI for a period of 14 years alongwith fine of Rs.5,000/-, in default whereof he was directed to undergo SI for 3 months, for the offence punishable under Section 6 POCSO; and undergo RI for a period of 3 years



alongwith Rs.1,000/- fine, in default whereof he was directed to undergo SI for 1 month, for the offence punishable under Section 506 IPC. The sentences were ordered to run concurrently and benefit under Section 428 Cr.P.C. was given to the appellant.

2. The prosecution's case in a nutshell is that the appellant, who is the father of the prosecutrix, committed penetrative sexual assault upon the prosecutrix for an extended period of time and threatened to kill her if she revealed his actions.

The appellant resided and worked for gain at a farmhouse, to which he brought his daughter/the prosecutrix, when she was around 14 years old. The prosecutrix's mother, who was separated from the appellant and living at her parental home, would visit the farmhouse every Sunday to meet her daughter. About 10-15 days after the prosecutrix was brought to live with the appellant, he, having consumed alcohol, removed the prosecutrix's clothes and forcibly committed penetrative sexual assault on her, and threatened to kill her if she told anyone. He continued to commit repeated acts of penetrative sexual assault on a regular basis over an extended period, resulting in the prosecutrix missing her menstrual period for two months. Eventually, the prosecutrix disclosed the abuse to her mother, who, in turn, informed the owner of the farmhouse. Together, they went to the police station, where the prosecutrix's statement was recorded. Based on her statement, an FIR was registered. Following the completion of investigation, the police filed a charge sheet, and the Trial Court framed charges against the appellant under Sections 5 (l) & (n), punishable under Section 6, of the POCSO Act, and alternatively under Sections 376(2)(f) (i) & (n), as well as Section 506, of the IPC. The appellant pleaded not guilty and claimed trial.



3. The prosecution examined 11 witnesses in support of its case. The prosecutrix/PW-10 testified that the appellant/her father sexually assaulted her weekly for an extended period of time. Her mother/PW-2 corroborated the prosecutrix's testimony insofar as the facts known to her, stating that she used to be married to the appellant and lived with him at the farmhouse, but after their separation, the prosecutrix was left in the custody of the appellant's brother and sister-in-law in his native village when she was about 2 years old. She stated that the prosecutrix was later brought back to live with the appellant at the farmhouse around a year before the matter was reported, after which PW-2 started meeting her every Sunday. The owner of the farmhouse/PW-9 also corroborated the said testimonies insofar as the facts known to him, stating that the appellant was employed by him at his farmhouse, the prosecutrix was born there, and was later left with the appellant's family in his native village when she was about 1 year old. He stated that she was brought back to stay with the appellant at the farmhouse when she was around 12-13 years old and PW-2 used to visit every Sunday to meet the prosecutrix. He further testified that he, along with the prosecutrix and her mother, went to the police station to lodge a complaint against the appellant. Dr. Supriya/PW-3 proved the MLC of the prosecutrix (Ex. PW-1/A) and deposed that as per the MLC, the prosecutrix's hymen was "old torn".

The statement of the appellant was recorded under Section 313 Cr.P.C., wherein he denied all evidence and claimed that he was falsely implicated by the prosecutrix at her mother's instance.

4. Before this Court, the appellant's counsel further argued that there was a delay in recording the FIR and the medical and forensic evidence did



not support the prosecution's case.

5. The defence of false implication raised by the appellant is meritless and to be rejected. The claim that the sexual assault may have been committed by someone else, given that children from adjoining farmhouses had access to the farmhouse, is unsubstantiated and does not undermine the prosecutrix's corroborated testimony that she was sexually assaulted by her father over an extended period. No one other than the prosecutrix and the appellant stayed at the farmhouse, and it was for the accused to discharge the burden of proving that someone else had committed the sexual assault, but no evidence was led by the appellant in this regard. The prosecutrix's mother had remarried, had more children, and was not living with her and the appellant, leaving the prosecutrix without anyone to confide in. Additionally, the appellant kept her under constant threat, and her failure to disclose the sexual assault immediately, particularly when the perpetrator was her own father, cannot be faulted.

The appellant's contention that the prosecution's case was not supported by the medical evidence, as the MLC only showed "hymen old torn" and nothing else did not find favour with the Trial Court, since the prosecutrix's own testimony stated that the last sexual assault had happened a few days prior to the examination on the basis of which the MLC was prepared. The MLC also confirmed that the prosecutrix had not had her menstrual period for the last two months. The testimony of the prosecutrix, along with the other materials on record, reads as credible and reliable, without any indication of it being tutored. In view of the above, the appellant was convicted under Section 6 POCSO and Section 506 IPC for committing penetrative sexual assault and criminal intimidation.



6. The appellant has been produced through VC from Central Jail No. 8/9, Tihar, New Delhi by Assistant Superintendent Prabhu Dayal. At this stage, learned counsel for the appellant, on instructions from the appellant, states that the appellant, being fully aware of the consequences, does not wish to challenge his conviction under the aforesaid sections; however, he prays that the sentence awarded to him be modified to the period already undergone by him. The appellant, through VC, makes the same submission.

7. Even otherwise, this Court, based on the material produced and keeping in mind that the appellant is the father of the prosecutrix and stands duly identified by her, as well as the credible testimony of the prosecutrix, corroborated in part by her mother/PW-2 and the owner of the farmhouse/PW-9, as well as the MLC (Ex. PW-1/A), concurs with the findings of the Trial Court and finds that no grounds to interfere with the same are made out. Consequently, the conviction of the appellant is upheld qua the offences under Section 6 POCSO and Section 506 IPC.

8. However, the Court also notes that the offence in question pertains to the year 2013, and the latest nominal roll on record dated 27.07.2025, reflects that the appellant, as of 24.05.2025, has completed his entire substantive sentence, having served 11 years, 9 months, and 2 days of incarceration, along with earning remission of 2 years, 2 months, and 28 days. From 25.05.2025, the appellant is currently serving a default sentence of 4 months in view of the non-payment of fine of Rs. 6,000/- imposed upon him by the Trial Court. The appellant has exhibited satisfactory jail conduct, except for one incident in 2016. The appellant has faced trial since the year 2013 and is currently 46 years of age. He is stated to not be involved in any other case. Out of 4 months of default sentence, he has already undergone



more than two and half months.

9. In view of the above, the Court is of the opinion that the ends of justice will be served if the appellant's sentence is modified to the period already undergone. It is ordered accordingly.

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

11. The present appeal is disposed of in the above terms.

MANOJ KUMAR OHRI, J

AUGUST 12, 2025/nb