



2026:DHC:78



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

% Reserved on : 10.11.2025
Pronounced on : 06.01.2026
Uploaded on : 06.01.2026

+ **CRL.A. 631/2018**

HAMID KHAN

.....Appellant

Through: Mr. Kanhaiya Singhal, Ms. Avantika Shankar, Mr. Rhythum Bhardwaj, Ms. Shatakshi Singh, and Mr. Pulkit Jolly, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with SI Pinki, P.S. Sultanpuri.
Mr. Kunal Sharma, Amicus Curiae Pro Bono, with Mr. Yash Punjabi, Advocate, for the victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed seeking setting aside of the judgment of conviction dated 08.03.2018 and the order on sentence dated 09.03.2018 passed by the learned ASJ-01, North West District, Rohini Courts, in SC No. 15/2016 arising out of FIR No. 1067/2015 registered under Section 376 IPC and Section 6 POCSO at P.S. Sultan Puri.

The appellant was acquitted under Section 506 IPC and convicted under Section 6 read with Sections 5 (m) & (p) POCSO. Vide the impugned order on

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sentence, he was directed to undergo RI for a period of 10 years along with payment of fine of Rs.5,000/-, in default whereof he would undergo SI for 1 month, for the offence punishable under Section 6 POCSO. The benefit under Section 428 Cr.P.C. was granted to the appellant.

2. The facts of the case, as noted by the Trial Court, are reproduced hereunder:-

“Brief facts of the prosecution case are that on 05.11.2015, the complainant who is the paternal grandmother of the victim D came to P.S. Sultan Puri along with the victim, aged about 6 years and stated that her husband Hamid Khan did wrong act with the victim on 16.10.2015 for which she wants to make a complaint. Since the allegations were of rape, assistance of NGO was taken who counseled the victim and the complainant and thereafter statement of complainant was recorded to the effect that her first husband XXXX died about 15 years before and she had two sons from him. Whereabouts of one son is not known, and the children of her second son XXXX are living with her. Her second husband Hamid Khan about six months before inserted his finger in the private part of her grand daughter victim D and the victim informed her about the same and since then, she was keeping the victim always alongwith her. On 16.10.2015, she was lying on bed after coming from the hospital that she saw her husband moving his hand on the private part of the victim. She could not come to PS because she was not well and now she wants that action should be taken against her husband. FIR was registered and the IO visited the spot and in between beat Ct. Rinku met him and he was joined in the investigation and accused who was found in the jhuggi was apprehended. He was, thereafter arrested and the victim was medically examined with alleged history of sexual assault by her grand father Hamid Khan. This alleged history was given by the complainant with last episode of sexual assault on 16.10.2015. The statement of the victim u/s 164 Cr.P.C. was got recorded where she stated that her grandfather used to lie her on the bed and remove her panty and thereafter used to touch his pishab wali jagah to her pishab wali jagah. He also used to insert his



pishab wali jagah into her pishab wali Jagah as well as his finger. He used to ask her to sleep with him and on her refusal, he used to drag her to his bed and also threatened to kill her if she will inform to her grandmother(dadi). After completion of investigation chargesheet was filed. Copies supplied.”

3. The prosecution examined 7 witnesses in support of its case. The child victim was examined as PW-3 and the complainant, i.e., the child victim's grandmother, was examined as PW-4. PW-7 is the Duty Officer who proved the subject FIR and the endorsement on the *rukka*. PW-1, Asst. Health Inspector, Birth & Death, MCD Office, established the age of the child victim by proving her birth certificate. PW-2 is the learned MM who recorded the statement of the child victim under Section 164 Cr.P.C. Dr. Anubha Verma (PW-5) medically examined the child victim and deposed that her hymen was found torn. PW-6 is the I.O. of the case who deposed as to various aspects of the investigation.

4. Learned counsel for the appellant contends that the present case is one of false implication, as there are various inconsistencies in the child victim's statements and it is an admitted fact that the appellant and the complainant had quarrels over the appellant objecting to the complainant's son residing in their *jhuggi*. He further contends that there was an undue delay in lodging the FIR, and that the explanation provided for the same, i.e., the complainant recovering from a medical issue, has not been verified. No medical documents, including documents purportedly handed over to the police *qua* the complainant's visit to Dr. RML Hospital on 16.10.2015, are on record. Lastly, he contends that the



child victim's brother was not examined, which further weakens the prosecution case.

5. Learned APP for the State as well as the learned *Amicus Curiae* appointed to represent the victim support the impugned judgment and submit that the offence in question stands established beyond reasonable doubt in view of the clear and cogent testimonies of the child victim and her grandmother/complainant. It is submitted that the identity of the appellant is not in dispute and that the delay in lodging the FIR stands adequately explained. Learned *Amicus* submits that apart from the complainant recovering from shoulder surgery at the time, the delay in reporting the matter to the police also stands explained by the fact that she had to gather the courage to lodge a complaint against her own husband, over a wrong act that he had committed upon her grandchild.

6. The complainant, i.e., the child victim's grandmother, was examined as PW-4. She identified the appellant in Court and stated that he was her second husband. Her first husband had passed away 15-16 years ago. One of her two sons from her previous marriage, along with his wife and two children, used to reside with her. He was not residing with her at the time, and his wife had eloped with someone 5-6 years ago, leaving their two children, i.e., the child victim and her brother 'A', under the witness' care. One day, while coming back with the child victim in a bus, the child victim told her that the appellant had been committing penetrative sexual assault upon her and that he had also inserted his finger into her private parts. She did not immediately lodge a complaint as she was suffering from some problem in the joint of her shoulder



at the time and had been operated upon. She further stated that on 16.10.2015 at about 7.30 P.M., she caught the appellant red-handed, committing sexual assault upon the child victim. She stated that she had seen the appellant put his hand inside the child victim's underwear and fondle her private parts. She could not report the matter to the police on the day itself as she was not feeling well and she had to gather the courage to go to the police. She discussed the matter with relatives and friends, as a result of which several days elapsed, and ultimately, she reported the matter to the police on 05.11.2015. She proved her complaint as Ex. PW-4/A.

In her cross-examination, she stated that she had been operated upon on 08.01.2014 and was still getting treatment from the hospital. She admitted that she and her husband, i.e., the appellant, had once quarreled over the issue of her son, i.e., the child victim's father, staying with her. She stated it to be correct that she had lodged a complaint against the appellant, while they were married, alleging that he had committed sexual assault upon her at knife-point prior to their getting married. She denied the suggestions that she had falsely implicated the appellant to get rid of him as he had been objecting to her son staying in their *jhuggi* or that she had filed false complaints against him earlier as well.

7. The child victim was examined as PW-3. Before her examination, the Trial Court put preliminary questions to her and satisfied itself as to her competency to give rational answers. The child victim stated that her grandfather is in jail because he used to do "*badtameeze*" with her. She deposed that her grandfather, while her grandmother was in the hospital, used to remove her underwear and insert his penis as well as his finger into her vagina. When



asked as to how many times her grandfather had done this to her, the child victim answered two times, then again said that he had done it many times. She stated that her grandmother found out as she saw the same one day and also because the witness had told her about the same. Thereafter, her grandmother told the police. The police arrested her grandfather and took the child victim for medical examination. She correctly identified the appellant in Court.

In her cross-examination, she admitted that their *jhuggi* has only one room, which contains one bed and a cot. She admitted that her grandmother and grandfather used to fight with each other. She stated that her grandfather had committed the wrong act with her during the day while her brother was at school and her grandmother had gone to get medicine. She denied the suggestion that her grandmother and grandfather had fought before she and her grandmother went to the police. She also denied the suggestions that her grandmother had tutored her as to what was to be said in Court and or that she was deposing falsely.

8. Dr. Anubha Verma, who had medically examined the child victim, deposed as PW-5. She stated that on examination, the hymen of the patient was found old torn, and she prepared the MLC already exhibited as Ex. PW-4/B. On a Court question being put to her during cross-examination, she stated that it is fairly common for girls of the victim's age to have torn hymens. She explained that this could be caused by children accidentally inserting toys or their fingers into their vaginas.

9. The appellant's statement under Section 313 Cr.P.C. was recorded, wherein he denied the allegations put to him and claimed false implication at



the instance of the complainant, i.e., the child victim's grandmother. He stated that the complainant had used the child victim as a pawn since he had been objecting to the complainant's son staying in her *jhuggi*. However, he did not lead any defence evidence.

10. I have heard the learned counsels for the parties and carefully examined the record.

11. It is apposite to note at the outset that no arguments disputing the age of the child victim have been agitated before the Trial Court or before this Court. Notwithstanding, the age of the child victim stands established by her birth certificate (Ex. PW-1/A) duly proved by PW-1. The same reflects her date of birth as 19.08.2009, which brings the victim under the ambit of a "child" within the meaning of Section 2(d) POCSO.

12. The learned counsel for the appellant has contended that there are inconsistencies in the various statements of the child victim, and that the same indicates tutoring, in this case at the instance of the child victim's grandmother. He has submitted that the allegation at the first instance was merely of fondling of private parts, and that the allegations *qua* fingering and penetration, based on which the appellant has been convicted under Section 6 read with Sections 5 (m) & (p) POCSO, were introduced belatedly.

13. It is observed on a perusal of the record that the child victim, in her statement recorded under Section 161 Cr.P.C., on being asked what had happened to her, had simply stated that her grandfather had fondled her private parts. In her statement under Section 164 Cr.P.C. however, which was recorded a few days later, the child victim put forth allegations *qua* disrobing, fondling,



penetration, and threats being made to her life. Further, the allegation regarding fingering appeared for the first time, insofar as the child victim's statements are concerned, only during the child victim's deposition. Notably however, the allegation regarding the appellant extending threats against the victim's life disappeared at the stage of her deposition, and the Trial Court accordingly acquitted the appellant of the charge under Section 506 IPC.

14. It is also worth mentioning at this stage that the allegations *qua* fingering and penetration suffer from a serious lack of detail and have remained largely unsubstantiated other than the oral testimonies of the witnesses. Due to the delayed lodging of the FIR and the consequent delay in the child victim's medical examination, there is no forensic evidence on record. The MLC of the child victim is on record and while the same shows her hymen to be old torn, no injuries have been noted therein; and the same cannot be said to support the allegations of forcible penetration or fingering. While it is settled law that a conviction can be sustained on the basis of the sole testimony of a child victim of sexual assault and the Court need not insist on corroboration, the concerned testimony in such cases needs to be of sterling quality. The said bar is not being met in the present case as there are many inconsistencies in the various statements of the child victim.

15. While the complaint lodged by the child victim's grandmother and her testimony as PW-4 are consistent, she is only a hearsay witness insofar as the allegations of penetration and fingering are concerned. She has stated only that the child victim told her about the purported assault being committed by the appellant. However, apart from the aforesaid, she has made one specific



allegation, i.e., regarding her witnessing the appellant fondle the child victim's private parts on 16.10.2015 at about 7.30 P.M.

16. Considering the contentions raised by the parties and on a conspectus of the evidence that has come on record, this Court is of the considered view that the allegations regarding the appellant committing the offence of fingering and penetration upon the child victim do not stand proved beyond reasonable doubt. The same lack detail, have remained largely unsubstantiated, and were not stated by the child victim at the first instance.

17. However, the child victim has remained consistent throughout with respect to the allegation regarding the appellant fondling her private parts. The said allegation was levelled in her statement under Section 161 Cr.P.C., her statement under Section 164 Cr.P.C., as well as in her Court deposition. The child victim's grandmother, too, has consistently stated about witnessing the appellant fondle the child victim's private parts.

18. Considering all of the above, this Court deems it appropriate, in the facts and circumstances of the present case, to alter the conviction of the appellant from one under Section 6 read with Sections 5 (m) & (p) POCSO, dealing with aggravated penetrative sexual assault, to one under Section 10 read with Sections 9 (m) & (p) POCSO, dealing with aggravated sexual assault. Keeping in view the appellant's age being about 65 years, his substantive sentence is modified to RI for a period of 5 years, which is the minimum mandatory sentence under Section 10 POCSO Act. The fine imposed upon the appellant and the sentence in default of payment of fine, however, are maintained.

19. The present appeal is partly allowed in the above terms.



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20. The personal bond furnished by the appellant stands cancelled and his surety bond is discharged. The appellant is directed to be taken into custody to undergo the remaining sentence.

21. Before parting, this Court records its appreciation for the valuable assistance rendered by Mr. Kunal Sharma, the learned *Amicus Curiae* appointed to represent the victim.

22. A copy of this judgment be communicated to the Trial Court and the Jail Superintendent concerned.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 06, 2026

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