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

% Reserved on : 24.07.2025
Pronounced on : 17.10.2025

\+ **CRL.A. 808/2023**

RAHUL @ BHUPINDER VERMA .....Appellant
Through: Mr. Vinayak Bhandari, Ms. Teestu Mishra and Ms. Jaisal Singh, Advocates

versus

STATE (NCT OF DELHI) .....Respondent
Through: Mr. Pradeep Gahalot, APP for State
Ms. Tanya Agarwal, Advocate for Victim

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted assailing the judgment of conviction dated 22.05.2023 and order on sentence dated 27.07.2023 passed in Sessions Case No.59044/2016 arising out of FIR No.255/16 under Section 376, Indian Penal Code, 1860 [in short, 'IPC'] and Section 6 of Protection of Children from Sexual Offences Act, 2012 [in short, 'POCSO Act], registered at PS Alipur, Delhi.

Vide the impugned judgement, the appellant has been convicted for the offence punishable under Section 376 IPC and under Section 6 POCSO Act, 2012 and vide order on sentence, he was directed to undergo R.I. for a period of 10 years, along, with a fine of Rs. 500/-. In default of payment of fine, the convict was directed to undergo S.I. for 07 days. The benefit of Section 428 CrPC was granted to the appellant.

2. The facts in nutshell as noted by the learned trial court are as follow:

> *"2. The facts in brief, which arc borne out from the record are that complainant/victim M gave a complaint in writing wherein 1.t is stated that in the year 2014, she was studying in school and her age was 16 years. Her Bua's son Rahul used to visit their house and during his visit she developed friendship with accused Rahul which converted into love affair between them. Rahul promised her to marry her and during that period he made physical relations with her. When she asked Rahul to marry, he clearly refused to marry her. Due to her upset mental state, she consumed poison on 12.11.2014 and she got treatment from the hospital for about one month and eighteen days. She further stated that on the false pretext of marriage, Rahul made physical relations with her for about one and half years and used her. On the basis of this complaint, present FIR was registered against the accused."*

3. The prosecution in support of its case examined 12 witnesses, including the prosecutrix/child victim (PW1), her mother (PW2) and her father (PW3). Child victim was also medically examined and her MLC was proved on record through Dr. Shruti Kulkarni, SR-OBG, SRHC Hospital, who was examined as PW-11. The child victim's age and her date of birth were proved through testimony of Mr Raju Maurya, Superintendent, CBSE Regional Office, Delhi (East), who was examined as PW-12.

4. The appellant, in his statement recorded under Section 313 Cr.P.C., denied the prosecution case and claimed that he was falsely implicated in the case as his mother had refused financial aid when family of the child victim requested for the same. In support of his defence, the appellant examined two witnesses i.e., Saroj (DW1) and Ram Khilawan (DW2).

5. At the outset, learned counsel conceded that the child victim being 16 years of age, is not disputed. The impugned judgment is assailed primarily on the ground that there was gross and inordinate delay of about one and half years in reporting the incident. It is further contended that the perusal of the testimony of the child victim does not make out a case for conviction under Section 376 IPC and 6 of POCSO Act as at no place, the child victim has stated that any penetrative sexual assault was committed. In this regard, learned counsel has placed reliance on the decision of the Division Bench of this court in Sahjan Ali vs. State[1], contending that the same is binding. Reliance is also placed on the decision of the Division Bench of the High Court of Sikkim in Dipesh Tamang vs. State of Sikkim.[2]

6. The contentions raised on behalf of the appellant were refuted by the learned APP for State as well as learned counsel for the prosecutrix. It was stated that the child victim was only 16 years of age and on a false promise of marriage, the appellant committed the offence of rape. The child victim consumed poison on 12.11.2014 on account of which she fell unconscious. She lost her voice and only after regaining it, she confided about offence with her mother, and the present FIR was lodged.

7. The prosecution's case hinges only on the oral evidence i.e., the testimony of the child victim and her parents. During the medical examination, internal examination has been refused. Notably, there is no forensic evidence on record.

8. The prosecutrix was examined as PW-1, who deposed that the appellant was a distant relative, being son of her *Bua* (aunt). She stated that

[1] 2024 SCC OnLine Del 9079
[2] 2020 SSC OnLine Sikk 24

in the year 2013, she got acquainted with the appellant. The appellant would frequently visit her house. He proposed marriage to her and at the end of 2013 and also established "physical relations" with her. She further deposed that on the pretext of marriage, the appellant continued to establish "physical relations" for about one year. However, towards the end of year 2014, the appellant refused to marry her, due to which she consumed poison. She got unconscious and could regained her consciousness after two months. She still could not regain her voice and walking ability for another one and a half year and on regaining her ability to speak, the present case was lodged.

In cross examination, the child victim stated that "physical relations" were established after 2-4 days of appellant proposing to marry her. Thereafter, "Physical relations" continued to be established at her house. She denied refusing internal medical examination and claimed that it was the doctor who did not examine her as the incident had occurred two years earlier. She further stated that in the year 2013, the appellant had given a mobile to her which she kept hidden away from her family. While she was admitted in the hospital after consumption of poison, the appellant took the mobile phone away when he visited her in the hospital. She admitted that the factum of the appellant visiting her in the hospital was not stated by her during her statement to the police. She denied that no "physical relations" were established and that the appellant was falsely implicated by her family to extort money.

9. The mother of the child victim was examined as PW-2, who deposed that on the date when the child victim had consumed poison (i.e., 12.11.2014), she was in her office. When she reached home, the appellant was present there. The child victim was taken to LNJP Hospital where she

remained admitted for one month and eighteen days. When the child victim regained her consciousness, she disclosed that the appellant had established "physical relations" with her on the pretext of marriage. The FIR was lodged only after the child victim regained her speech.

10. Father of the child victim was examined as PW-3. His testimony was cumulative to the testimony of his wife (PW-2), i.e., the mother of the child victim.

11. W/ASI Tejwati, (PW-9) I.O. of the case deposed that on 31.03.2016, complainant alongwith her parents came to the Police Station and handed over her complaint. The victim was medically examined and her statement recorded on 01.04.2016, and the appellant came to be arrested on 02.04.2016. In her cross examination, she stated that vocal cord of the victim was damaged and she could not speak properly, when she recorded her statement. She further stated that she collected the discharge slip of the victim to show that the patient was not able to speak for the last two years.

12. The defence of the appellant was that he never established any sexual relations with the victim and had come to know from the neighbours of the child victim that on the day of incident, her father had beaten her up and thereafter, she consumed poison. Later on, the parents of child victim had requested appellant's family for financial help that was refused by his mother.

The appellant also examined one *Saroj*, who was a worker in *Gupta farm* in the neighborhood of the child victim as DW1. *Saroj* deposed that on 12.11.2014 at about 03.00 P.M.- 04.00 P.M., there was some commotion outside and when he and his co-worker *Ram Khilawan* (DW2) went outside the farm, they saw the child victim, her parents and one other person

present. The child victim was little unconscious and was lying on the grass near the road and her mother was weeping. When DW1 asked her father about what happened, then, he told him that he had hit two *dandas* to the victim and she drank poison.

DW2 Sh. *Ram Khilawan* also deposed on similar lines.

13. The appellant has contended that there is inordinate delay in registration of FIR. As per case of prosecution, the "physical relations" were established at the end of year 2013. The appellant had refused marriage at the end of year 2014. The victim consumed poison on 12.11.2014 and she was discharged on 22.12.2014. The FIR came to be registered on 31.03.2016. It has come in oral testimony of the witnesses that the FIR could not be lodged earlier as victim had lost her voice and when she regained it, the case was registered. However, there is no evidence on record to prove that she did not have the ability to speak from the time since the incident till the FIR came to be registered. Though her thumb impression has been recorded at the time of recording of her statement under Section 164 CrPC on 01.04.2016, and her loss of sight was observed by the trial court at the time of her deposition on 27.07.2016, neither of those proceedings indicate anything in so far as the victim's ability to speak or otherwise communicate is concerned. It is only at the fag end of the trial that the WSI Tejwati (the investigation officer) in her cross examination stated that the vocal cord of the victim was damaged. She relied on her own observations and the discharge slip of the victim, pertaining to 2014. Nothing is pointed in the discharge slip which would point to any speech impairment suffered by the victim. Thus, in absence of concretely established reasons, the delay of one and a half years in reporting the incident assumes importance.

14. Coming to second limb of the appellant's contention that even on a reading of the testimony of the child victim, the ingredients of an offence punishable under Section 376 of the IPC and Section 6 of POCSO Act are not made out. In other words, it is contended that merely stating establishment of "physical relations" cannot be employed to mean that the penetrative sexual assault was committed.

15. The expression "physical relations" is not used or defined either under the IPC or POCSO Act. The Code and the POCSO Act defines different sexual offences and provides for commensurate punishments according to the degree and severity of crime. The appellant has been convicted under Section 6 POCSO Act, which prescribes punishment for aggravated penetrative sexual assault. As per Section 5 (l), whoever commits penetrative sexual assault on on the child more than once or repeatedly is said to have committed aggravated penetrative sexual assault. Penetrative sexual assault is defined under Section 3 of the POCSO Act as under:-

> *"3. Penetrative sexual assault.—A person is said to commit "penetrative sexual assault" if—*
> *(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or*
> *(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or*
> *(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or*
> *(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."*

16. It would also be beneficial to look at the definition of rape as given in the IPC as well. Section 375 IPC defines rape in the following manner: -

> *375. Rape. -- A man is said to commit "rape" if he--*

> *(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
> *(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
> *(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*
> *(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,*
> *under the circumstances falling under any of the following seven descriptions:*
> *...*
> *Sixthly. With or without her consent, when she is under eighteen years of age.*
> *Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.*

Thus, the conditions for an act to constitute penetrative sexual assault and rape are identical. One additional explanation which is provided in IPC is that "vagina" also includes *labia majora*.

17. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts. A three Judge Bench of the Supreme Court in *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat*[3] has held that section 29 of the POCSO Act comes into play once the foundational facts are established.

18. Before Section 29 of the POCSO Act can be said to be applicable against the appellant, it has to be assessed from the material on record, whether the foundational facts of the appellant committing penetrative sexual assault has been established or not. To drive home a conviction under

[3] (2025) 2 SCC 399

Section 376 IPC or Section 6 POCSO Act, the prosecution has to prove, beyond reasonable doubt, that the appellant's actions were enough to fulfill the ingredients of the said offences.

19. The credibility and reliability of the testimony depend on the judicial scrutiny of the totality of the facts and circumstances. It is settled law that the victim of a sexual assault is not to be treated as an accomplice and as such their evidence does not require corroboration from any other evidence, including evidence of the doctor. However, at the same time, it is essential for the prosecution to prove the necessary ingredients of the offence. Whether use of expression 'Physical relations' would automatically mean rape/penetrative sexual assault or there has to be some further description, or other evidence, to establish the connection between the term 'physical relations' and the offence? In this regard, gainful reference may be made to a judgment of a coordinate Bench of this Court in Virender vs The State of NCT of Delhi, 2009 SCC OnLine Del 3083, wherein while considering whether use of expression "*galat kaam*" in the testimony of prosecutrix could entail a conviction under Section 376, the court held as under:

> *"42. Commission of an offence under section 376 certainly requires some evidence with regard to the acts which were committed by an accused person to establish the ingredients of the offence. The statement which has been recorded in court does not at all enable any conclusion to be derived as to what was the comprehension of the prosecutrix as to what are the relations between a husband and wife. In any traditional and conservative Indian family, any act from mere touch to the ultimate intimacy of sexual intercourse between persons not married to each other would, in common parlance, would be covered within the gamut of acts which could be labelled as "galat kaam" or "gandi harkatein". This range would also cover the intimacies shared by a married couple. Such understanding of even the learned trial judge is manifested from the proceedings in that while putting the evidence to the appellant under section 313 of*

the CrPC, as question 4, it has been put to the appellant that he had "misbehaved" with the prosecutrix."

20. Recently, a Division Bench of this Court in Sahjan Ali (supra), while considering the import of expression "physical relations" by the prosecutrix came to the conclusion that for convicting an accused for office under Section 6 of POCSO Act and Section 376 IPC, use of expression '*sambandh'* and "physical relations" would in no manner lead to the conclusion that there was any penetrative sexual assault. The relevant observations of the Division Bench are extracted hereafter:

> *"21. It is thus unclear as to the manner in which the Trial Court came to the conclusion that there was any sexual assault by the Appellant. The mere fact that the survivor is below 18 years cannot lead to a conclusion that there was penetrative sexual assault. The survivor, in fact, used the phrase 'physical relations', but there is no clarity as to what she meant by using the said phrase. Even the use of the words 'samband banaya' is not sufficient to establish an offence under Section 3 of the POCSO Act or under Section 376 IPC. Though consent would not matter if the girl is a minor under the POCSO Act, the phrase 'physical relations' cannot be converted automatically into sexual intercourse let alone sexual assault.*
> *22. The fact that she voluntarily went with the Appellant is also not disputed. However, the leap from physical relations or samband to sexual assault and then to penetrative sexual assault is one which has to be established on record by means of evidence, and the same cannot be presumed or deduced as an inference. In such cases, the benefit of doubt ought to be in favour of the accused. Moreover, the impugned judgment completely lacks any reasoning and also does not reveal or support any rationale for the conviction.*"

21. The division bench of the Sikkim high Court in Depesh Tamang v State of Sikkim (supra) was dealing with a case wherein the prosecutrix had stated that the accused had 'physical relationship' with her. The Court held that 'physical relationship', by way of surmises and conjectures, could not be equated to penetrative sexual assault. It held as follows:-

> *"32. There is no ingredient of penetrative sexual assault in the evidence of PW1. Evidence of PW1 is that she had 'physical relationship' with the accused 5/6 times; What is meant by 'physical relationship' had not been explained. 'physical relationship' may be in very many ways. By a process of surmises and conjectures, 'physical relationship' cannot be construed to mean penetrative sexual assault within the meaning of Section 3 of the POCSO Act."*

22. Coming to the facts of the present case, the child victim in her statement under Section 164 CrPC alleged that '*Rahul mere saath ek-dedh saal se shareerik sambandh bana raha tha. uske baad jab maine use shaadi karne ke liye kaha toh usne kaha wo mujhse shaadi nhi karega*.' In Court, she deposed about the incident in the following manner: -

> *"Accused Rahul is son of my Bua (distant relative). In year 2013, I got acquainted with accused, often he used to visit my house. We both fell in love with each other. Accused proposed me for marriage. Then accused established physical relations with me in end of year 2013. Thereafter, he continued to establish physical relations for one year on pretext of marrying me. In the end of year 2014 accused refused to marry me."*

No clarification was sought, either by the APP, or the Court as to what the child victim meant by the term 'physical relations' and whether it fulfilled the ingredients of penetrative sexual assault.

23. If it appears that the testimony of the child witness is lacking in essential details, it is the statutory duty of the Court to ask certain questions to discover or obtain proper proof of the relevant facts and to first satisfy itself as to the competence of the child victim to testify and thereafter to ensure that the complete testimony is brought on record. The power can be traced to Section 165 of the Evidence Act, which reads as follows: -

> ***"165. Judge's power to put questions or order production.** — The Judge*

> *may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:*
> *Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:*
> *Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."*

A similar power has been provided under Section 168 of the Bharatiya Sakshya Adhiniyam, 2023. This power is to be used by Courts to discharge their duty of arriving at the truth and subserve the ends of justice. If the prosecution is not doing their part in the requisite manner, the Courts cannot remain a mute spectator and have to take a participatory role in the trial. Section 165 confers wide powers on the Trial Court to 'ask any questions it pleases' to elicit the relevant facts, even if the question is irrelevant.

24. In this regard, reference may also be made to the Delhi High Court Rules governing 'Practice in the Trial of Criminal Cases.' Part E of the said rules- 'Record of Evidence in Criminal Cases' Rule 2 speaks of the duty of Court to elucidate facts. It reads as under:-

> *2. Duty of Court to elucidate facts—Magistrates should endeavour to elucidate the facts and record the evidence in a clear and intelligible manner. As pointed out in 23 P.R. 1917 a Judge in a criminal trial is not merely a disinterested auditor of the contest between the prosecution and the defence, but it is his duty to elucidate points left in obscurity by either*

side, intentionally or unintentionally, to come to a clear understanding of the actual events that occurred and to remove obscurities as far as possible. The vide powers given to the Court by Section 165 of the Indian Evidence Act and Section 540 of the Code of Criminal Procedure should be judiciously utilised for this purpose when necessary.

To ensure that vulnerable witnesses are not overwhelmed by the justice dispensation system, and they feel safe while giving their testimony, in furtherance of the dicta laid down by the Supreme Court in Smruti Tukaram Badade v. State of Maharashtra[4], Delhi High Court has released 'Guidelines of the High Court of Delhi for Recording of Evidence of Vulnerable Witnesses, 2024.' Rule 23 speaks as to the Mode of questioning. It reads as follows : -

(i) To facilitate the ascertainment of the truth the court shall exercise control over the questioning of vulnerable witnesses and may do so by:

a. ensuring that questions are kept simple and stated in a form appropriate to the comprehension and developmental level of the vulnerable witness;

b. protecting vulnerable witness from harassment or undue embarrassment, character assassination, aggressive questioning, and ensure that dignity of the witness is maintained at all times during the trial;

c. avoiding waste of time by declining questions which the court considers unacceptable due to their being improper, unfair, misleading, needless, unconnected to the case, repetitive or expressed in language that is too complicated for the witness to understand.

d. allowing the vulnerable witness to testify in a narrative form.

e. in cases involving multiple accused persons or defendants, take steps to minimize repetition of questions, and the court may require counsels for different parties to provide questions in advance from all the counsels.

f. in cases involving sexual offences against child victims, ensuring that questions are put to the child victim only through the court.

(ii) Objections to questions should be couched in a manner so as not to mislead, confuse, frighten a vulnerable witness.

[4] 2022 INSC 39

(iii) The court should allow the questions to be put in simple language avoiding slang, esoteric jargon, proverbs, metaphors and acronyms. The court should ascertain the spoken language of the victim or vulnerable witness and the range of their vocabulary before recording the evidence. The court must not allow the question carrying words capable of multiple meanings, questions having use of both past and present in one sentence, or multiple questions, which is likely to confuse a witness. Where the witness seems confused, instead of repetition of the same question, the court should direct its re-phrasing.

Explanation: The reaction of a vulnerable witness shall be treated as sufficient clue that the question was not clear so it shall be rephrased and put to the witness in a different way.

(iv) Given the developmental level of vulnerable witnesses, excessively long questions shall be required to be rephrased and thereafter put to witness.

(v) Questions framed as compound or complex sentence structure; or two-part questions or those containing double negatives shall be rephrased and thereafter put to witness.

Thus, the Court, while not remaining a mute spectator, has to ensure at the same time, that the vulnerable witnesses are not overwhelmed by the process and that the guidelines extracted hereinabove are followed in their true spirit.

25. In the present case, the testimony of the child victim or her parents would show that it has been repeatedly stated that "physical relations" were established however, there is no clarity as to what was meant by the expression "physical relations". No further description of the alleged act has been given. Unfortunately, no questions have been put to the victim by the prosecution or Trial Court to gain some clarity as to whether the essential ingredients of the offence the appellant was charged with, have been made out or not. In a given case, the Court can still be guided by other attending circumstances to reach a conclusion however, in the present case the MLC of the child victim also does not lend any help in this regard as the medical examination was admittedly conducted after one and half years of the

incident and records that internal medical examination was refused. Further, there is no forensic material on record. Moreover, as noted above, there has been significant delay in reporting the incident.

26. Indeed, this is an unfortunate case. However, the court is bound to decide the case on its own merits and the evidence that has surfaced on record as well as the precedent of the Division Bench of this Court.

27. In the peculiar facts and circumstances of this case, the use of the term 'physical relations', unaccompanied by any supporting evidence, would not be sufficient to hold that the prosecution has been able to prove the offence beyond reasonable doubt. The appellant's conviction under Section 376 IPC and Section 6 of POCSO Act is unsustainable.

28. Accordingly, the appeal is allowed and the impugned judgment is set aside and the appellant acquitted. As a necessary sequitur, the appellant is released from the jail forthwith, if not required with any other case.

29. A copy of this judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.

30. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 17, 2025/*pmc*