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

Reserved on 11th September, 2025.
Pronounced on: 23rd September, 2025

\+ CRL.A. 98/2025 & CRL.M.(BAIL) 184/2025 (seeking suspension of sentence)

CHAND MIYAN .....Appellant
Through: Ms. Cauveri Birbal, Mr. Kamlendu Pandey, Ms. Nistha Dhall, Advocates

versus

STATE (NCT OF DELHI) .....Respondent
Through: Mr. Amit Ahlawat, APP for the State with SI Priyanka, PS Alipur
Mr. Deepal Goel, Advocate for Complainant

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. The present appeal under Section 415(2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] (erstwhile Section 374(2) read with Section 482 of the Code of Criminal Procedure, 1973[2]) is directed against judgment of conviction dated 07th September, 2024 and order on sentence dated 06th November, 2024 passed by the ASJ-05 (POCSO) North-West, Delhi in SC No. 288/2018 titled ***"State v. Chand Miyan"***. The said proceedings emanate from FIR No. 147/2018, registered at P.S. Alipur for the offences under Sections 342, 366(A) and 377 of the Indian Penal Code,

[1] "BNSS"
[2] "Cr.P.C."

1860[3] and Section 6 of the Protection of Children from Sexual Offences Act, 2010.[4]

FACTUAL BACKGROUND

2. The case of the Prosecution, in brief, is as follows:

2.1. On 1st April, 2018, a complaint was lodged by the Prosecutrix, alleging that on the said day, at approximately 1:00 P.M., while she had gone to purchase *daal*, she was accosted by the Appellant, Chand Miya, who was her neighbour and engaged in *kabaadi kaam* (scrap dealing). He forcibly grabbed her and took her to a nearby godown. It is further alleged that he shut the door, forcibly grabbed the Prosecutrix and covered her mouth. He then removed his own lower garments as well as those of the Prosecutrix, made her lie face down on the floor, and attempted anal penetration, and everything got wet. The Prosecutrix attempted to flee; however, she was unable to do so as the Appellant had latched the door of the godown. Thereafter, the Appellant allegedly handed her a sum of ₹10. The Prosecutrix rushed home and narrated the incident to her mother, who informed the police, leading to the registration of the FIR.

2.2. The Prosecutrix was taken to BSA Hospital, where her medical examination was conducted, and findings recorded *vide* MLC No. 749/2018. During examination, she reiterated her allegations. The MLC mentions mild redness on the labia majora and minora, with the hymen found intact. No redness or tear was observed in the perineal region.

2.3. During investigation, the statement of the Prosecutrix under Section 164 Cr.P.C. was recorded. She stated that the Appellant had taken her to the

[3] "IPC"
[4] "POCSO"

godown, bolted the door, removed her lower garments as well as his own, and committed anal penetration. She added that immediately thereafter, when the Appellant released her, she managed to unbolt the door by removing a brick and ran to her mother. Her mother thereafter went to confront the Appellant but he had absconded by then. She also clarified that there was no bleeding and that although she was not otherwise assaulted, she had sustained bruises in the assault.

2.4. Upon conclusion of investigation, chargesheet was filed before the concerned Court. Thereafter, *vide* order on charge dated 18th July, 2018, charges were framed against the Appellant under Sections 363/342/376(2) of the IPC and Section 6 of the PCOSO Act. The Appellant pleaded not guilty and clamed trial.

2.5. In support of their case, the Prosecution examined fourteen witnesses, comprising the Prosecutrix, her mother and her teacher, the investigating officers, the Appellant's brother, and the forensic examiner. For clarity and ease of reference, the witnesses are summarised in the table below:

PW No.	Name / Description	Role / Deposition
PW-1	The Prosecutrix	Complainant; alleged sexual assault; statement under Section 164 CrPC.
PW-2	Teacher of the Prosecutrix	Produced school records; DOB: 1st October, 2010.
PW-3	ASI Narender Kumar	Posted at P.S. Alipur, received the PCR call, recorded DD entry 18A.
PW-4	HC Praveen	Deposited the samples with FSL Rohini.
PW-5	Mother of the Prosecutrix	Called the Police on 100 number; corroborated disclosure.
PW-6	Dr. Mini, BSA Hospital	Proved the MLC.
PW-7	Raju @ Chhote Khan	Brother of the Appellant; claimed ownership of the warehouse.
PW-8	SI Shivdeep Singh	Received the *rukka*; FIR registered under his

PW No.	Name / Description	Role / Deposition
		supervision.
PW-9	Ct. Tara Chand	Met the Prosecutrix and her mother; collected the *rukka*.
PW-10	Ct. Shashi	Went with the Prosecutrix to BSA Hospital and got her MLC conducted.
PW-11	Ct. Amit	Arrested the Appellant, along with the IO; got his MLC conducted from SRHC Hospital.
PW-12	SI Ravinder	Went to the spot along with PW-9; took the Prosecutrix and her mother to BSA Hospital.
PW-13	Manisha Upadhyaya, Assistant Director, Biology, FSL Rohini	Conducted biological analysis of exhibits.
PW-14	SI Tejwati, Investigating Officer	Conducted investigation; collected evidence; filed chargesheet.

2.6. After closing of Prosecution evidence, the statement of the Appellant was recorded under Section 313 Cr.P.C. All incriminating circumstances appearing in the record were put to him. The Appellant denied the allegations *in toto*, asserting that he had been falsely implicated, likely due to prior animosity. In support of his defence, he examined his brother, Salim Mohammad, as DW-1. The defence witness deposed that the godown in question was being used as a residential premises occupied by 10-12 persons, and further claimed that the Prosecutrix's mother, seeking to conceal her prior association with the Appellant, had orchestrated his false implication.

2.7. Upon determination of the age of the Prosecutrix, the depositions of witnesses, and the medical evidence brought on record, the Trial Court held that the Prosecution had succeeded in proving their case. By judgment dated 7th September, 2024, the Appellant was convicted for the offences punishable under Section 6 of the POCSO Act and Sections 363/342/376(2) of the IPC. By the order on sentence dated 6th November, 2024, he was

sentenced to undergo simple imprisonment for a period of 3 years for the offence under Section 363 IPC, along with a fine of ₹500/-, and default sentence of 15 days; simple imprisonment for a period of 6 months under Section 342 IPC, along with a fine of ₹500/-, and default sentence of 15 days; and rigorous imprisonment for a period of 10 years under Section 376(2) IPC, along with a fine of ₹1,000/-, and default sentence of 30 days. The said sentences were directed to run concurrently, and benefit of Section 428 Cr.P.C was granted to the Appellant. The order on sentence also clarified that the Appellant has not been convicted separately for the offence under Section 6 of POCSO Act, in view of Section 42 of the POCSO Act and Section 71 of IPC. Further, apart from the sentence, compensation was also awarded to the Prosecutrix.

APPELLANT'S CASE

3. Ms. Cauveri Birbal, counsel for the Appellant, assails the conviction and sentence on multiple grounds, urging that the impugned judgment suffers from grave infirmities and rests on assumptions rather than reliable proof. Her submissions are summarised below:

3.1. The Trial Court failed to appreciate that the testimonies of the Prosecutrix (PW-1) and her mother (PW-5) are marred by serious contradictions and material inconsistencies. In such circumstances, it was unsafe for the Trial Court to base the conviction solely on the uncorroborated testimony of a child of tender age, without sufficient corroborative evidence to inspire confidence in the Prosecution's case.

3.2. The Prosecutrix, in her complaint (Ex. PW-1/A), alleged that the Appellant attempted to insert his penis into her anus. However, in her statement recorded under Section 164 Cr.P.C. as well as during her

examination-in-chief, she alleged actual penetration, specifically stating that the Appellant had forcefully inserted his private part into her anus. The inconsistency on the critical aspect of penetration, undermines the reliability of her testimony.

3.3. Further, the MLC of the Prosecutrix (Ex. PW-6/A) does not record any injury, bleeding, or tear in the perineal region. Therefore, the allegation of penetration is not corroborated by the evidence on record. Given that the Appellant is a fully grown adult and the Prosecutrix is of tender age, some injury would ordinarily be expected if penetration had indeed occurred. In this backdrop, the mere matching of DNA profiles of the clothes worn by the Appellant and the Prosecutrix cannot conclusively establish penetration. In this regard, reliance is placed in ***Abhay Singh v. State***,[5] wherein this Court observed that the absence of injuries in the genital region casts doubt upon the allegation of penetration by an adult male. The relevant observation reads follows:

> *"36, Since the report of the chemical examiner Ex. 14/F shows the presence of semen on the clothes and vaginal swab but the medical evidence as recorded in the MLC Ex. PW8/A does not show that the private part of the victim had any mak of violence. Had there been penetration by a fully grown up person like her father, even the slightest penetration would have caused some injury in its attempt to enter the child's vagina*".

3.4. PW-1, in her cross-examination, admitted that a dispute had taken place between her mother and the Appellant approximately one year prior to the date of the alleged incident, indicating prior animosity. It is further submitted that the Appellant and the mother of the Prosecutrix were known to each other and were relatives. This relevant aspect was overlooked by the

[5] Criminal Appeal 968/2015, decided on 26th July, 2017.

Trial Court.

3.5. The mother of the Prosecutrix, in her cross-examination, deposed that although she had known the Appellant for several years prior to the alleged incident, he did not visit their house frequently. However, it is submitted that the maternal uncle (*mama*) of the Appellant and the mother of the Prosecutrix belong to the same village. Further, contrary to her deposition, the Appellant used to frequently visit the house of the Prosecutrix.

3.6. PW-7, Raju @ Chhottey Khan, did not support the case of the Prosecution. He deposed that he had, in fact, stopped his brother, *i.e.*, the Appellant, from sitting at the godown as well as the *kabari* shop prior to the alleged incident.

3.7. The FSL Report (Ex. PW-13/A) cannot be treated as conclusive proof to establish the guilt of the Appellant. PW-13, who proved the FSL Report, admitted in her cross-examination that the time, period, and age of the stains found on the clothes of the Prosecutrix and on the gauze cloth piece attributed to the Appellant were not examined. Further, there was a delay of approximately 15 days in sending the exhibits to the FSL, raising a serious doubt as to the possibility of tampering or compromise of the integrity of the exhibits.

3.8. It is the case of the Prosecution that the Appellant abducted the Prosecutrix in broad daylight and took her to a godown. However, the IO did not record the statement of any independent witness to corroborate this claim. Furthermore, no effort was made to inquire with shopkeepers or other individuals in the vicinity of the alleged place of occurrence, despite the location being in a public area with nearby commercial establishments.

3.9. The Trial Court failed to properly appreciate the statement of the

Appellant recorded under Section 313 Cr.P.C., wherein he suggested that the present case was registered on the basis of false and incorrect information provided by the Prosecutrix and her mother, possibly due to prior enmity. The Trial Court further erred in disregarding the testimony of DW-1, Salim Mohammad, the brother of the Appellant, solely on the ground that he was an interested witness, without assigning adequate reasons for the same.

3.10. The Trial Court failed to appreciate that no proper site plan of the alleged place of incident was filed by the IO. Preparation of a site plan is not a mere procedural formality; rather, it is a critical component of the investigation, enabling the Court to arrive at a fair and reasoned conclusion regarding the commission of the alleged offence and the involvement of the accused. Reliance is placed on the judgement of the Supreme Court in ***Singhara Singh Vs. State of Haryana***.[6]

3.11 Without prejudice to the above submissions, it is contended that even if the Prosecution's case is accepted at its highest, the conviction under Section 6 of the POCSO Act is unsustainable. At most, the facts may constitute an offence under Section 7 of the POCSO Act (sexual assault), punishable under Section 10. It is further submitted that the Appellant has already undergone seven years of incarceration, which is the maximum sentence prescribed for the offence of aggravated sexual assault under Section 10 of the POCSO Act.

RESPONDENTS' CASE

4. On the other hand, Mr. Amit Ahlawat, APP for the State, and Mr. Deepal Goel, counsel for the Prosecutrix, oppose the appeal and support the findings of the Trial Court. Their submissions are summarised as follows:

[6] AIR 2004 SC 124.

4.1. The statement of the Prosecutrix is of sterling quality. She has narrated the incident in a clear, consistent, and detailed manner. Her testimony, when read in conjunction with the scientific evidence on record, clearly establishes the commission of aggravated penetrative sexual assault. The law does not require corroboration of the testimony of the Prosecutrix if her evidence inspires confidence. Reliance is placed on the settled principle that the testimony of a Prosecutrix, if found credible, can form the sole basis of conviction. It is further contended that, considering the tender age of the Prosecutrix and the trauma she underwent, minor discrepancies, if any, in her statement ought not to dilute the overall credibility of her testimony.

4.2. The Defence has failed to confront the Prosecutrix with the alleged contradictions between her complaint, her statement recorded under Section 164 Cr.P.C. and her testimony before the Court. As such, the argument regarding inconsistencies is devoid of merit and cannot be raised at the appellate stage.

4.3. The contention that the FSL report lacks credibility is without merit. The expert witness (PW-13) was not subjected to meaningful cross-examination on the findings. In such circumstances, the Appellant cannot be permitted to question the reliability of scientific evidence at the appellate stage. In support, reliance is placed on a judgment of the High Court of ***Meghalaya in Shri Thoura Darnei v. State of Meghalaya***.[7]

4.4. The medical evidence does not negate the case of the Prosecution. It is well settled that absence of visible injuries or tearing is not decisive, particularly in cases of sexual assault on a minor. The MLC recorded redness on the genital area, which lends support to the Prosecutrix's account.

[7] Crl.A. No. 37/202.

Courts have repeatedly held that lack of injuries cannot, by itself, discredit the testimony of a victim of sexual assault, more so when the victim is a child.

4.5. On the issue of penetration, it is contended that the Prosecutrix has consistently maintained, both under Section 164 Cr.P.C. and during trial, that penetration had, in fact, occurred. The complaint made immediately after the incident reflected her immature articulation of the act, but her subsequent statement and testimony provided clarity. Minor variations in expression of a child victim, it is urged, cannot be treated as contradictions.

ANALYSIS

5. The Appellant stands convicted for aggravated penetrative sexual assault upon a child. Before turning to credibility, medical and scientific evidence, it is necessary to settle the question of age; the answer triggers the statutory provision and the reverse-burden framework under the POCSO Act.

Age of the Prosecutrix

6. To establish the age of the Prosecutrix, the Prosecution examined PW-2, a teacher from the school attended by the Prosecutrix. PW-2 produced school records which reflect the date of birth of the Prosecutrix as 1st January, 2010. These documents were neither objected to by the Defence during cross-examination nor was any suggestion made challenging the authenticity or reliability of the said records. The incident in question occurred on 1st April, 2018. Accordingly, the Prosecutrix was 8 years and 3 months old at the time of the alleged incident and, therefore, falls within the definition of a "child" under Section 2(1)(d) of the POCSO Act.

7. Once minority is established, Section 29 POCSO raises a presumption

that the accused committed the charged sexual offence(s), and Section 30 deals with culpable mental state. That presumption is not absolute: it arises only after the Prosecution proves the foundational facts (including the child's age, identity of the accused, and the factum of the sexual act alleged). Thereafter, the accused may rebut on a preponderance of probabilities; but Section 29 never relieves the prosecution of first establishing that factual substratum. Courts across jurisdictions, including the Supreme Court, have underscored this two-stage analysis, while upholding the constitutionality of the reverse burden.[8]

8. The Court must now test whether the Prosecution discharged its initial burden through reliable primary facts (age already answered above, with the remaining foundational elements addressed when analysing the testimony, MLC, site evidence and FSL results). Second, if the foundation stands, the Court shall then examine whether the defence, taken as a whole, including the Section 313 Cr.P.C. statement and DW-1's testimony, rebuts the presumption on a balance of probabilities. In these inquiries, settled principles remain constant: the testimony of a sexual-assault survivor needs no corroboration if it inspires confidence; absence of visible injuries is not, by itself, exculpatory, especially where the victim is a child.

Statements of the Prosecutrix - credibility and consistency

9. Four contemporaneous accounts of the Prosecutrix are available: the initial complaint (Ex. PW-1/A), the history recorded in the MLC (Ex. PW-6/A), the statement under Section 164 Cr.P.C. (Ex. PW-1/B), and the deposition at trial. The Prosecutrix, in her complaint (PW-1/A), alleged that on 1st April, 2018, at around 1.00 P.M., while she had gone to purchase *daal*,

[8] Just Rights for Children Alliance v. S. Harish, 2024 SCC OnLine SC 2611.

she was approached by the Appellant, who forcibly grabbed her and took her to a nearby godown. It is further alleged that he shut the door and covered her mouth. He then removed his lower garments as well as those of the Prosecutrix and made her lie down on the floor in a prone position. Thereafter, he attempted to insert his penis into the anus of the Prosecutrix, and everything got wet. The Prosecutrix tried to escape; however, she was unable to do so as the Appellant had latched the door of the godown. Thereafter, the Appellant handed her a sum of ₹10. Following the incident, the Prosecutrix rushed home and narrated the events to her mother, who then called the police.

10. Pursuant to the lodging of the FIR, the Prosecutrix was taken to BSA Hospital for her medical examination *vide* MLC No. 749/2018. There, the Prosecutrix recorded her history as: *"she was going to shop this afternoon. A person named Chand Miya absconded her & took her to godown near the place. He shut the door & removed her clothes & tried to insert his penis into her vagina & anus. She was shouting, he left out of fear & left her in the godown. She herself went to home & told her father & mother about this event."*

11. In her subsequent statement recorded under Section 164 Cr.P.C., the Prosecutrix stated that her mother had asked her to purchase *masoor dal* from a nearby shop and that she was carrying ₹50 with her at the time. She further stated that the Appellant approached her from behind, covered her mouth, lifted her, and took her to his godown, where no one else was present. It is stated that the Appellant then closed the door, removed the Prosecutrix's *payjami* as well as his own lower garments, and inserted his genital organ into her anus. The Prosecutrix further mentioned that as soon

as the Appellant released her, she opened the door by removing a brick and immediately ran to her mother. She also stated that her mother attempted to confront the Appellant, but he had already absconded from the premises. Upon specific inquiry by the Magistrate, the Prosecutrix clarified that she did not bleed, nor was she physically assaulted by the Appellant, but she did sustain bruises during the incident.

12. When examined as PW-1 before the Trial Court, the Prosecutrix deposed that the Appellant, after taking her to the godown, compelled her to lie face down in a prone position. Thereafter, he inserted his penis into her anus, causing her severe pain and resulting in everything becoming wet. The material part of her testimony is extracted below for reference:

> *"Issi saal 4-5 mahine pehle garmiyon ke din the, ek din mein dopehar ke samai apni mummy ke kehne per daal lene dukan per jaa rahi thi, toh muljim Chand Miyan, jo ki aaj adalat main hajir hai (witness has correctly identified accused Chand Miyan through wooden partition) jo ki hamare pados main rehta hai, ne mujhe pakad liya aur mujhe apne kabad ki godown main Ie gaya, aur fir ussne darwaja ander se band karke mujhe ander band kar diya tha aur darwaje per iint (brick) laga di thi aur mera mooh daba diya tha,* ***aur fir Chand Miyan ne meri pajami utaar di aur apna pajama bhi utaar diya, aur mujhe fursh per ulta laitakar jabardasti mere latrin ke raaste main apni susu kame wali jageh ghhusa di. Mujhe bahut dard hua tha, aur fir sab geela-geela ho gaya.*** *Chand Miyan ne mujhe Rs. 10/- diye aur kaha ki apni mummy ko kuch mut batana. Mein Darwaja kholkar iint (brick) hatakar, bhagkar apni mummy ke pass gayi aur unhe saari baaten batayi. Meri mummy chappal lekar Chand Miyan ko maarne gayi thi. Raaste main ek aunti puch rahi thi ki kya hua toh meri mummy ne kaha tha ki dekho Chand Miyan ne isske saath kya kar diya. Muljim Chand Miyan, hamen godown per nahi mila, wo wahan se bhag gaya tha."*

13. Read together, these statements demonstrate a consistent and coherent narrative implicating the Appellant in acts of sexual assault. The Prosecutrix has provided a detailed and consistent account of the sequence of events across multiple statements, which lends credibility to her version and

supports the conclusion that the Appellant committed acts amounting to sexual assault upon her.

14. The defence has sought to capitalise on two variations: first, that the complaint and the MLC history describe only an "attempt" at insertion, whereas the Section 164 Cr.P.C. statement and deposition speak of actual anal penetration; and second, that the MLC history refers to "vagina and anus," while the complaint and subsequent accounts specify the anus alone. These differences are not material. The first account of a traumatised child cannot be expected to provide a precise, clinical description of penetration; it is well recognised that clarity often emerges when the victim is questioned in a more secure setting such as before a Magistrate or in court. What is critical is that in her Section 164 Cr.P.C. statement and her deposition, the Prosecutrix consistently affirmed anal penetration.

15. As per Section 3 of the POCSO Act, even the slightest penetration of the anus amounts to penetrative sexual assault, and the law does not require visible injury to corroborate the fact of penetration. The Supreme Court has repeatedly cautioned against elevating peripheral discrepancies into determinative contradictions when the core account of sexual assault remains intact and credible.[9] In law, the testimony of a survivor of sexual assault, if credible, requires no mechanical corroboration and can form the sole basis of conviction. The Supreme Court has underscored this principle in ***Rai Sandeep v. State (NCT of Delhi)***,[10] when characterising a "sterling witness".

16. It must also be noted that the phrase "everything became wet,"[11]

[9] State of Punjab v. Gurmit Singh, (1996) 2 SCC 384; State of H.P. v. Sanjay Kumar, (2017) 2 SCC 51
[10] (2012) 8 SCC 21.
[11] *"phir sab geela-geela ho gaya"*, as reported in her complaint as well as her testimony before the Court.

recurring in both the complaint and the deposition, cannot be read as embellishment. It reflects, in the vocabulary of a child, the physical consequence of the act she endured. When viewed alongside her account of forced undressing, gagging, and the immediate sensation of pain,[12] the expression appears spontaneous and natural rather than contrived. Equally significant is her prompt disclosure of the incident to her mother, without delay or external influence. Such immediacy of the narration instils confidence in its truthfulness and falls within the ambit of *res gestae* under Section 6 of the Indian Evidence Act, 1872.

17. On the aspect of alleged contradictions, the record discloses no material impeachment of PW-1 in terms of Section 145 of the Evidence Act. Unless the defence specifically confronts the witness with the relevant portions of her prior statements and duly proves them, an inconsistency remains a matter of argument rather than evidence. The principle was conclusively settled in ***Tahsildar Singh v. State of U.P.***,[13] which remains the locus classicus on the manner of proving contradictions. In any case, the variations highlighted concern nuances of expression, not the substance of occurrence. The identity of the assailant, the location (the godown), the method employed (gagging, undressing, prone positioning), the act alleged (anal sexual assault), and the immediate aftermath (receipt of ₹10 and prompt disclosure) are steady across all stages of her narration.

18. On a holistic appraisal, the Prosecutrix's testimony emerges as natural and consistent on the essentials. At the same time, the present analysis does not end with testimonial appreciation alone. The subsequent sections

[12] "mujhe bahut dar hua", as noted in her deposition before the Trial Court.
[13] AIR 1959 SC 1012.

examine her account in the light of medical findings and forensic evidence, and thereafter assess whether the defence plea of prior animosity, the testimony of DW-1, and the asserted investigative lapses are sufficient, cumulatively or otherwise, to dislodge the statutory presumption under Section 29 of the POCSO Act.

19. At this juncture, it is apposite to refer to the judgement of ***Nirmal Premkumar v. State***,[14] wherein the Supreme Court categorised the reliability of oral testimony of the Prosecutrix into three distinct classes:

> *"11.* ***Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence."***
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> *xx…x….x…*
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> *13. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."*

20. The Supreme Court further has observed that while the testimony of a Prosecutrix can, in appropriate cases, be treated as that of a "sterling witness" needing no corroboration, this standard demands a very high quality of consistency from the earliest account to the deposition in court, with only immaterial discrepancies tolerated. Tested on that framework, the Prosecutrix's evidence here cannot be placed in the category of wholly

[14] 2024 SCC OnLine SC 260.

unreliable. She has consistently maintained the essentials: that the Appellant intercepted her on the way to the shop, took her to the godown, gagged her mouth, removed her lower garments, and subjected her to a sexual act. The apparent shift in her narrative, from describing an "attempt" in the initial complaint and medical history, to affirming "penetration" in her statement under Section 164 Cr.P.C. and in court, is better understood as a child's difficulty in articulating the nature of the assault at the earliest stage rather than a contradiction. A child of tender age cannot be expected to describe penetration with precision in her first account, and it is natural that her later statements, recorded in safer and more formal settings, reflected greater clarity.

21. The Supreme Court, in ***State of M.P. v. Balveer Singh***,[15] after examining a catena of previous decisions, succinctly summarised the governing principles for appreciating the testimony of a child witness:

> *"35. From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify.* ***The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.****"*

22. Against this background, given the pruported inconsistencies in the

Prosecutrix's account, even if the Court does not consider her testimony to be "wholly reliable," it would still fall within the third category as identified by the Supreme Court in ***Nirmal Premkumar***, that is, "neither wholly reliable nor wholly unreliable". In such a situation, in view of the legal principles enunciated in ***Balveer Singh***, the Court cannot discard her testimony outright, nor is it prudent to accept it in its entirety without reservation. The Court there emphasised that minor inconsistencies do not warrant discarding such testimony, and that corroboration is not a legal mandate but only a measure of prudence in appropriate cases. In the present case, judicial prudence requires that the Prosecutrix's version be tested against corroborative evidence such as the medical examination and forensic results before arriving at a final conclusion on its reliability.

23. It is here that the scientific evidence, particularly the MLC of the Prosecutrix as well as the FSL report, assumes significance.

Scientific Evidence

24. DNA profiling, when conducted in accordance with established forensic protocols, is regarded by courts as possessing the highest degree of reliability. Its probative worth, however, is contingent on two safeguards: first, that the chain of custody of exhibits remains intact; and second, that the expert furnishes clear testimony on what the generated profiles establish, and equally, what they cannot establish. Considered against these standards, the present case furnishes dependable scientific corroboration of the Prosecutrix's account.

25. The FSL, Rohini report (PW-13/A) records: *"DNA profile was generated from the source of exhibit '3' (Gauze cloth piece of accused) is*

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[15] 2025 SCC OnLine SC 390.

similar with DNA profile generated from the source of exhibit '2' (Clothes of victim)". Exhibit '3' is a dirty moist blackish brown gauze cloth piece described as 'blood sample' of the Appellant, while exhibits '2a' and '2b' are the clothes worn by the Prosecutrix at the time of the alleged incident. The report further indicates that human semen was detected on exhibits '2a' and '2b'. Thus, in plain terms, the Prosecutrix's clothing bore the Appellant's semen. That finding dovetails with her consistent description of "wetness" immediately after the act and furnishes powerful corroboration of sexual contact contemporaneous with the incident. This evidence corroborates the assertion that there was physical contact involving transfer of the Appellant's biological material to the garments worn by the Prosecutrix during the alleged incident.

26. The report also notes that no male DNA profile was generated from the cervical, vaginal, and rectal swabs/slides. However, the negative finding on the swabs does not undermine the Prosecution's case. First, as noted above, Section 3 of the POCSO Act makes it clear that penetration "to any extent" into the anus amounts to penetrative sexual assault; the law does not predicate guilt on the recovery of semen or the presence of visible injuries. Second, forensic science and judicial experience caution against placing undue weight on negative swab results. Yield may be affected by several factors: the timing of collection, the small surface area sampled, partial or momentary penetration, absence of ejaculation in the cavity, transfer of semen onto clothing rather than internal surfaces, intervening acts such as defecation or degradation of biological material. Third, the positive detection of semen on the Prosecutrix's clothing, with DNA matching the Appellant, provides direct corroboration of her account of the assault and its

aftermath. In this setting, the negative swabs represent absence of recovery, not proof of absence.

27. The Defence has urged that if anal penetration had indeed occurred upon a child of eight years, some degree of injury would almost inevitably be found. Indeed, the medical examination (MLC) of the Prosecutrix (PW-6/A) records only mild redness in the labia majora and labia minora. There was no tear or bleeding observed in the fourchette area; the hymen was found to be intact; and there was no indication of redness, edema, or tear in the perineal region. While the Appellant's argument is not entirely without force, the legal and medical position does not make injury a *sine qua non*. The Supreme Court has consistently reiterated that the absence of injuries does not negate the offence of rape or penetrative assault.[16] Medically, several factors explain why injuries may be absent: penetration may have been only partial, the act may have involved ejaculation without forceful entry, the elasticity of tissues in a child may allow minor penetration without lasting marks, and the examination was conducted hours after the incident, when superficial abrasions could already have subsided or been overlooked. Thus, while the presence of injury may have furnished corroboration, its absence does not erode the consistent testimony of the Prosecutrix or the corroborative DNA findings on her clothing. On this aspect it is also apposite to note the findings of the Trial Court:

> *"29. On the basis of the various versions of the victim recorded at different stages of the case and the testimony of the victim and other witnesses and other evidence on record, it emerges out as follows:*
> *(i)* ***The version of the victim had remained consistent:***
> *Victim in the present case was only eight years at the time of alleged offence. She in her complaint which was got registered on the very same*

[16] State of Punjab v. Gurmit Singh, (1996) 2 SCC 384; Lok Mal v. State of Uttar Pradesh, (2025) 4 SCC 470.

day has stated that during afternoon hours, while she was going to purchase daal, the said incident was committed by the accused at his godown after confining the victim there by closing the door and she stated that accused had grappled her mouth and removed her payjami and made her to lie down on the floor facing the ground and he also removed his payjama and tried to insert his urinal part into her anus and then she felt wetness. In her medical examination also, victim has given the same description of the acts of the accused. In her statement under Section 164 CrPC, victim has stated that accused had inserted his urinal part from her backside. She explained the backside as 'potty wal jagah' in her said statement. Upon further asking by the Ld. MM, she denied for bleeding and stated that she received bruises. In her testimony, victim has described the acts of the accused in the similar manner as she has stated in her statement under Section 164 CrPC. Ld. Counsel for accused has argued that there is improvement on the part of the victim as she has stated in her complaint and at the time of her medical examination that accused tried to insert his urinal part into her anus, however, in her statement under Section 164 CrPC and in her testimony she has made improvements by stating that accused inserted his urinal part into her anus. The victim in each of her statement stated that she felt wetness after the commission of the said act by the accused. She has specifically mentioned that accused removed her payjami and that accused had also removed his lower and made her to lie down facing ground for the commission of said act and after the commission of act, she felt wetness. In her complaint and at the time of her medical examination, victim has specifically mentioned that accused tried to put his urinal part into her vagina and anus. As per Section 3 of the POCSO Act, penetration by penis to any extent into vagina, mouth, urethra or anus is sufficient for commission of penetrative sexual assault. In the present, case, victim in her statement under Section 164 CrPC as well as in her testimony stated that accused inserted his penis into anus. Victim in each of her statement has stated that after the commission of alleged act by the accused, she felt wetness. Court is mindful of the fact that at the time of commission of alleged offence, the age of victim was only eight years. The child of such a tender age might not have sufficient knowledge to explain the alleged sexual act of the accused. Considering all the statements of the victim, recorded at all the different stages, the Court is of the opinion that victim at every stage of the case, simply explained the act of the accused whatever she has felt or observed. From the different wordings of the victim, it cannot be said that victim had deliberately tried to improve her version. Further, the testimony of the victim finds corroboration in the MLC Ex. PW-6/A wherein victim stated that the accused tried to insert his penis into her vagina and anus and mild redness was found on labia majora and minora.

(ii) ***Testimony of victim and her mother are corroborative to each other:***

Mother of the victim in the present case, is although a hearsay witness w.r.t. commission of offence by the accused, however, the mother of the victim had duly deposed that on the alleged date at about 01:00 p.m. she had sent the victim to purchase daal and after sometime victim came crying and told her about the alleged acts of the accused. She has further stated that after hearing about the alleged acts of the accused, she went to the godown of the accused to apprehend him but accused was not found there and then she made call at 100 number. Victim in her testimony has also deposed the similar facts that on the alleged day, during afternoon hours, she had gone to purchase daal and then the accused committed the alleged act with her. She has further deposed that after the alleged act of the accused, she went running to her mother and told her about all the acts of the accused and then her mother went to apprehend the accused. Victim has also stated that her mother did not find the accused at godown and then she made call at 100 number and this way, testimony of the victim and her mother found corroborative to each other with respect to after commission of the alleged act by the accused,

(iii) ***Victim successfully withstood the rigor of cross examination:***

Victim in her cross examination stated that her mother had given Rs.50/- to purchase dal and there was no one else with her at that time. She has further deposed that when the accused had forcefully took her to his godown, no one was there. She further stated that after the alleged act, her mother had gone to beat accused at his godown. She denied that three days prior to the alleged act, there was quarrel took place between her mother and the accused. She voluntarily stated that quarrel had taken place, one year back. She also denied that before arrival of police, father and brother of accused did not come to her house. This way, victim has successfully understood the rigor of cross examination.

(iv) ***Promptness in registration of FIR****.:*

As per the testimony of victim, she had gone to purchase daal in afternoon hours. As per the testimony of mother ofvictim, she has sent the victim at about 01:00 p.m. to purchase daal. As per PW 9, Ct. Tara Chand, he received the information about the present case at about 03:25 p.m. and at about 03:45 p.m., he reached at the spot. Considering the testimony of victim, her mother and PW 9, the FIR in the present was promptly registered. Prompt registration of FIR rules out of any false and malicious implication on the part of victim and her family.

(v) Testimony of PW 6 corroborates the testimony of witness :

PW 6 Dr. Mini deposed that on 01.04.2018 at about 05:30 p.m., the patient S aged about 9 years was brought to the one stop center and she gave alleged history from point A to A 1. In her cross

> ***examination, she denied that the victim did not narrate the said facts in her MLC or that the history made in the MLC as per the dictation of her mother. This way, the testimony of PW-6 further strengthen the case of prosecution and rules out tutoring of the victim.***
> ***(vi) FSL Result:***
> ***As per FSL result Ex.PW 13/A, the DNA profile generated from the source of Ex.3 i.e. gauze cloth piece of accused, is similar with DNA profile generated from the source of Ex.2 i.e. clothes of the victim. From the FSL result, the testimony of victim, finds corroboration regarding the commission of penetrative sexual act by the accused upon her.***
> ***30. From the above discussion, it can be safely concluded that prosecution by way of leading evidence has been successful in proving commission of the alleged offences by the accused. Now it is upon the accused to rebut the presumption as lies under section 29 and 30 of the POCSO Act.***"

28. The Trial Court extracted and relied upon the core features of the scientific matrix, semen on the Prosecutrix's clothes and DNA concordance with the Appellant's reference sample, as corroborative of her testimony. That approach is sound. Where the child's account is consistent on essentials, the presence of the Appellant's semen on her garments at the material time is difficult to reconcile with innocence, and comfortably satisfies the Prosecution's foundational burden. The defence has not, on a preponderance of probabilities, furnished a credible alternative explanation consistent with innocence.

29. For completeness, the Court must also address the Appellant's contention that the proved facts at best amount to "sexual assault" under Section 7 of the POCSO Act, and not "penetrative sexual assault" under Section 3. Reliance is also placed on the judgment in ***Attorney General v. Satish***,[17] where the Supreme Court elaborated on the scope and ambit of Section 7, drawing a distinction between the two limbs of the provision:

[17] (2022) 5 SCC 545.

> *20. A close analysis of Section 7 reveals that it is broadly divided into two limbs. Sexual assault, under the first limb is defined as the touching by a person - with sexual intent - of four specific body parts (vagina, penis, anus or breast) of a child, or making a child touch any of those body parts of "such person" (i.e. a clear reference to the offender) or of "any other person" (i.e. other than the child, or the offender). In the second limb, sexual assault is the doing of "any other act with sexual intent which involves physical contact without penetration".*
> *21. The use of the expression "touch" appears to be common, to the first and second parts, of the first limb. "Touch" says the Cambridge Dictionary is*
>
> > *"to put your hand or another part of your body lightly onto and off something or someone."*
>
> *22. Collins Dictionary, likewise, states that*
>
> > *"Your sense of touch is your ability to tell what something is like when you feel it with your hands."*
>
> *23. "Contact" on the other hand, which is used in the second limb, has a wider connotation; it encompasses - but is not always limited to – 'touch'. While it is not immediately apparent why the term 'physical contact' has been used in the second limb, its use in conjunction with "any other act" (controlled by the overarching expression "with sexual intent"), indicates that 'physical contact' means something which is of wider import than 'touching'. Viewed so, physical contact without penetration, may not necessarily involve touch. The "other act" involving "physical contact" may involve: direct physical contact by the offender, with any other body part (not mentioned in the first limb) of the victim; other acts, such as use of an object by the offender, engaging physical contact with the victim; or in the given circumstances of the case, even no contact by the offender (the expression "any other act" is sufficiently wide to connote, for instance, the victim being coerced to touch oneself).*

30. The Prosecutrix, both in her statement under Section 164 Cr.P.C. and in her testimony before the Court, unequivocally affirmed that anal penetration had taken place. This account finds corroboration in the forensic evidence: the detection of semen on the prosecutrix's clothing, with DNA matching the Appellant, coheres with her consistent description of pain and "wetness" immediately after the incident. As adumbrated above, it is well-settled that neither external injuries nor recovery of semen from internal swabs are essential to establish penetration, particularly in cases involving

children. The evidentiary balance, therefore, firmly establishes penetrative sexual assault within the meaning of Section 3, thereby attracting the enhanced punishment prescribed under Section 6.

31. Thus, the conviction under Sections 6 of the POCSO Act (punishment for aggravated penetrative sexual assault) and Section 376(2) of the IPC (punishment for rape) is made out against the Appellant.

Defence Evidence and Rebuttal of Presumption

32. The Appellant, in his statement under Section 313 Cr.P.C., denied the allegations *in toto* and asserted false implication owing to prior animosity. In defence, he examined his brother, DW-1 Salim Mohammad, who deposed that the godown was being used as a residential premises occupied by several individuals, and that the Prosecutrix's mother had falsely implicated the Appellant to conceal her prior association with him.

33. This line of defence does not assist the Appellant. The allegation of prior enmity or personal animus is wholly unsubstantiated. No independent evidence was led to suggest any dispute proximate to the incident that could plausibly explain a child's false accusation of such gravity. While false implication is not impossible in sexual offence cases, the burden lies on the defence to establish some credible foundation for such a theory. None is forthcoming here. The improbability of a minor voluntarily subjecting herself to medical examination, prolonged investigation, and cross-examination without any apparent motive is a factor the Court cannot overlook.

34. Second, the testimony of DW-1 lacks probative weight. Being the Appellant's brother, his evidence is inherently interested, and his suggestion that the Prosecutrix was prompted to make allegations in order to conceal

her mother's supposed relationship with the Appellant is not only speculative but implausible. The Trial Court rightly discounted this testimony, and there is no material to warrant a different view.

35. Third, the absence of a site plan or statements from independent shopkeepers in the vicinity does not, by itself, create a reasonable doubt. It is well settled that sexual offences frequently occur in private or secluded locations and are rarely witnessed by outsiders. The consistent account of the Prosecutrix, corroborated by her mother, medical examination, and DNA evidence, is more than sufficient to establish the foundation of the offence.

36. As to chain of custody and the Defence suggestion of a 15-day delay in dispatch to FSL: the record does not reveal any tampering or breach, and the seals were not shown to be compromised. The expert from FSL confirmed receipt of the exhibits in sealed condition, with the seals tallying with the specimen impressions. Further, the defence did not extract in cross-examination any admission to suggest breach of the chain of custody. In these circumstances, the timing of dispatch, by itself, does not diminish the probative force of the semen detection and DNA match, which strongly corroborate the Prosecutrix's testimony.

37. As regards the Appellant's contention concerning the alleged lapse on the part of the Investigating Agency in not associating independent witnesses with the investigation or examining nearby shopkeepers, it is noted that the Investigating Officer (PW-14), in her cross-examination, stated that no worker was present inside the godown at the time when she visited the scene of the incident. She further deposed that, although efforts were made to associate public witnesses from the vicinity of the godown, the same could not materialise as no one was found to be available. In any

event, given the consistent and cogent testimony of the Prosecutrix regarding the incident of sexual assault, such alleged investigative lapses do not, by themselves, vitiate the Prosecution's case. It is well-settled that the case of the Prosecution cannot be discarded solely on the ground that no independent witnesses have been examined, especially when the testimony of the victim inspires confidence of the Court.[18]

38. In these circumstances, the statutory presumption under Section 29 of the POCSO Act stands unrebutted. The Defence has not discharged the burden of creating a preponderance of probabilities consistent with innocence. On the contrary, the record points unerringly to the Appellant's culpability.

CONCLUSION

39. The record of this case discloses the ordeal of a child barely eight years of age, who was betrayed and violated by a neighbour she would ordinarily have trusted. Her courage in disclosing the incident to her mother immediately, in narrating the same to the Magistrate, and before the Court, is commendable. The law has long recognised that children, because of their tender age, may not describe such acts with clinical precision; yet the essence of their testimony, if natural and consistent, must be given full weight. Here, her account finds strong corroboration in the scientific evidence, leaving no room for reasonable doubt.

40. Offences of this nature strike at the very core of a child's dignity and security. The Protection of Children from Sexual Offences Act, 2012 was enacted to ensure that children are safeguarded against sexual abuse in all its forms, and to mandate a sensitive but firm judicial response. Courts are

[18] State of Punjab v. Gurmit Singh, (1996) 2 SCC 384.

under a solemn duty not only to do justice in the individual case, but also to reaffirm society's commitment that such crimes will be met with stern consequences.

41. In light of the foregoing discussion, this Court finds no infirmity in the conviction of the Appellant under, *inter alia*, Section 6 of the POCSO Act and Section 376(2) IPC, nor in the sentence imposed. The appeal is accordingly dismissed. The conviction and sentence recorded by the Trial Court are affirmed.

42. The Trial Court has already directed compensation to be paid to the Prosecutrix. The same shall be disbursed, if not already done, in accordance with the provisions of Section 33(8) of the POCSO Act read with the Delhi Victim Compensation Scheme, so that some measure of rehabilitation is secured for the child.

43. Disposed of, along with pending application.

SANJEEV NARULA, J

SEPTEMBER 23, 2025/ab