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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 28.07.2025*+ **CRL.A. 141/2025, CRL.M.(BAIL) 243/2025 & CRL.M.(BAIL) 965/2025**

RAJESH GAMBHIRAppellant

Through: Mr. Ashish Sehrawat, Mr. Kapil Yadav and Mr. Nikhil Yadav, Advs.

versus

STATE GNCT OF DELHI AND ANRRespondents

Through: Mr. Naresh Kumar Chahar, APP for the State with Ms. Puja Mann, Adv.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****J U D G M E N T****Index to the Judgment**

FACTUAL BACKDROP	3
SUBMISSIONS BEFORE THE COURT	7
On behalf of the Appellant	7
On behalf of the State	10
ANALYSIS & FINDINGS	11
Testimonies of Material Witnesses	12
Version put forth by the Accused	19
Age of the Victim	20
Whether the offence alleged against the appellant has been proven beyond reasonable doubt?	20



Sentencing of the Appellant.....	31
<i>Evil Use of Technology to Outsmart Investigating Agencies</i>	32
<i>Technology as a Tool for Cyberbullying</i>	33
<i>Mental and Emotional Impact of Cyber Threats on Children</i>	33
<i>Necessity of Providing Safe Digital Spaces for Children</i>	34
<i>Lasting Trauma and the Need for Deterrence in Cybercrime Against Children</i>	34
The Decision	35

DR. SWARANA KANTA SHARMA, J

1. The appellant has preferred the present appeal to assail the judgment dated 26.03.2024 and the order on sentence dated 02.12.2024 [hereafter '*impugned judgment and order*'], passed by the learned Additional Sessions Judge-01, POCSO, North-West, Rohini Courts, Delhi [hereafter '*Trial Court*'] in SC No. 53654/16. The said case arose out of FIR No. 456/2016, registered on 23.09.2016 at Police Station Ashok Vihar, Delhi, for the commission of offences punishable under Sections 354A, 354D, 509 and 506 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Sections 67 and 67A of the Information Technology Act, 2000 [hereafter '*IT Act*'].

2. By way of the impugned judgment, the appellant was convicted for offences under Sections 354A(iii), 354D, 509, and 506 of the IPC; Sections 67 and 67B of the IT Act; and Sections 11(v)/12 and 13/14 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*']. Vide the impugned order on sentence, he was awarded sentence of rigorous imprisonment for a period of 03



years for the offence punishable under Section 12 of POCSO; rigorous imprisonment for a period of 01 year for the offence punishable under Section 506 of IPC; rigorous imprisonment for a period of 05 years for the offence punishable under Section 14 of POCSO Act; and rigorous imprisonment for a period of 05 years for the offence punishable under Section 67B of the IT Act. All the sentences were directed to run concurrently.

FACTUAL BACKDROP

3. The prosecution was set in motion pursuant to a complaint dated 22.09.2016 lodged by the mother of the minor victim 'VG', a Class IX student. It was alleged that the victim VG had received vulgar and obscene images on her mobile phone, which bore the number 96XXXXXX55, through WhatsApp messages sent from mobile number 7834891235. The images were disturbing in nature, i.e. her face had been morphed onto the nude body of another person. Accompanying these images was a threatening message warning that if she did not comply with the sender's demands, the obscene content would be uploaded on Facebook and circulated over the Internet. Based on this complaint, FIR No. 456/2016 was registered, and investigation commenced.

4. During investigation, the Investigating Officer (I.O.) procured the call detail records (CDRs) of mobile number 7834891235. The CDRs revealed that the said number had been used across multiple IMEIs, and was registered in the name of one Ramesh. However, no



verifiable address for Ramesh could be located. Further technical analysis showed that the number had been predominantly used with three IMEIs: (1) 356436035501640, (2) 358425073433590, and (3) 355965042266750. Upon cross-checking the CDRs linked to these IMEIs, one common mobile number i.e. 9910902401 surfaced repeatedly. This number was found registered in the name of the present accused, Rajesh. The police thus reached the address associated with the said number, which turned out to be a mobile shop named 'Gambhir Communication'. Upon spotting the police, the accused attempted to flee but was apprehended. A search of his premises led to the recovery of a Samsung J7 (golden colour) mobile phone. Examination of the phone revealed several obscene and sexually explicit images, including the same morphed picture that had been sent to the victim.

5. It is the prosecution's case that the accused had confessed to having sent the obscene picture and threatening messages to the victim. He had disclosed that the SIM card used to send the images was hidden in his shop, and that two other mobile phones he had used during the commission of the offence were also stored there. At his instance, the SIM card bearing the number 7834891235 was recovered from beneath a newspaper on a slab inside the shop. In addition to the Samsung J7, two other mobile phones, i.e. a Nokia phone and a Bird phone were recovered and seized.

6. The complainant also handed over two colour printouts of the obscene images, which were taken into custody. Further, the



Samsung tablet used by the victim to receive the messages, along with its SIM card, was seized. The victim's statement under Section 164 of Cr.P.C. was recorded before the learned Magistrate. All relevant electronic devices and materials were forwarded to the Forensic Science Laboratory (FSL) for analysis and retrieval of the digital evidence.

7. Upon completion of investigation, a chargesheet was filed before the learned Trial Court. Charges were framed for the commission of offences punishable under Sections 354A, 354D, 506, and 509 of the IPC; Sections 11(v)/12 and 13/14 of the POCSO Act; and Sections 67 and 67B of the Information Technology Act.

8. During the course of trial, the prosecution examined 15 witnesses to prove its case. The accused's statement was recorded under Section 313 of the Cr.P.C. wherein he denied the allegations in totality and stated that he had been falsely implicated in this case. The accused chose to lead defence evidence and was granted opportunity to do so; however, he did not lead the evidence thereafter and the same stood closed. After hearing final arguments and upon conclusion of trial, the learned Trial Court held the appellant guilty of the alleged offences. The concluding portion of the impugned judgment of conviction reads as under:

“Conclusion

42. In the present case the testimonies of the witnesses have remained consistent and corroborative with each other. Moreover, the documentary proof has duly supported the testimony of the witnesses regarding that whatsapp chat being



sent by the accused. Thus, the Court does not find any reason to disbelieve the testimonies of witnesses and the documents which have been proved. On the other hand, at the time of recording of statement of accused under Section 313 Cr.P.C accused has only stated that he has been falsely implicated in this case, he also alleged against police officials from Andha Mugal, however, no defence evidence is adduced by the accused to show that he has been falsely implicated despite opportunity being granted.

43. Accordingly, as per above discussed facts, the prosecution has been successful in bringing home the guilt of the accused for the offence u/s 354A(iii)/354D/509/506 IPC and Section 11(v) punishable u/s 12 POCSO Act, 13 POCSO Act punishable u/s 14 POCSO Act and 67 and 67B of Information Technology Act are found to be proved. Hence, the accused is convicted for the offences punishable under section 354A(iii)/354D/509/506 IPC and Section 11 (v) punishable u/s 12 POCSO Act, 13 POCSO Act punishable u/s 14 POCSO Act and 67 and 67B of Information Technology Act.”

9. The concluding portion of the order on sentence is extracted hereunder:



S.No.	Offence	Substantive Sentence	Fine	Sentence in default of payment of fine
1.	12 POCSO Act	03 years (Three Year) rigorous imprisonment	Rs. 10,000/- (Rupees Ten thousand Only)	SI Three months.
2.	Section 506 IPC	01 year (One year) rigorous imprisonment	Rs. 10,000/- (Rupees Ten thousand Only)	SI Three months.
3.	14 POCSO Act	05 years (Five Year) rigorous imprisonment	Rs. 50,000/- (Rupees Fifty thousand Only)	SI Four months.
4.	67B IT Act	05 years (Five Year) rigorous imprisonment	Rs. 1,00,000/- (Rupees One Lakh Only)	SI Six months.

10. Aggrieved by his conviction, the appellant has preferred the present appeal.

SUBMISSIONS BEFORE THE COURT

On behalf of the Appellant

11. The learned counsel appearing on behalf of the appellant argues that the prosecution case is riddled with contradictions and falsehoods, and that the appellant has been falsely implicated. It is submitted that in the initial complaint (Ex. PW-1/A, DD No. 44B) lodged on 22.09.2016, the complainant failed to mention the make or model of the device allegedly used by the victim, nor did she specify the date on which the obscene message was received. It is further



submitted that while two screenshots were allegedly produced by the complainant (Ex. PW-10/F), the version given by the victim in her statement under Section 164 of Cr.P.C. materially departs from the original complaint. The victim introduced a new narrative stating that she had not been using her phone due to exams, and upon taking her mother's tablet device, discovered the objectionable messages. The existence of two devices, one being the victim's mobile and the other her mother's tab, casts doubt on the prosecution's version.

12. The learned counsel argues that neither the tablet (Ex. PW-1/B) nor the screenshots (Ex. PW-10/F) were shown to PW-1 or PW-2 during their examination in court. This omission, it is urged, is significant and attracts an adverse inference under Section 114(g) of the Indian Evidence Act. Moreover, the prosecution failed to produce any document proving that the tablet belonged to the victim or her mother. In the absence of such corroborative evidence, and given that the case property was not identified by key witnesses, the prosecution's case is materially weakened. It is contended that the I.O.'s evidence alone cannot be considered conclusive or sufficient to sustain the conviction.

13. The learned counsel for the appellant further submits that the prosecution's case suffers from glaring contradictions in the testimony of its own witnesses. It is pointed out that PW-8, in his examination-in-chief dated 27.05.2022, stated that he, along with PW-10, conducted a raid based on the CDRs, which led them to the appellant's shop. However, in his cross-examination dated



01.05.2023, PW-8 admitted that the CDR was in hard copy form, while PW-10, Insp. Sandeep Kumar, contradicted this by stating that no printout of the CDR had been taken. It is further argued that although PW-8 claimed to have personally checked the Samsung J7 mobile phone and found 55 obscene photographs, which he allegedly took screenshots of (Ex. PW-8/B), he later contradicted himself during cross-examination by stating that he had not checked the said mobile phone. The phone in question was allegedly seized by the I.O., but no effort was made to recover or examine the original digital evidence directly from the device. Moreover, neither the source of the printouts nor the mobile phone of PW-8, from which the screenshots were allegedly taken, was seized or examined. No certificate under Section 65B of the Indian Evidence Act was furnished in support of these electronic records, rendering them inadmissible.

14. The learned counsel also submits that the arrest and disclosure statement of the appellant, as recorded by PW-8, suffers from inconsistencies regarding the timing and sequence of events. Furthermore, the prosecution's entire case hinges on the mobile number 7834891235, which, as per Ex. PW-9/C, was registered in the name of one Ramesh. Statements of the shopkeepers who sold the SIM card confirmed that the SIM was issued to Ramesh after due diligence. However, despite this, no effort was made by the I.O. to trace or apprehend Ramesh. No independent witness was examined in this regard, and the Trial Court failed to appreciate the prosecution's failure to explore this critical aspect. It is also submitted that the



learned Trial Court failed to consider that the IMEI number of a mobile device can be altered, and no enquiry was conducted by the I.O. into the possibility of tampering.

15. On these grounds, the learned counsel contends that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt, and that the learned Trial Court erred in convicting the appellant on such unreliable evidence.

On behalf of the State

16. On the other hand, the learned APP for the State submits that the impugned judgment and order are well-reasoned and based on a proper appreciation of the evidence on record, warranting no interference by this Court. It is submitted that the prosecution examined the victim child as PW-2, who fully corroborated her earlier version. She deposed that during her term exams in September 2016, she was not using her tablet. After the exams, upon checking the device handed over by her mother, she discovered vulgar and nude images sent via WhatsApp from an unknown number. The photographs depicted her face morphed onto the nude body of another person, along with a threatening message that if she told anyone, the pictures would be made viral. She disclosed her WhatsApp number and identified the sender's number as 7834891235. Her mother (PW-1), who lodged the complaint, also supported her version in her deposition.

17. The learned APP further contends that the FSL report



confirmed the presence of obscene material on the accused's mobile phone, including the very images sent to the victim. The WhatsApp chats retrieved from the accused's device clearly showed that the images were sent to the victim's number. The recovery of the mobile phone and SIM card used in the offence, at the instance of the accused, further corroborated the prosecution's case. It is argued that the accused not only committed a grave offence against a minor by transmitting obscene images but also criminally intimidated her. It is thus argued that the learned Trial Court rightly convicted him under the relevant provisions of the IPC, POCSO Act, and IT Act, and no grounds for interference are made out in the present appeal.

18. This Court has **heard** arguments addressed on behalf of the appellant as well as the State, and has perused the material available on record.

ANALYSIS & FINDINGS

19. This case brings forth certain pertinent issues surrounding the misuse of cyberspace, particularly its potential to inflict psychological harm and create situations of coercion through anonymous and faceless acts. It also highlights the manner in which technology can be misused to invade privacy, morph images, and issue threats, especially to young individuals.

20. However, before delving into these broader implications, this Court deems it appropriate to first examine the testimonies of the material witnesses, whose statements form the foundational basis of



the prosecution's case.

Testimonies of Material Witnesses

21. PW-1, Smt. IW, the mother of the victim, on whose complaint the FIR was lodged, deposed that at the time of the incident, her daughter was studying in Class IX and was using a Samsung tablet device bearing mobile number 964XXXXX855. She stated that due to her daughter's examinations, the device was with her, and it was only on 22.09.2016, after the exams concluded, that she returned the device to her daughter. Upon checking the device, the victim found vulgar and indecent images on WhatsApp, received from mobile number 783489XXXX. These images depicted the victim's face morphed onto the nude body of another girl. PW-1 further stated that the sender had also sent a threatening message stating that if the victim did not comply with his demands, the images would be uploaded on the internet and Facebook. She deposed that her daughter, upon seeing the images, came running to her in a state of distress and showed her the objectionable content. PW-1 then informed her husband and immediately accompanied her daughter to the police station, where she submitted a handwritten complaint (Ex. PW-1/A). Before the learned Trial Court, she identified the Samsung tablet as the one seized by the police *vide* seizure memo Ex. PW-1/B. PW-1 affirmed that the accused was arrested on the basis of the mobile number from which the objectionable content had been sent. She also confirmed the date of birth of the victim as 15.07.2002 and



gave details of her school admissions. She clarified that while her daughter's full name is VMG, only the initials 'VG' were mentioned in her complaint.

22. In the course of cross-examination, the learned counsel for the accused suggested to PW-1, that the victim was in contact with the person who had sent the morphed photographs and that neither the photographs nor any objectionable messages were ever received. It was further suggested that PW-1 and her daughter had communicated with the sender through calls or messages. These suggestions were categorically denied by PW-1, who maintained that she saw the vulgar photographs for the first time on 23.09.2016 on her daughter's device, that her daughter had not replied to any such messages, and that neither of them had contacted the sender.

23. The victim VG was examined as PW-2. She deposed that in September 2016, while she was in Class IX and appearing for her term examinations, she had not been using her Samsung tablet, which remained with her mother during that period. After her exams concluded, she requested her mother to return the device, and upon accessing WhatsApp on the said tablet, she discovered that vulgar and nude images had been sent to her from an unknown number. She stated that while the face in the images was hers, the body was not, and it appeared that her image had been morphed. She further deposed that a threatening message accompanied the images, warning her that if she disclosed the matter to anyone, the pictures would be made viral on the internet along with similar images. She testified



that she was shocked and immediately informed her mother. Her parents then took her to the police station, where a complaint was lodged. Before the learned Trial Court, she identified the mobile number from which the messages were received as 7834891235 and confirmed that her own WhatsApp number was 964XXXXX855 at the relevant time. She clarified that she had never seen the sender, either in person or *via* electronic means, and speculated that her photograph and mobile number might have been taken from her Facebook profile, which was not privacy-protected at the time. She identified her statement under Section 164 of Cr.P.C., marked as Ex. PW-2/A. She also correctly identified the morphed photographs shown to her during trial as Ex. P-1 and P-2.

24. During the cross-examination of the victim (PW-2), suggestions were put to her that she was in touch with the person who had sent the alleged photographs, and that no morphed or obscene content was ever sent to her by the accused. These suggestions were denied by PW-2. She firmly reiterated that she had no prior knowledge of the sender, had never communicated with him in any form, and that the morphed pictures were indeed received by her on her WhatsApp account.

25. PW-3 Ravi Rathore deposed that around 5-6 years ago, he was working as a salesman for a distributor of Idea company. His job involved recharging top-up SIMs at various telephone shops, including the shop of present accused, i.e. Gambhir Telecom, located at Padam Nagar, Kishan Ganj, near Pratap Nagar Metro Station. He



stated that the said shop dealt in disposable glasses and plates and also operated as a mobile recharge outlet.

26. PW-8 SI Naveen deposed before the learned Trial Court that the complaint in question was marked to SI Sandeep for inquiry on 22.09.2016. Upon tracing the location of the accused through the CDR of his mobile number, a raiding party was constituted which reached the accused's shop, Gambhir Communication, located at H.No. 18/15, VPO Azad Nagar, Kishan Ganj, New Delhi. On seeing the police, the accused attempted to flee, claiming he would call someone named Rajesh. However, PW-8 chased and apprehended him after he fell upon bumping into an electric pole. During interrogation, the accused disclosed his name as Rajesh but failed to provide satisfactory answers and was thereafter taken to the police station. On his formal search, a golden-coloured Samsung J7 mobile phone was recovered, in which several nude and obscene photographs of the victim were found in the 'My File' folder. It was revealed that these had been sent to the prosecutrix via WhatsApp. The disclosure statement of the accused was recorded as Ex.PW8/A. The SIM card and two additional mobile phones allegedly used in the commission of the offence were recovered from his shop. Fifty-five screenshots of the nude and obscene images and WhatsApp messages were taken and seized vide memo Ex.PW8/B. The nude photograph was marked as Ex.P1, while the remaining screenshots were exhibited as Ex.PW8/C. The two other recovered phones, make Nokia and Bird, were also seized.



27. PW-9 Pawan Singh, Nodal Officer of Vodafone Idea Ltd., testified that upon the I.O.'s request, he provided the certified CDRs of mobile number 7834891235 for the period from 01.07.2016 to 22.09.2016 (Ex.PW9/A), along with a certificate under Section 65B of the Indian Evidence Act (Ex.PW9/B), a copy of the Customer Application Form (Ex.PW9/C), and a certificate regarding the destruction of the original CAF in a fire incident (Ex.PW9/D).

28. PW-10 Inspector Sandeep deposed that on 22.09.2016, while posted as a Sub-Inspector, a complaint made by the complainant (mother of the victim) regarding the receipt of obscene images on the prosecutrix's WhatsApp was marked to him for necessary action. Upon analysis of the CDR and CAF of mobile number 7834891235, he found that it was registered in the name of one Ramesh at a non-existent address. Further analysis revealed that the said SIM had been used across multiple mobile phones. By tracking the IMEI numbers, he identified another number, i.e. 9910902401 registered in the name of one Rajesh at Azad Nagar, Kishan Ganj, New Delhi. On 23.09.2016, during a field inquiry, the police team located Rajesh at a shop named Gambhir Communication. Upon being asked about his identity, Rajesh attempted to flee but was apprehended after colliding with an electricity pole. During interrogation, he disclosed his involvement, and from his possession, a Samsung J7 mobile phone was recovered, which contained nude and obscene images stored in a folder titled '*my file folder*'. Further recoveries included the SIM card of mobile number 7834891235 and two other mobile phones, make



Nokia and Bird, from his shop. On 24.09.2016, the complainant visited the police station and handed over two pages of printouts of the obscene messages/pictures received on her daughter's Tab, along with the Tab and its SIM card. These were seized by the I.O. PW-10 identified the recovered items in court, including the mobile phones and the SIM card.

29. PW-11 Retd. Insp. R.K. Maan, the Investigating Officer, deposed that upon registration of the FIR, he took over the investigation and coordinated with SI Sandeep, who had already traced the suspect using CDR analysis. He joined the team in apprehending the accused Rajesh from his shop, where the accused attempted to flee but was apprehended. A mobile phone containing nude and obscene images of the victim was recovered from his possession, along with a SIM card and two other mobile phones. Subsequently, the complainant handed over the victim's Tablet and printouts of the objectionable messages/pictures, which were seized. The I.O. got the victim's statement recorded under Section 164 of Cr.P.C., collected relevant school records, and ensured that all seized devices and documents were deposited in the *malkhana* and later sent to FSL. After receiving the FSL report, the I.O. confirmed that the obscene photographs matched those found on the victim's Tablet and the accused's mobile. He also identified the recovered articles before the learned Trial Court.

30. PW-12 Ajay Kumar, Nodal Officer of Bharti Airtel Ltd., produced certified documents related to mobile number 9910902401



belonging to the present appellant, including the Customer Application Form, with a copy of the accused's voter ID (Ex. PW12/A & PW12/B). He also submitted the CDRs for the said number for the period from 01.01.2016 to 22.09.2016 (Ex. PW12/C to PW12/E), and the CDRs of three mobile phones used with IMEI numbers 356436035501640, 355965042266750, and 358425073433590 (Ex. PW12/F to PW12/H). A certificate under Section 65B of the Indian Evidence Act (Ex. PW12/J) was also provided, confirming that these phones were used by the accused to send obscene pictures to the victim.

31. PW-13 HC Munendra Singh deposed that on 23.09.2016 and 24.09.2016, the I.O. deposited sealed parcels containing mobile phones and a Samsung Tab in the police malkhana, which he duly recorded in the register (Ex. PW13/A & PW13/B). On 19.10.2016, he handed over two sealed parcels to Ct. Mukesh for deposit at the FSL, and received the relevant acknowledgment documents (Ex. PW13/C & PW13/D).

32. PW-14 Ajay Kumar Sharma, Senior Scientific Officer, FSL Rohini, testified that on 19.10.2016, he had received and examined the sealed parcels containing a Samsung Tab (with SIM) and a Samsung mobile phone (with SIM and memory card). On analysis, he had retrieved data, including obscene photographs of the victim, consistent with Ex. PW11/A, as well as additional obscene content from the accused's phone. His report was marked as Ex. PW14/A. Later, on 09.05.2018, upon request from SHO, duplicate copies of the



retrieved data were provided in two pen drives (Ex. P1 and P2) bearing FSL certification (Ex. PW14/C).

Version put forth by the Accused

33. In his statement under Section 313 of Cr.P.C., the accused denied all the allegations. He claimed that no obscene material was present in his mobile phones and alleged that the police officials might have downloaded such content from the internet after seizing his devices. He asserted that the investigation was neither fair nor impartial and that he had been falsely implicated. He denied knowing Ravi (PW-3), who allegedly worked as a salesman for the Idea distributor and used to top up SIMs at his shop, Gambhir Telecom.

34. The accused further stated that no one came to his shop, that no disclosure statement was made by him, and that the FIR was registered only after seizing and manipulating his mobile phones. He alleged that he was falsely implicated due to his prior objections to the conduct of police personnel from PP Andha Mughal, who used to take items from his shop without payment. He also claimed that all prosecution witnesses were interested witnesses.

35. Though the appellant chose to lead defence evidence, he failed to produce any witness, and on 28.07.2023, the opportunity to do so was closed on his own statement. Thus, no defence evidence was led in this case. The matter was thereafter listed for final arguments.



Age of the Victim

36. In the present case, the appellant did not dispute the age of the victim. During admission/denial of documents under Section 294 of Cr.P.C., the accused admitted the age proof documents of the victim as Ex. PX1/2.

37. Further, during trial, PW-5 Administrative Officer from the victim's school brought the record pertaining to admission of victim, as per which her date of birth was 15.07.2002 as mentioned in admission form, School leaving certificate, birth certificate, entry made in admission register Ex.PW5/D and the certificate issued by PW-5 in this regard.

38. As per the aforesaid documents, the age of the victim is 15.07.2002, and thus, on the date of incident, the victim was a minor – aged about 14 years and 2 months. Thus, the provisions of POCSO Act would undoubtedly be attracted in the present case.

Whether the offence alleged against the appellant has been proven beyond reasonable doubt?

39. This Court notes, as rightly observed by the learned Trial Court, that the offence in question was committed in cyberspace. The material on record establishes that obscene and morphed photographs, along with threatening messages, were sent from WhatsApp number 7834891345 to the WhatsApp number 96XXXXXX55 belonging to the victim, a minor girl, who was using a Samsung Tablet bearing IMEI number 35240506095192.



40. The photographs in question depicted the face of the victim morphed onto a nude body, accompanied by threatening messages. One such message stated, “*Or kisi ko bola Teri pic miss use karky fb or net pr dalduga,*” and another said, “*Bohot sari pic h mera pass Teri aisi.*” These threats were clearly intended to coerce and intimidate the victim into complying with the accused’s demands.

41. The prosecution has relied upon both documentary and oral evidence to support its case. The Samsung Tablet used by the victim was seized vide seizure memo Ex. PW-1/B, and was sent to the FSL along with the Vodafone SIM card corresponding to WhatsApp number 96XXXXX55. The FSL retrieved data from both the Tablet and the SIM card, which confirmed that morphed nude photographs and the aforementioned obscene messages were indeed sent to the victim from the mobile number 7834891345. The relevant photographs were proved by PW-14, the concerned FSL officer, who authenticated them through Ex. PW-11/A. The officer confirmed that the data retrieved from the Tablet of the victim matched the WhatsApp messages and images referred to by her during the investigation. The FSL findings corroborate the testimony of the prosecution witnesses and confirm the use of mobile number 7834891345 by the accused for sending obscene content to the victim child.

42. The contention raised by the learned counsel for the appellant, that there is inconsistency in the victim’s reference to the device - sometimes calling it a mobile and at other times a tablet – is without



merit and no help to the appellant. PW-1, the mother of the victim, clarified that her daughter was studying in Class IX at the relevant time and “*she was having a Tablet(phone) make Samsung...*” The terms ‘mobile’ and ‘tablet’ appear to have been used interchangeably by the witnesses. Importantly, the record shows that the only device seized and examined in this case was the Samsung Tablet, and no other mobile phone of the victim is on record. Moreover, no such inconsistency was pointed out or challenged during the cross-examination of prosecution witnesses. The defence has also not shown any discrepancy that could cast doubt on the reliability of the forensic evidence. The FSL report, coupled with the oral testimony of witnesses, clearly proves that the obscene messages and morphed images were received by the victim on her Samsung Tablet from the mobile number used by the accused.

43. In view of the above, this Court finds that the prosecution has successfully proven beyond reasonable doubt that morphed images and threatening messages had been sent to the victim child through WhatsApp, and that the device used by the victim was the Samsung Tablet seized during the investigation.

44. As regards the contention of the learned counsel for the appellant that the accused had no connection with the mobile phone or number involved in the offence, this Court is of the view that the prosecution has successfully established a clear link between the accused and the mobile number 7834891235, from which the obscene messages and pictures were sent to the prosecutrix.



45. During investigation, the I.O had collected the CDRs and the Customer Application Form pertaining to mobile number 7834891235. The Nodal Officer of Vodafone Idea duly proved the certified copy of the CDRs for the period 01.07.2016 to 22.07.2016, along with the certificate issued under Section 65B of the Indian Evidence Act. The mobile number was found to be registered in the name of one *Ramesh*, whose address was later found to be untraceable. However, a deeper analysis of the CDRs revealed that this number had been used in three different mobile handsets bearing IMEI numbers: (1) 356436035501640, (2) 358425073433590, and (3) 355965042266750, between the period 01.01.2016 to 22.09.2016. These IMEI numbers were duly proved through the testimony of the Nodal Officer of Bharti Airtel.

46. It is relevant to note that each mobile phone has a unique 15-digit International Mobile Equipment Identity (IMEI) number, which can be used to trace the specific device used, its brand, model, and other specifications, even without physically accessing the handset. The CDRs of the abovementioned IMEI numbers further revealed that another mobile number 9910902401 was also being used in the same handsets along with 7834891235.

47. Upon investigation, the certified copy of the CAF and a Voter ID card relating to mobile number 9910902401 (proved as Ex. PW-12/A and Ex. PW-12/B) were found to be in the name of the present accused. Accordingly, it was rightly concluded by the learned Trial Court that the mobile handsets with the above-mentioned IMEI



numbers were being used to operate both mobile numbers 7834891235 and 9910902401, and that one of the mobile numbers, i.e., 9910902401, was registered in the name of the accused himself.

48. Furthermore, as per the testimonies of PW-10 and PW-11, pursuant to the disclosure made by the accused, one Samsung J7 mobile phone (golden colour), a SIM card of mobile number 7834891235, and a newspaper were recovered from Vineet at the slab of his shop. Additionally, two other mobile phones, one *Nokia* and one *Bird*, were recovered from the shop of the accused. The IMEI numbers of the Nokia handset (Ex. PX-10/2) were 356436035501640 and 355965042266750, and that of the Bird handset (Ex. PX-10/3) were 358425073433590 and 357393033020990. Of significance is the fact that IMEI number 355965042266750 – which was common to both mobile numbers 7834891235 and 9910902401 – was linked to the Nokia phone recovered from the accused. Since 9910902401 was registered in the name of the present accused, the use of both mobile numbers in the same device further corroborated his connection to the number 7834891235, which was used to send obscene and threatening WhatsApp messages to the victim on her Samsung tablet.

49. Thus, the learned Trial Court committed no error in holding that the prosecution had clearly established the link between the accused and the mobile number 7834891235, from which the offensive messages were sent to the prosecutrix.



50. As regards the argument advanced on behalf of the appellant that no data was recovered from the phone of the accused which connects it to the messages sent to the prosecutrix, the same is without merit. The FSL report categorically confirms that the obscene pictures and threatening messages sent to the WhatsApp number of the victim (being used on her Samsung tablet) were in fact transmitted from the phone recovered at the instance of the accused. This finding conclusively establishes the appellant's involvement in the commission of offence in question.

51. Now, insofar as the offences alleged against the appellant are concerned, this Court first examines the offences under the IPC. The appellant has been convicted for offences under Sections 354A(iii), 354D, 509, and 506 of IPC. These provisions are set out below:

354A. Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.



354D. Stalking.—(1) Any man who—

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication,

commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

509. Word, gesture or act intended to insult the modesty of a woman. —Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

506. Punishment for criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

52. In the facts of the present case, it is evident that the accused



morphed an image of the victim by using the body of another girl and sent the resulting obscene photograph to the victim, thereby depicting her in a sexually explicit manner. This act clearly amounts to showing pornography against the will of the victim and falls squarely within the offence defined under Section 354A(iii) of IPC. The repeated messages and attempts to contact the victim through electronic means, despite her resistance, constitute the offence of stalking under Section 354D of IPC. Furthermore, the indecent, vulgar, and obscene messages, morphed photographs, and WhatsApp chats sent to the victim, a minor school-going girl, were clearly intended to insult her modesty and intrude upon her privacy, thus attracting the offence under Section 509 of IPC. In addition, the threats extended to the victim, in case she did not comply with the accused's demands, are corroborated by the victim's testimony, the statement of her mother, the retrieved WhatsApp chats, and the FSL report, all of which substantiate the offence under Section 506 of IPC.

53. Under the POCSO Act, the appellant has been convicted for offences under Sections 11(v)/12 and 13/14. These provisions are reproduced below:

11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or



(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves “sexual intent” shall be a question of fact.

12. Punishment for sexual harassment.—Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

13. Use of child for pornographic purposes.—Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

(a) representation of the sexual organs of a child;

(b) usage of a child engaged in real or simulated sexual acts (with or without penetration);

(c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—For the purposes of this section, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.



14. Punishment for using child for pornographic purposes.—

(1) Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.

(2) Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (1).

54. In the present case, the testimony of the victim, her mother and the FSL report as well as the testimony of the concerned official from FSL proves that the present appellant had morphed the photograph of the victim by using body of some other girl and thereafter indecent obscene representation of the victim girl was made and sent on her Whatsapp. This amounts to sexually explicit representation of a child and constitutes use of a child for pornographic purposes as defined under Sections 11 and 13, punishable under Sections 12 and 14 of the POCSO Act, respectively.

55. Further, Sections 67 and 67B of the IT Act, for which the appellant has been convicted, are set out below:

67. Punishment for publishing or transmitting obscene material in electronic form.—

Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant



circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.—Whoever,—

- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
- (d) facilitates abusing children online, or
- (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form—

- (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is the interest of science, literature, art or learning or other objects of general concern; or
- (ii) which is kept or used for *bona fide* heritage or religious



purposes.

Explanation—For the purposes of this section,—children means a person who has not completed the age of 18 years.

56. In this regard, it has been contended on behalf of the appellant that no offence under these provisions could be made out as even if presumed that such material was sent to the victim, it cannot be called lascivious or appealing to the prurient interest of the victim child or depicting the victim in obscene manner. This Court however does not agree with this contention since a perusal of the messages and the images reveals that the accused had sent morphed indecent and vulgar pictures of the victim to her which depicted the victim in obscene, in decent and sexually explicit manner and therefore, his acts are clearly covered under Section 67 and 67B of the IT Act.

57. Thus, this Court finds that the prosecution has succeeded in proving the case beyond reasonable doubt through the consistent and corroborated testimonies of the victim and her mother, supported by expert evidence and the FSL report. The defence taken by the appellant, that he was falsely implicated, has not been substantiated by any credible evidence. Therefore, no infirmity is found in the judgment of conviction passed by the learned Trial Court, which is accordingly upheld.

Sentencing of the Appellant

58. As regards the sentence awarded, this Court notes that the learned Trial Court has rightly sentenced the appellant under Sections



12 and 14 of the POCSO Act, Section 506 IPC, and Section 67B of the IT Act, after properly considering the applicability of Section 42 and 42A of the POCSO Act and Section 71 of the IPC. It has also rightly observed that the offences under Sections 354A(iii), 354D, and 509 IPC are subsumed under the broader provisions of the POCSO Act, and that the offence under Section 67 of the IT Act overlaps with Section 67B.

59. As far as the quantum of sentence is concerned, the learned Trial Court has awarded the maximum punishment prescribed for the offences under Section 67B of the IT Act and Section 12 of the POCSO Act, and awarded half of the maximum sentence for the offence under Section 506 of IPC. The sentence under Section 14 of the POCSO Act has also been appropriately awarded in accordance with law.

Evil Use of Technology to Outsmart Investigating Agencies

60. This Court cannot lose sight of the manner in which the present crime was executed, i.e. through deliberate and calculated misuse of modern technology. The appellant herein chose to operate from behind the veil of a mobile device and internet connectivity, believing he could escape the reach of law enforcement agencies by frequently changing handsets and SIM cards. This is not just an act of technological manipulation but one which was clearly aimed at outsmarting the investigative machinery. However, it is a matter of reassurance that while the accused misused technology for nefarious



purposes, the same tools – through forensic and technical expertise – were used by the agencies to trace the crime back to its origin and establish a clear chain of electronic evidence linking the accused to the commission of offence in question.

Technology as a Tool for Cyberbullying

61. However, what is deeply concerning is the use of technology to commit cyberbullying – an act that, while faceless and silent, can be as mentally traumatic and scarring as physical violence, especially when directed towards children. The present case reflects a textbook example of cyberbullying, where an adolescent girl, who was pursuing her studies, became a victim of a targeted assault upon her privacy and dignity. The act of morphing her face onto an obscene image and coupling it with threatening messages not only sought to shame her but was intended to coerce her into submission through fear. Such conduct, in the virtual world, has very real and devastating consequences in the real world.

Mental and Emotional Impact of Cyber Threats on Children

62. The psychological impact on a minor who receives a morphed nude photograph of herself, combined with a threat that the same will be published online if she does not comply with the accused's demands, is difficult to quantify in words in a judgment. The victim in this case, a student of class IX, was at a vulnerable stage of life, one where academic performance, self-esteem, peer relationships, and family interactions are all deeply affected by emotional stability.



An act like this would shatter a child's sense of safety, personal security, and dignity, possibly for years to come.

Necessity of Providing Safe Digital Spaces for Children

63. Thus, this Court is also of the view that creating a safe environment for children cannot be restricted to physical spaces alone. The modern world demands that equal protection be extended to digital spaces, where children are now spending considerable time, often for educational purposes. Tablets, mobile phones, and internet access have become essential tools for learning, especially in the aftermath of the COVID-19 pandemic. However, the case at hand demonstrates the dark side of such access, i.e. where a child electronic device was misused as a medium of abuse.

Lasting Trauma and the Need for Deterrence in Cybercrime Against Children

64. It must be therefore emphasized that threats extended in cyberspace can never be taken lightly. The harm caused is not mitigated by the fact that there was no physical contact. The trauma from virtual abuse lingers as strongly, if not more so, because of its repetitive and invasive nature. A morphed image, once created and circulated, can cause long-term damage to a child's mental health, dignity and her reputation. The fear of such circulation alone, even if the image is never actually published, is enough to terrorize a young mind.



The Decision

65. In the aforesaid context, the plea for leniency on behalf of the appellant stands on a fragile footing. The law must send a clear message that crimes committed in cyberspace against children are taken with utmost seriousness and will attract consequences that reflect the gravity of the impact on the victim. Therefore, while this Court remains cognizant of the complexity of crimes committed through digital means, it also acknowledges the equally compelling responsibility of the justice system to evolve with time. It is important to not only detect and punish such crimes effectively but also to affirmatively uphold a child's right to safety, dignity, and mental well-being in such cases.

66. Therefore, this Court finds no reason to interfere either with the conviction of the appellant, or with the sentence awarded to the appellant herein. The impugned judgment and order passed by the learned Trial Court suffer from no infirmity or error. The same are accordingly upheld.

67. In view of the above, the present appeal alongwith pending application, stands dismissed.

68. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY, 28, 2025/ns