VERDICTUM.IN

2026:DHC:9866

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

Reserved on: 28.10.2026
Date of Decision: 05.11.2026
Uploaded on: 05.11.2026

\# **CNR No. DLHC010141122021**

\+ **CRL.A. 144/2021 & CRL.M.(BAIL) 348/2021**

NAVRATAN .....Appellant

Through: Mr. Ajay Verma, Ms. Sneha Sejwal, Ms. Smriti S Nair, Advocates

versus

THE STATE (NCT OF DELHI) & ANR. .....Respondents

Through: Mr. Raghuvinder Verma, APP for the State.
Mr. Rajesh Kumar Singh, Mr. Rohish Arora, Ms. Meenu Saxena, *Amicus Curiae* for the victim.
SI, Shyam Bir Singh, PS Okhla Industrial Area.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973, (hereinafter referred to as "Cr.P.C.") against the judgment of conviction dated 06.11.2020 and the order on sentence dated 10.12.2020 passed by Learned ASJ-07 (Special Court, POCSO Act), South-East District, Saket Courts, New Delhi, in connection with ***FIR No. 387/2016*** registered at Police Station Okhla Industrial Area, Delhi, whereby the appellant was convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) and sentenced to undergo rigorous imprisonment for a period of twenty (20) years, along with a fine of

VERDICTUM.IN

₹10,000/-, and, in default of payment of fine, to undergo simple imprisonment for a period of six (6) months.

Brief Facts

2. In brief, the case of the prosecution is that the accused and the victim (PW-1) were neighbours, residing in separate rooms on the same floor of the building bearing No. A-24, Harkesh Nagar, Okhla Phase-II, New Delhi. It is alleged that on 05.06.2016, at about 02:00 PM, while the victim was playing outside her house, the accused forcibly took her to his room, where he removed her clothes as well as his own clothes and inserted his penis into her vagina. The victim started weeping due to the pain caused by the alleged assault, whereupon the accused threatened to kill her if she disclosed the incident to anyone. Consequently, the victim did not disclose the incident to her family members. The incident allegedly came to light on 15.06.2016, when the victim complained of pain in her private parts while her mother was giving her a bath. Upon being questioned, the victim disclosed the incident to her mother, who subsequently apprised her husband. Thereafter, on 16.06.2016, at about 06:30 PM, the parents of the victim, along with the victim, approached the Police Post, Okhla Industrial Area, Phase-III, and reported that the accused had done 'galat kaam' with their daughter. The information was reduced to writing vide DD No. 23PP, and PW-10/Sub-Inspector Kiran Sood recorded the statement of the victim (Exhibit PW-1/A) in the presence of her mother, 'G' (PW-3).

3. The prosecution's case proceeds further that after the statement of the victim was recorded, the investigation was assigned to PW-12/Sub-Inspector Bijender Singh Nagar who took the victim to AIIMS Hospital for her medical examination, which was conducted by PW-2/Dr. Darshana vide

VERDICTUM.IN

MLC (Exhibit PW-2/A). During the examination, her hymen was found torn and samples, including vaginal smear, were collected and preserved. On 17.06.2016, the victim was counselled by a counsellor from an NGO, namely Shakti Vahini, and her statement under Section 164 Cr.P.C. was recorded before the learned Metropolitan Magistrate, Saket Courts (Exhibit PW1/B). Upon completion of investigation, the chargesheet was filed before the Court.

4. Thereafter, Copy of the charge-sheet was supplied to the accused and on 16.08.2016 charge under Section 6 of the Protection of Children from Sexual Offences (POCSO) Act 2012 was framed against him to which he pleaded not guilty and claimed trial.

5. To prove its case against the accused and discharge its burden, the prosecution examined twelve witnesses before the learned Trial Court, whose testimonies have been discussed in the impugned judgment as under:

> *"**PW-1/'S' (Victim)** supported the prosecution's case. She gave a detailed account of the incident and mentioned that accused committed penetrative sexual assault upon her after removing her clothes. She identified the accused in the court and stated that her statement was recorded under Section 164 Cr.P.C.*
>
> ***PW-2/Dr. Darshana** (Senior Resident, Department of Obstetrics and Gynecology, AIIMS Hospital) deposed that she medically examined the victim and prepared the MLC which is Exhibit PW-2/1. She mentioned that during the internal gynecological examination, the hymen of the victim was found torn but there was no fresh tear. She mentioned about lifting samples from the body of the victim and stated that the parcels containing the sealed samples were handed over to the police alongwith*

VERDICTUM.IN

the sample seal.

PW-3/'G' (Mother of the victim) *deposed that the victim complained of pain in her private parts at the time when she was giving bath to her. She mentioned that she made inquiries from the victim, who disclosed her that a person named 'pakad' (accused herein), living in the neighborhood, had done wrong act with her. She mentioned that she went to the police station alongwith the victim and her husband, where the statement of the victim was recorded. She mentioned about the medical examination of the victim and identified the accused in the court. She deposed that the real name of accused is Navratan but he was also known by his nickname 'pakad'.*

PW-4/Akbar Abbas *(Principal, SDMC School, Central Zone, Shyam Nagar, New Delhi) produced original record from the school of the victim. He mentioned that the victim was admitted in the school in 1st standard and her name was entered in the admission register at Serial No.4624. He stated that the victim left the school on 22.07.2016 while she was studying in 4th standard. He mentioned that as per the school records, the date of birth of the victim is 25.03.2008. The copy of the relevant entry in the admission register is Exhibit PW-4/C while the admission form is Exhibit PW-4/B. The witness mentioned that the date of birth of the victim was entered in the school record on the basis of an affidavit furnished by the mother of the victim. The said affidavit is Exhibit PW-4/X. He mentioned that he handed over the attested copies of the record as well as certificate of date of birth of the victim (issued by the Principal of school) to the police which is Exhibit PW4/A.*

PW-5/Ajit Singh *(Landlord of victim and accused) mentioned that family of the victim and accused were his tenants and they were residing in separate rooms on the same floor of the building. He*

VERDICTUM.IN

mentioned that at the time of alleged incident, accused used to reside in his room alongwith 2–3 friends but he vacated the room soon after the registration of FIR.

***PW-6/Lady Constable Sarita** (Police official, who collected samples of the victim from the hospital) stated that on the directions of the Investigating Officer, she got the victim medically examined at AIIMS Hospital and collected her MLC. She mentioned that she collected the sealed samples as well as the MLC of the victim and handed them over to the Investigating Officer/Sub-Inspector Bijender Singh. She stated that the Investigating Officer seized the samples vide seizure memo Exhibit PW-6/A.*

***PW-7/Lady Constable Asha** (Police official who took the victim to Hospital for medical examination) stated that on the directions of the Investigating Officer, she took the victim for medical examination to AIIMS Hospital. She mentioned that after sometime, Lady Constable Sarita also arrived at the hospital. She deposed about the medical examination of the victim.*

***PW-8/Lady Constable Shashi Bala** (Witness of initial investigation) deposed that she accompanied the Investigating Officer during the initial investigation. She mentioned that on 17.06.2016, she went alongwith the victim to the court, where her statement was recorded under Section 164 Cr.P.C. She mentioned that she joined the investigation on 22.06.2016 and the Investigating Officer prepared the site plan in her presence.*

***PW-9/Constable Ram Avtar** (Witness of registration of FIR) mentioned that on 16.06.2016 while he was present at Police Post of Okhla Industrial Area Phase-III, Investigating Officer/Sub-Inspector Bijender Nagar handed him over a rukka for getting the FIR registered. He*

VERDICTUM.IN

mentioned that he took the rukka to the police station and got the FIR registered.

PW-10/Inspector Kiran Sood *(First Investigating Officer) stated that she recorded the statement of the victim which is Exhibit PW-1/A. She mentioned about the registration of FIR and stated that thereafter, the investigation was marked to Sub-Inspector Bijender.*

PW-11/Sub-Inspector Kala Joshi *(Third Investigating Officer) deposed that she deposited the sealed samples at the FSL through Constable Ravi and prepared the charge-sheet. She mentioned about completing the formalities and filing the charge-sheet in the court.*

PW-12/Sub-Inspector Bijender Singh *(Second Investigating Officer) justified the investigation carried out by him. He mentioned about the registration of FIR and the medical examination of victim. He stated about the arrest of accused and mentioned about his medical examination. He deposed about the seizure memos prepared by him and mentioned about recording the statements of the witnesses. He stated that the documents disclosing the date of birth of the victim were collected from her school. He mentioned about preparing the site plan (Exhibit PW-12/F). He stated that the investigation was transferred to Sub-Inspector Kala Joshi on 05.07.2016."*

6. On the completion of prosecution evidence, examination of accused U/s 313 Cr.P.C. was conducted on 12.10.2020, during his examination, he denied all the incriminating evidence and took the defence of false implication. He came up with a version that there used to be frequent quarrels between him and the family of the victim and in order to settle the score, the victim has falsely implicated him in the present case. Thereafter, the accused opted to lead Defence Evidence and matter was listed for Defence Evidence.

VERDICTUM.IN

The discussion regarding the defence witnesses by the learned Trial Court is reproduced hereinbelow:

> ***"DW-1 Mahipal Singh*** *(friend of accused) stated that around four years back, he used to reside in a room on the second floor of the building at B-Block, Harkesh Nagar, New Delhi. He mentioned that at that time, accused was residing in the adjacent room on the same floor of the building and victim was also residing along with her family on the same floor. He mentioned that the mother of the victim had to solemnize marriage of her elder daughter and for that purpose, she required money. He mentioned that the mother of the victim requested him that he should request accused to give her a loan of Rs.20,000/- as the accused had made a withdrawal from his Provident Fund. He mentioned that on his request, accused handed over a sum of Rs.20,000/- to the mother of the victim. He stated that after this transaction, he was constrained to go to his native place as his mother was not well. He mentioned that after he left for his native village, accused kept a person named Kanhaiya in his room and they started residing together. He mentioned that he came to know that some quarrel took place between Kanhaiya and the elder sister of the victim and during this quarrel, Kanhaiya slapped the elder sister of the victim. He mentioned that after this quarrel, Kanhaiya left the room and the mother of the victim falsely implicated the accused in the present case to avoid the repayment of loan."*

7. The learned Trial Court, vide the impugned judgment dated 6th November 2020, convicted the appellant and held as under:

> *"29. I have reached the conclusion that prosecution's case stands proved beyond*

VERDICTUM.IN

reasonable doubt while on the other hand, defence taken by the accused is improbable and unbelievable. The victim gave a detailed account of the incident mentioning that accused took her to a room and committed penetrative sexual assault upon her by inserting his penis in her vagina. It is established beyond reasonable doubt that on 05.06.2016, at around 02.00 PM, accused wrongfully committed penetrative sexual assault upon the victim at House No.-52, Harkesh Nagar, New Delhi. By committing penetrative sexual assault on an eight years old girl, accused committed aggravated penetrative sexual assault as defined under Section 5 (m) of the POCSO Act, 2012, which is punishable under Section 6 of the Act. I have no hesitation in holding the accused Navratan guilty of committing offence punishable under Section 6 of the POCSO Act, 2012.

30. Be heard separately on the point of sentence."

8. Consequent upon the judgment of conviction, the learned Trial Court, vide Order on Sentence dated 10th December 2020, imposed the following sentence upon the appellant:

"7. Turning to the mitigating circumstances, convict is stated to be a married man having a large family to support. No previous involvement of the convict has been alleged or proved. Keeping in view the totality of circumstances, I am of the considered opinion that ends of justice would meet, in case, convict Navratan is sentenced to undergo Rigorous Imprisonment (RI) for a period of 20 (twenty) years and a fine of Rs.10,000/- (Rupees Ten Thousand only) for committing the offence under Section 6 of the POCSO Act. In default of payment of fine, the convict shall further undergo Simple Imprisonment

VERDICTUM.IN

(SI) for a period of 6 (six) months. Benefit of Section 428 Cr.P.C shall be extended to him. This order be treated as Custody Warrant and no separate warrant shall be issued.

...

10. The matter appears to be a fit case where compensation needs to be awarded to the victim who has suffered mental and physical trauma on account of penetrative sexual assault committed by the convict. An application in this regard moved by the counsel for the victim/complainant is on record. It has been mentioned in the application that on account of penetrative sexual assault on the victim, her mother was constrained to leave her job and remain at the house to take care of her daughter/victim. It has further been mentioned in the application that on account of mental and physical trauma caused due to the penetrative sexual assault committed by the convict, victim discontinued her studies and stayed at the house for long time. Counsel for the victim has submitted that the father of the victim is suffering from Tuberculosis and he is earning a meagre sum of Rs.8000/- per month by doing job in a factory. The victim was just eight years old at the time of sexual assault. Report about the financial status and background of the family of the victim was summoned. Sub-Inspector Manoj Bhaskar submitted report which revealed that victim comes from a very poor background. It has been mentioned in the report that presently, the father of the victim is working as a House-Keeper and he earns around Rs.7,000/- to Rs.8,000/- per month and her mother is a housewife. Report further reveals that victim has two brothers age 15 years and 20 years respectively and her family resides in a rented

VERDICTUM.IN

> *accommodation. Considering the mental and physical trauma caused to the victim, I am of the considered opinion that a compensation of Rs.4,00,000/- (Rupees Four Lakh only) needs to be awarded to her. This compensation is required for nutrition needs, rehabilitation and studies of the victim. Out of the said compensation, a sum of Rs.50,000/- (Rupees Fifty Thousand only) shall immediately be released to the victim while the remaining amount shall be kept in the form of seven FDRs each amounting to Rs.50,000/- (Rupees Fifty Thousand only) in the name of the victim and the same shall be released to her on attaining the age of 18 years. The victim can move an appropriate application before the court as and when the need arises for liquidating the FDRs. Copy of the judgment and order on the point of sentence be sent to Secretary, DLSA (South-East) for necessary compliance alongwith details of the victim/complainant. IO/SJ, PS Okhla Industrial Area is directed to ensure the presence of victim before Secretary, DLSA (South-East).”*

9. Aggrieved by the aforesaid impugned judgment and order on sentence, the appellant has challenged both before this Court.

Submissions on Behalf of the Appellant

10. Learned counsel for the appellant submits that the impugned judgment of conviction and order on sentence are contrary to the facts and evidence on record, as the learned Trial Court has failed to appreciate the material contradictions and inconsistencies in the prosecution’s case. It is contended that the learned Trial Court has erroneously shifted the burden of proof upon the appellant, whereas the prosecution was required to

VERDICTUM.IN

establish the guilt of the appellant beyond reasonable doubt.

11. Learned counsel for the appellant further submits that the testimony of the prosecutrix and her mother suffers from material contradictions and does not inspire confidence.

12. Learned counsel submits that, in her examination-in-chief, the prosecutrix had deposed that the appellant had committed vaginal intercourse with her, whereas, upon being asked leading questions by the learned Public Prosecutor, she stated that the appellant had committed anal intercourse with her.

13. Learned counsel for the appellant further submits that the testimony of the prosecutrix, being that of a child witness aged about eight years at the time of the alleged incident, is required to be scrutinised with greater caution, as a child witness is susceptible to tutoring and external influence. Reliance in this regard is placed upon the judgments of the Hon'ble Supreme Court in ***Pradeep v. State of Haryana,*** **2023 SCC OnLine SC 777**, and ***Pramila v. State of Uttar Pradesh,*** **(2021) 12 SCC 550**, to contend that where the testimony of a child witness suffers from material inconsistencies and the possibility of tutoring cannot be ruled out, it would be unsafe to place implicit reliance upon such testimony for sustaining a conviction.

14. Learned counsel further submits that there is an unexplained delay in the reporting of the alleged incident. It is pointed out that while the alleged incident is stated to have taken place on 05.06.2016, the same was reported to the police only on 16.06.2016. It is contended that the delay in lodging the FIR, coupled with the inconsistencies in the statements of the prosecutrix and her mother regarding the disclosure of the incident, renders

VERDICTUM.IN

the prosecution's case doubtful and indicates that the appellant has been falsely implicated.

15. Learned counsel for the appellant submits that the medical and forensic evidence does not corroborate the allegations levelled against the appellant. That as per the MLC dated 16.06.2016, there was no fresh tear of the hymen and no injury mark was noticed. Further, the medical examination recorded that there was an attempt at penetration by the penis and finger, but penetration was not completed. It is submitted that the aforesaid findings are inconsistent with the allegations made by the prosecutrix. Learned counsel further places reliance upon the FSL report dated 30.09.2016, wherein semen was not detected in the vaginal swab and vaginal slide, and no male DNA profile could be generated from the samples collected from the prosecutrix.

16. Learned counsel for the appellant also submits that the learned Trial Court has failed to appreciate the defence evidence led on behalf of the appellant. In this regard, reliance is placed upon the testimony of DW-1, Mahipal Singh, who deposed that the appellant had, at his instance, advanced a loan of Rs. 20,000/- to the mother of the prosecutrix. It is contended that when the appellant sought repayment of the said amount, he was falsely implicated in the present case on account of the ensuing dispute between the families.

17. Learned counsel for the appellant submits that the prosecution's case is riddled with material contradictions, unexplained circumstances and inconsistencies between the ocular, medical and forensic evidence, which have not been duly considered by the learned Trial Court. Accordingly, it is prayed that the impugned judgment of conviction dated 06.11.2020 and

VERDICTUM.IN

order on sentence dated 10.12.2020 be set aside and the appellant be acquitted.

18. Learned counsel for the appellant, in the alternative and without prejudice to the submissions advanced on the merits of the appeal, also prayed for leniency in the matter of sentence, submitting that the appellant has already undergone approximately 11 years of incarceration including remission. It is, therefore, prayed that a lenient view may be taken and the sentence imposed upon the appellant be suitably reduced to the time already undergone.

Submissions on behalf of the Respondents

19. Per contra, Learned APP for the State submits that the learned Trial Court has duly appreciated the testimony of the prosecutrix, which has remained consistent on the material particulars of the incident. It is submitted that the prosecutrix has categorically narrated the manner in which the appellant took her inside his room, subjected her to sexual assault and threatened her with dire consequences in case she disclosed the incident to anyone. The discrepancies sought to be highlighted by the appellant are minor in nature and cannot be expected to be absent in the testimony of a child witness who was approximately eight years of age at the time of the incident.

20. Learned APP further submits that the delay in reporting the incident stands duly explained by the circumstances in which the prosecutrix initially refrained from disclosing the incident on account of the threats extended by the appellant. It is submitted that the incident came to light when the mother of the prosecutrix noticed discomfort in her private parts

VERDICTUM.IN

while bathing her, whereupon the prosecutrix disclosed the incident to her. The subsequent reporting of the matter to the police lends assurance to the prosecution version. It is further submitted that the absence of a male DNA profile from the vaginal swab and vaginal smear of the prosecutrix cannot, by itself, be a ground to discard her otherwise cogent and consistent testimony.

21. Learned Amicus Curiae appearing on behalf of the victim submits that the medical evidence does not contradict the prosecution version, particularly in view of the MLC of the prosecutrix, wherein her hymen was recorded as torn/not intact.

22. Learned Amicus Curiae further submits that the absence of a fresh tear cannot, by itself, discredit the testimony of the prosecutrix or negate the occurrence of the incident, particularly when her testimony has remained consistent on the material aspects.

23. Learned Amicus Curiae further submits that the defence of false implication on account of an alleged loan of Rs.20,000/- remains wholly unsubstantiated. It is submitted that the suggestion put to the mother of the prosecutrix during her cross-examination was materially different from the version subsequently sought to be established through DW-1. It is further submitted that DW-1 admitted that he had neither demanded repayment of the alleged loan nor had the appellant informed him that the amount remained unpaid. Moreover, the appellant did not summon or produce any relevant provident fund records to substantiate the alleged source of the loan. Accordingly, it is submitted that the defence of false implication has no basis and was rightly rejected by the learned Trial Court.

24. Learned APP for the State, accordingly, submits that the findings

VERDICTUM.IN

returned by the learned Trial Court are based on a proper appreciation of the evidence on record and do not warrant any interference by this Court. It is, therefore, prayed that the present appeal be dismissed.

Findings and Analysis

25. This Court has considered the rival submissions advanced on behalf of the parties and has examined the evidence on record in the light of the grounds urged in the present appeal.

Age of the prosecutrix

26. At the outset, the age of the prosecutrix on the date of the incident requires consideration. The prosecution relied upon the testimony of PW-4, the Principal of the school where the prosecutrix was studying, who produced the school record and deposed as under:

> *"I am working as Principal in the abovesaid school since 08.3.2011. Today I have brought summoned record pertaining to student namely 'S' D/o Sh. 'RK'. As per record, aforesaid student was got admitted by her mother in our school in class 1st. Her name was entered in the admission register at serial no. 4624. The student had left the school on 22.07.2016 when she was studying in 4th class. As per record, the date of the birth of the student is 25.03.2008 which was recorded on the basis of affidavit of the student submitted by her mother which is Ex. PW 4/X. The copies of the aforesaid records were also provided to police officials by me vide certificate dated 04.07.2016 which is Ex. PW 4/A and bears my signature at point A. The copy of admission form is Ex PW4/B (OSR) bearing my signature at point A. Copy of admission register is Ex PW4/C (OSR) bearing my signature at point A."*

VERDICTUM.IN

27. The determination of the age of a child victim under the POCSO Act has to be undertaken in accordance with the statutory framework. In ***P. Yuvaprakash v. State*, 2023 SCC Online SC 846**, the Hon'ble Supreme Court reiterated the prescribed order of preference for age-related documents and emphasised that the prosecution must establish the age of the victim through legally acceptable material. The mere production of a school document does not conclude the inquiry; its evidentiary value has to be assessed with reference to the source and basis of the date-of-birth entry. The same principle has been reiterated in ***Birka Shiva v. State of Telangana*, 2025 SCC Online SC 1454**, wherein the Hon'ble Supreme Court held that although an entry in a school register may be admissible, its probative value depends upon the information on the basis of which it was recorded and the person who supplied such information.

28. In the present case, the prosecution has not relied upon an unexplained school entry in isolation. PW-4 produced the original school record, including the admission register and the admission form (Exhibit PW-4/B). The record further includes the affidavit furnished by the mother of the prosecutrix, on the basis of which her date of birth was entered in the school record (Exhibit PW-4/X). The mother, PW-3, was also examined and stated that the prosecutrix was about eight years of age in 2016 and was studying in Class IV. Thus, the source of the date-of-birth entry is identifiable and the school record is supported by the testimony of the very parent who furnished the information. The evidentiary deficiency noticed in P. Yuvaprakash *(supra)* and Birka Shiva *(supra)*, where the source or basis of the school entry was not satisfactorily established, does not arise in the same manner in the present case. The date of birth recorded is

VERDICTUM.IN

25.03.2008. On the date of the incident, i.e. 05.06.2016, the prosecutrix was eight years, two months and eleven days old. The finding of the learned Trial Court that she was below twelve years of age is, therefore, supported by the evidence on record and does not call for interference.

Testimony of the prosecutrix and allegation of tutoring

29. The principal contention on behalf of the appellant is that the testimony of the prosecutrix is inconsistent and that she was tutored by her parents to falsely implicate him. It is submitted that the variations regarding the manner in which she was taken to the room and the nature of the alleged act render her testimony unreliable.

30. In her examination-in-chief, the prosecutrix narrated the occurrence as follows:

> *"On a day I was playing on staircase, one uncle came with chicks and asked me to bring one chick to him. I took a chick from my house and put the same to that uncle who was in another room which belongs to his known person. He asked me to sit there and removed my underwear and also removed his underwear. After removing clothes, he inserted his penis into my vagina and did wrong act with me. I pushed him and came out of the room. I cried and after wiping my tears came to my house and sat there silently."*

31. The prosecutrix thus gave a specific account of penile-vaginal penetration. She stated that she disclosed the incident to her parents, though she could not recall whether it was on the same day or the following day. During her cross-examination by the learned APP, she identified the appellant as Navrattan, stated that he resided near her house and that the incident occurred at about 2:00 PM on the fifth day of the month. She also

VERDICTUM.IN

stated that the appellant approached her while she was playing outside and took her towards him after closing her mouth.

32. This Court has considered the variation regarding the circumstances in which the prosecutrix was taken to the room. While in her examination-in-chief she stated that the appellant asked her to bring a chick, during her cross-examination by the learned APP she stated that he approached her while she was playing outside and took her towards him after closing her mouth. She, however, also affirmed that she had gone to the room after bringing a chick from her house. These variations relate to the events preceding the assault and do not displace her specific allegation of penile-vaginal penetration.

33. The appellant has also relied upon the prosecutrix's affirmative answer to a question regarding insertion of the penis into her anus. However, when the learned Trial Court immediately asked whether she understood the meaning of the word "***ga*d***", she answered in the negative.

34. The prosecutrix further stated that she had shown the place of occurrence to the police and identified the appellant as the person who had committed the wrong act with her. She also deposed regarding threats allegedly extended by the appellant, both against disclosing the incident and against her father after his release from jail. These statements are required to be considered alongside the evidence regarding her disclosure to PW-3.

35. PW-3 was not an eyewitness but a witness to the disclosure made by the prosecutrix. She stated that while bathing the child, when she touched her private parts, the prosecutrix complained of pain and disclosed that a person known as Pakad, residing in the neighbourhood, had committed a wrong act with her. PW-3 deposed:

VERDICTUM.IN

> *"When I was giving bath to my daughter 'S' at our house and when I had touched her private part she complained of pain and told me that a person by the name of Pakad living in our neighbourhood had done wrong act with her."*

36. PW-3 further stated that, after her husband returned, they took the prosecutrix to the police station. She identified the appellant as the person known as Pakad. Her testimony lends support to the factum of the child's disclosure and the identification of the person to whom the allegation was attributed. The use of the general expression "wrong act" by PW-3, as opposed to the specific account given by the prosecutrix, does not constitute a material contradiction, since PW-3 was only narrating what the child had disclosed to her.

37. The allegation of tutoring also requires consideration. In ***Pradeep v. State of Haryana,*** **2023 SCC OnLine SC 777**, the Hon'ble Supreme Court held that the possibility of tutoring a child witness must be examined with caution. However, the mere possibility of tutoring is not a ground to discard the testimony. Corroboration is a rule of prudence and not an inflexible requirement; the testimony must be scrutinised in the light of the circumstances of the particular case.

38. In the present case, apart from the suggestion that the prosecutrix was deposing falsely at the instance of her parents and in collusion with an NGO, no material has been brought on record to establish tutoring. The prosecutrix denied the suggestion. Her first disclosure, as deposed to by PW-3, was made when she complained of pain while being bathed and attributed the wrong act to a person known as Pakad, residing in the neighbourhood. No prior dispute or demand by the family against the

VERDICTUM.IN

appellant has been established. The prosecutrix was also familiar with the appellant, who resided in the neighbourhood. The variations in her account, including those concerning the events preceding the assault and the question regarding anal penetration, have been considered above. They do not displace her specific allegation of penile-vaginal penetration. The plea of tutoring, therefore, remains an unsubstantiated suggestion and does not furnish a ground to discard her testimony.

Delay in disclosure and registration of FIR

39. The appellant has next contended that there was an unexplained delay in reporting the incident. The occurrence is stated to have taken place on 05.06.2016, whereas the matter was reported to the police on 16.06.2016. It is further pointed out that the prosecutrix could not consistently state when she had disclosed the incident to her parents.

40. The prosecutrix could not recall whether she had disclosed the incident on the same day or the following day. PW-3, however, explained that the incident came to light when she was bathing the prosecutrix and the child complained of pain in her private parts. The prosecution case is that the disclosure was made to PW-3 on 15.06.2016 and the matter was reported to the police on the following day. The prosecutrix also attributed a threat to the appellant, stating that he had asked her not to disclose the incident, failing which he would kill her. She further stated that, after the appellant was apprehended, he threatened to kill her father after coming out of jail.

41. The testimony of the prosecutrix contains some variation regarding the precise nature and occasion of the threat. This Court has taken note of

VERDICTUM.IN

the same and does not proceed on the assumption that every part of the threat account is entirely consistent. Nevertheless, the explanation furnished by PW-3 regarding the circumstances in which the child disclosed the incident, coupled with the tender age of the prosecutrix, provides context to the delay. In ***State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384**, the Hon'ble Supreme Court cautioned that delay in reporting sexual offences cannot be assessed by applying a mechanical or stereotyped approach, as a victim or her family may take time before approaching the police, having regard to the nature of the offence and the attendant social and psychological circumstances. The Court is required to examine whether the delay is explained in the facts of the particular case and whether it gives rise to a genuine possibility of embellishment or false implication. In the present case, the incident allegedly occurred on 05.06.2016; the child complained of pain and disclosed the incident to her mother on 15.06.2016, and the family approached the police on 16.06.2016. The sequence is consistent with the explanation that the incident came to light when the mother noticed the child's discomfort while bathing her. The delay is not, in these circumstances, unexplained, nor does the period by itself furnish a basis to infer fabrication.

Medical and Forensic evidence

42. The appellant has further contended that the medical and forensic evidence does not support the allegation of penetration. It is submitted that the medical examination did not reveal any fresh tear or injury and that the FSL report did not generate a male DNA profile from the vaginal samples of the prosecutrix.

VERDICTUM.IN

43. PW-2, Dr. Darshana, proved the MLC of the prosecutrix, Exhibit PW-2/A, prepared on 16.06.2016. Her deposition records:

> *"On local examination, hymen of the prosecutrix was not intact and there was no fresh tear. Vaginal smear was collected, sealed and was handed over to accompanied constable along with the sample seal."*

44. The MLC records that the hymen of the prosecutrix was not intact, though no fresh tear was noticed. It also mentions a cut scar mark over the groin region. Since the medical examination was conducted on 16.06.2016, i.e., eleven days after the alleged incident, and no opinion was given by the examining doctor regarding the age or cause of the scar, the same can or cannot be conclusively attributed to the alleged occurrence. However, the absence of a fresh tear must be appreciated in the context of the time gap between the incident and the medical examination. A minor tear or injury may heal during such an intervening period, and the absence of a fresh injury after eleven days cannot, by itself, negate the allegation of penetration.

45. In this regard, reliance may also be placed on ***Sunil Kumar v. State*, 2019 SCC OnLine Del 12300**, wherein, while examining the medical evidence and the anatomical features of a small child, the Coordinate bench of this Court observed:

> *"After examining the testimony of Dr Deepshikha and the MLC of the prosecutrix (Ext. PW 10/A) it is observed that the hymen of the victim was torn and there was redness around her hymen. Further there were two abrasions on her palm and one on the forehead. Herein it is relevant to highlight that as per the Modi's Textbook of Medical Jurisprudence and Toxicology extracted hereinabove records that*

VERDICTUM.IN

> ***<u>an adult penis cannot penetrate the vagina of a small child and in rare cases of great violence the organs may be forcibly introduced. As in small children partial penetration may generally cause redness and inflammation around the hymen.</u>*** *This aforesaid position has also been noted in Parikhs's textbook of Medical Jurisprudence, Forensic Medicine and Toxicology."*

46. The aforesaid observations are relevant while appreciating the medical evidence in the present case. The anatomical features of a small child and the possibility of partial penetration have to be borne in mind while examining the absence of visible injuries. In the present case, the hymen was found to be not intact. The finding regarding the condition of the hymen, when considered alongside the specific account of penetration given by the prosecutrix, is a relevant circumstance supporting her version.

47. In ***Radha Krishna Nagesh v. State of Andhra Pradesh***, **(2013) 11 SCC 688**, the Hon'ble Supreme Court held that an intact hymen or the absence of an actual wound is not conclusive of the fact that a minor girl was not subjected to rape. The Court recognised that penetration in the case of a minor girl may not invariably result in tearing of the hymen. The same principle was reiterated in ***State of Himachal Pradesh v. Manga Singh,*** **(2019) 16 SCC 759**, wherein it was held that the absence of hymenal rupture or external injuries does not, by itself, negate sexual assault. Applying the aforesaid principles, the absence of a fresh tear in the present case, particularly when the examination was conducted eleven days after the incident, cannot be regarded as a circumstance inconsistent with the prosecutrix's specific account of penetration.

48. As regards the FSL report, it records that semen was not detected in

VERDICTUM.IN

the vaginal swab and vaginal smear. It further records that no male DNA profile could be generated from these samples. Consequently, no DNA profile was available for comparison with that of the appellant. However, the evidentiary value of this finding must be appreciated having regard to the fact that the medical examination and collection of samples took place eleven days after the alleged incident. During this intervening period, the possibility of biological material having been lost, washed away or otherwise degraded cannot be ruled out. The possibility that the prosecutrix may have bathed during this period is also a relevant consideration.

49. It is pertinent to clarify that the FSL report does not record a DNA mismatch between the appellant and the biological samples of the prosecutrix. Rather, it records that no male DNA profile could be generated at all. In the absence of a usable profile, the question of comparison with the appellant's DNA did not arise. The report, therefore, neither establishes the appellant's involvement through DNA evidence nor excludes him as the perpetrator. Its evidentiary value is consequently limited to the findings actually recorded therein.

50. In ***Sunil v. State of Madhya Pradesh*, (2017) 4 SCC 393**, the Hon'ble Supreme Court recognised that the absence of a usable DNA profile does not, by itself, determine the prosecution case. The forensic evidence has to be appreciated in the context of the entire evidence on record. In the present case, the absence of a male DNA profile, particularly when the samples were collected eleven days after the alleged incident, cannot be treated as affirmative evidence that the alleged act did not take place or that the appellant was not involved.

51. The learned Trial Court has recorded a specific finding that the

VERDICTUM.IN

prosecutrix gave a detailed account of the incident, including insertion of the appellant's penis into her vagina, and accepted her testimony. This Court has examined the said finding in the light of the medical and forensic evidence. The MLC records that the hymen of the prosecutrix was not intact, though no fresh tear was noticed. The absence of a fresh tear, particularly when the examination was conducted eleven days after the incident, does not render the allegation of penetration improbable. The FSL report, on the other hand, does not furnish a DNA profile capable of either identifying or excluding the appellant. Neither of these circumstances creates a contradiction with the prosecutrix's account so as to discredit her testimony. It is clarified that the medical and forensic evidence is not being treated as independent proof of the appellant's involvement; rather, the same does not discredit the ocular account accepted by the learned Trial Court.

52. Accordingly, the appellant has failed to demonstrate that the learned Trial Court overlooked any medical or forensic circumstance which would render its findings unsustainable. The absence of a fresh tear and the absence of a male DNA profile, when appreciated in the factual circumstances of the present case, do not furnish any ground to disbelieve the prosecutrix or interfere with the finding of guilt.

False implication on account of alleged loan

53. The appellant has also sought to establish that he was falsely implicated on account of an alleged loan of Rs.20,000/- advanced to PW-3 for the marriage of her elder daughter. In support of this plea, reliance has been placed upon the testimony of DW-1, Mahipal Singh. According to

VERDICTUM.IN

DW-1, PW-3 had requested him to ask the appellant to advance the amount as a loan and the appellant had handed over the amount to her. He further suggested that PW-3 subsequently implicated the appellant to avoid repayment.

54. The defence version, however, has to be examined in the light of the admissions made by DW-1 in cross-examination. He stated:

> *"I do not know if Navratan had demanded the repayment of said loan. I never demanded the repayment of the said loan. Vol. I was at my native place. Accused Navratan never told me that Geeta is not returning the sum of Rs.20,000/-."*

55. The aforesaid admission assumes significance. DW-1 could not state whether the appellant had ever demanded repayment of the alleged loan. He himself had never demanded repayment and admitted that the appellant had never told him that PW-3 had failed to return the amount. DW-1 also admitted that he was a close friend of the appellant and that the appellant's family had asked him to depose in his favour. His version regarding the alleged quarrel between Kanhaiya and the elder daughter of PW-3 was not based on his personal knowledge, as he had admittedly learnt about it only after returning from his native village.

56. PW-3 denied having borrowed Rs.20,000/- from the appellant or DW-1 and also denied the suggestion that the appellant had been falsely implicated to avoid repayment. The Investigating Officer, PW-12, stated that no monetary transaction between the parties had come to his knowledge during the investigation. It is not the absence of a written loan document alone which renders the defence doubtful. The material circumstance is that the witness produced by the appellant could not

VERDICTUM.IN

establish any demand for repayment, any dispute concerning the alleged amount, or any grievance expressed by the appellant which could provide a basis for the alleged false implication. The alleged monetary transaction, therefore, does not furnish a credible explanation for the prosecutrix or her family falsely implicating the appellant.

Proportionality and quantum of sentence

57. The incident occurred on 05.06.2016. Accordingly, the sentence is governed by Section 6 of the POCSO Act as it stood on the date of the offence, prescribing a minimum sentence of ten years, extendable to imprisonment for life. The enhancement of the minimum sentence to twenty years by the 2019 Amendment is inapplicable.

58. In ***Gopal Singh v. State of Uttarakhand*, (2013) 7 SCC 545**, the Supreme Court held that sentencing must be guided by proportionality, having regard to the gravity of the offence, culpability, antecedents, age, and potential for reformation of the accused.

59. In the present case, having regard to the tender age of the victim and the nature of the offence, a substantial custodial sentence is warranted. At the same time, the appellant's satisfactory conduct in custody and absence of established criminal antecedents merit consideration. Balancing these factors, and having regard to the sentencing framework under the unamended Section 6 of the POCSO Act, a sentence of fifteen years' rigorous imprisonment is proportionate and adequate to meet the ends of justice.

Conclusion

60. For the reasons discussed hereinabove, this Court finds no perversity

VERDICTUM.IN

or material misappreciation of evidence in the findings returned by the learned Trial Court. The prosecution has established the charge under Section 6 of the POCSO Act beyond reasonable doubt. Accordingly, the conviction of the appellant is upheld.

61. While the conviction warrants no interference, this Court has independently examined the proportionality of the sentence, having regard to the gravity of the offence, the circumstances of the appellant and the applicable sentencing framework. Upon balancing the aggravating and mitigating circumstances, this Court finds that a sentence of fifteen years' rigorous imprisonment would be proportionate and adequate to meet the ends of justice.

62. Consequently, the sentence of twenty years' rigorous imprisonment is reduced to fifteen years' rigorous imprisonment. The fine of ₹10,000/- and the default sentence of simple imprisonment for six months shall remain unaltered.

63. Accordingly, the present appeal is partly allowed to the aforesaid extent and disposed of.

64. Pending applications, if any, stand disposed of.

65. Let a copy of this judgment be sent to the learned Trial Court and the concerned Jail Superintendent for information and necessary compliance.

MADHU JAIN
(JUDGE)

NOVEMBER 5, 2026/YT