2025:DHC:11807

IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Judgment Reserved on: 30.07.2025***

Judgment Delivered on: 23.12.2025

\+ **CRL.A. 619/2023 & CRL.M.(BAIL) 1092/2023**

JAHID ..... Appellant

versus

STATE GOVT OF NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Harsh Prabhakar (DHCLSC) with Mr. Dhruv Chaudhary, Mr. Shubham Sourav & Mr. Vijit Singh, Advs.

For the Respondents : Mr. Sunil Kumar Gautam, APP for the State
SI Ravinder Chander, PS-Amar Colony
Mr. Faraz Maqbool (DHCLSC) with Mr. A. Sahitya Veena & Ms. Deepshikha, Advs. for victim/R2
Ms. Anu Narula, Amicus Curiae.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed against the judgment dated 18.12.2021 (hereafter '**impugned judgment**') and order on sentence

dated 03.05.2023 (hereafter '**impugned order on sentence**') passed by the learned Additional Sessions Judge ('**ASJ**'), South East District, Saket Courts, New Delhi in SC No. 2180/2016 arising out of FIR No. 200/2016.

2. By the impugned judgment, the learned ASJ convicted the appellant for the offences under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**'). By the impugned order on sentence, the learned ASJ sentenced the appellant to undergo rigorous imprisonment for a period of 20 years and to pay a fine of ₹50,000/- for the offence under Section 6 of the POCSO Act and in default of payment of fine to undergo simple imprisonment for a period of 01 month.

3. The present case finds its genesis from a complaint given by the prosecutrix. It is alleged that on the night of 25.03.2016, at about 02:30-3:00 AM, the minor victim was sleeping at her home when the appellant, stated to be the step father of the victim removed her undergarments and inserted his penis into the vagina of the victim. It is alleged that thereafter the victim felt pain, she pushed the appellant and went for toilet whereafter she went back to sleep. It is alleged that in the morning, the victim narrated the entire incident to her elder sister 'Y', who then narrated the incident to the mother of the victim and the matter was thereafter reported to the police post which the FIR was lodged.

4. Post the completion of the investigation, the chargesheet was filed for the offences under Section 376 of the IPC and Section 4 of

the POCSO Act. Charges were framed against the appellant for the offence under Section 6 of the POCSO Act.

5. The learned ASJ, by the impugned judgment, convicted the appellant for the offence punishable under Section 6 of the POCSO Act. It was noted that the case of the prosecution was that the appellant, who is the step father of the victim, had committed aggravated penetrative sexual assault on her and that the victim in her complaint to the police as well as in her statement under Section 164 of the CrPC had supported the case of the prosecution and the medical evidence also demonstrated that the appellant had committed rape on the victim.

6. It was noted that the victim was below 12 years on the date of the incident. The learned ASJ took note of the fact that the victim/PW2, her mother/PW4 and her sister/PW5 during the deposition had not supported the story of the prosecution that the appellant had committed sexual assault on the victim. It was noted that PW2, PW4 and PW5 have consistently stated that while sexual assault was committed, the same had been done by one Vicky who removed the victim's clothes, kissed her and tried to insert his private part into the victim's genitals. It was noted that the victim was hostile on the identity of the accused.

7. The learned ASJ noted that the complaint was written in Hindi and the victim identified her signature on the said complaint. In the said complaint, it was mentioned that the appellant is the victim's step father and when the victim was sleeping with the appellant, at about

3:00-3:30 PM, the appellant removed her undergarments and inserted his penis in the victim's genital as a consequence of which the victim felt pain and she pushed the appellant, went to the lavatory and thereafter slept. Further, on the next date, she woke up at 10:00 AM and narrated the entire incident to her sister 'Ms. Y' who then told the incident to their mother, post which the victim was brought to the police station.

8. It was noted that in her statement under Section 164 of the CrPC recorded on 28.03.2016, the victim stated that on the night of Holi, she was sleeping in her room when the appellant committed '*galat kaam*' with her. The victim further stated that thereafter she went to the lavatory and slept. She further stated that she did not state anything at that time because she was scared. The victim further beseeched that the appellant be spared because he was the sole bread earner of the family. She further stated that the appellant had apologised to her that night itself.

9. The learned ASJ noted that the medical examination of the victim was conducted on 25.03.2016 at around 4:30 PM in AIIMS Hospital. The internal medical examination of the victim was also conducted on the consent of the victim's mother. It was noted that at the time of the medical examination, the victim in 'sexual history' stated that the sexual assault was committed by the father after he got drunk at around 02:30 am. It was noted that the MLC of the victim also supported the version of the victim that sexual intercourse had been committed on her as in the MLC, it was mentioned that the

hymen of the victim was '*fresh torn cruciate shape'*. It was consequently noted that from the MLC, it stood proven that sexual intercourse was committed with the minor victim.

10. Insofar as the identity of the perpetrator was concerned, the learned ASJ noted that the victim supported the version of the prosecution pertaining to the factum that sexual assault was committed with her, however, she took the name of one Vicky as the one who had committed intercourse with her. It was noted that the victim's mother as well as the victim's sister 'Y' deposed that the victim had told them that 'Vicky' was the person who had sexually assaulted her.

11. It was noted that the victim contended that her signature was taken on 3-4 papers by the police officials and that she was not allowed to read the contents of those papers. The mother of the victim/PW-4, during her deposition, stated that she did not know where 'Vicky' was residing and that she could not say whether the said 'Vicky' was residing in her neighbourhood though during cross examination, the victim deposed that Vicky was known to her 5-6 months prior to Holi and that the said 'Vicky' used to follow her when she went to attend school.

12. The learned ASJ noted that even if the version of the victim were to be believed that the police officials wrote the contents of the complaint and the same was signed by the victim, yet it appeared peculiar as to why in the medical history, it was mentioned that "*sexual assault by father after drunk at home around 2:30 am on 25.03.2016. No history of physical assault."* It was noted that even at

the time of recording of her statement under Section 164 of the CrPC, the victim had stated that the appellant had done the wrong acts with her. It was noted that the statement of the victim recorded under Section 164 of the CrPC resonated with the version narrated in the medical history of the victim.

13. The learned ASJ noted that the version narrated by the victim in her statement under Section 164 of the CrPC made it manifest that the victim changed her version considering that the appellant being her step father was the only earning member in the family, who if remained in jail, the whole family would be rendered without any source of income and financial stability.

14. It was noted that the FSL report made it apparent that the DNA of the accused matched with the DNA present on the underwear of the victim and the result of the FSL analysis materialised that the "*alleles from the source Ex. 10 (gauze cloth piece of accused) are accounted in the alleles form the source of Ex. 8 (underwear of the victim)*". It was noted that upon being questioned under Section 313 of the CrPC about the said aspect as to how the semen of the appellant was found on the undergarment of the victim, the appellant had replied that the police official had collected and seized the undergarment of the victim after 2-3 days of the lodging of the FIR and that the police had also taken his undergarment. The learned ASJ noted that the version of the appellant ran contrary to the record. It was noted that the doctor on the date of medical examination of the victim on 25.03.2016, that is the date of the incident of the offence, had seized the undergarment of the

victim and the same was handed over to the IO/PW8 on the same date and the same was deposited in the *malkhana* of the Police Station on 25.03.2016 itself. It was noted that while the exhibits of the appellant were seized on the date of his medical examination, that is on 26.03.2016, at that point of time, the undergarment of the victim was already in the custody of the police. It was noted that both the exhibits, that is, that of the victim and the appellant were duly sealed by AIIMS Hospital. It was noted that even when the exhibits were sent for FSL examination, they were sealed. It was noted that in accordance with Section 106 of the Indian Evidence Act, 1872 the onus was on the accused to explain how his semen came on the undergarment of the victim which the appellant had failed to discharge. Consequently, the learned ASJ convicted the appellant of the offence under Section 6 of the POCSO Act.

Submissions on behalf of the appellant

15. The learned counsel for the appellant submitted that the learned ASJ erred in convicting the appellant for the offence under Section 6 of the POCSO Act. He submitted that the sole eyewitness to the alleged incident that is the victim herself does not support the case of the prosecution. He submitted that the victim categorically deposed that on the night of Holi in the year 2016, the victim had woken up to relieve herself, she noticed an individual namely Vicky standing outside the gate who took her to a nearby vacant plot and attempted to rape her. He submitted that as per her testimony, the victim resisted

and raised an alarm upon which the appellant arrived at the scene and in a fit of rage, gave beating to the victim. He submitted that from the testimony of the victim, it is pellucid that the allegations of rape are attributed solely to Vicky and at no point did the victim depose that the appellant was the perpetrator.

16. He submitted that even the mother of the victim and the sister of the victim did not support the case of the prosecution in any manner so as to implicate the appellant. He submitted that on the contrary, both the witnesses have consistently stated that the sexual assault on the victim was committed by one Vicky. He submitted that the depositions of the mother and sister of the victim corroborate the testimony of the victim that one Vicky was responsible for the attempted rape. He submitted that the consistent stand taken by the victim's immediate family members who are natural witnesses makes it abundantly clear that the appellant was not the perpetrator. He submitted that in such attendant circumstances where the victim and her close relatives, all attribute the offence to another individual, the conviction of the appellant cannot be sustained.

17. He submitted that the scientific evidence (FSL Report) and the allelic data report indicated that the DNA profiles of the appellant were similar with the DNA profiles generated from the underwear of the victim, however the mere presence of the appellant's DNA on the clothing of the victim does not by itself establish that the appellant committed the alleged offence of rape especially in the absence of ocular evidence. He submitted that in the wake of the deposition of the

victim that clearly exculpated the appellant, the conviction of the appellant cannot be sustained.

18. He submitted that even otherwise, it is well settled that DNA evidence in isolation *sans* any ocular evidence does not suffice to sustain the conviction of the accused [Ref. ***Parvej Khan v. State of Maharashtra through the Bori Police Station and Another*** **: 2023 SCC OnLIne Bom 2705;** ***Paramesha v. State of Karnataka by Circle Inspector of Police Arakalgud Circle, Hassan District*** **: 2020 SCC OnLine Kar 5221**].

19. He submitted that the learned ASJ placed undue reliance on the statement of the victim recorded under Section 161 and 164 of the CrPC. He submitted that the statement recorded under Section 161 of the CrPC is inadmissible save to the limited extent permitted under Section 27 of the Indian Evidence Act, 1872 or for the purposes of contradiction under Section 145 of the CrPC. He submitted that similarly, statement under Section 164 of the CrPC is a pre-trial statement and does not by itself constitute evidence unless duly affirmed and deposed during the course of trial.

20. He submitted that the victim in her deposition before the Court explicitly stated that she was coerced by the Police into signing blank sheets of paper and was threatened with imprisonment alongwith her mother if she did not implicate the appellant in her statement before the learned Magistrate. He submitted that the clear allegations of coercion renders both the statements under Sections 161 and 164 of the CrPC wholly unreliable and unworthy of credit.

21. He submitted that the learned Trial Court further fell in error in relying upon the opinion of the doctor contained in the MLC specifically the remark that the "*hymen was torn in cruciate manner; fresh torn*" – a circumstance to return a finding of guilt. He submitted that such an observation without any corroborative evidence directly linking the appellant to the alleged act cannot constitute conclusive proof of rape by the appellant.

22. He submitted that medical findings such as hymenal rupture may be indicative of sexual activity but are not determinative of the identity of the perpetrator. He submitted that in the absence of any direct accusation by the victim against the appellant and considering that as per the testimony of the victim herself, the attempted rape was attributed to one *Vicky*, the reliance on the observations comprised in the MLC alone is unsafe to sustain the conviction of the appellant.

23. He submitted that the learned ASJ placed undue weight to the narration contained in the MLC of the victim which recorded that "*she was sexually abused by her father at home on 25.03.2016 at around 2:30 AM after he was drunk in the evening.* He submitted that the said endorsement in the MLC is hearsay evidence and consequently inadmissible as evidence. He submitted that the MLC fails to disclose the source of the information upon which the observation is recorded. He submitted that there is no clarity as to whether the victim herself made the statement or whether it was conveyed by someone else.

24. He submitted that the same assumes higher significance as the doctor who recorded the MLC and interacted with the victim had also

not deposed before the learned Trial Court. He submitted that the narration of events in the MLC is also at best a pre-trial statement and is inadmissible other than for the purposes of contradicting the maker.

Submissions on behalf of the victim and State

25. It is relevant to note that though the victim had turned hostile and not supported the case of the prosecution during her evidence, the learned counsel representing her before this Court has argued in favour of upholding the conviction. Even so, considering that the victim had turned hostile, by order dated 26.03.2025, this Court had appointed Ms. Anu Narula, learned counsel as *amicus curiae* to address arguments.

26. The learned Additional Public Prosecutor for the State and the learned counsel for the victim submitted that the learned ASJ rightly convicted the appellant for the offence punishable under Section 6 of the POCSO Act. They submitted that the present case involves a critical issue of weighing hostile ocular evidence recorded during trial against medical, scientific and other corroborative evidences. They submitted that this Court ought to examine whether any explanation has come on record during trial to show why the witnesses turned hostile.

27. They submitted that the evidence in this case includes consistent medical evidence in the form of MLC, consistent scientific evidence where the semen of the appellant was found on the underwear of the victim, the FSL report which confirmed that the DNA profiles

generated from the source of Ex. 10 (*gauze cloth piece of accused)* which matched with the DNA profile generated from the source of Ex. 8 (*underwear of the victim).*

28. They submitted that the earlier narration of events by the victim and her family at the stage of investigation, which though either inadmissible or rendered diluted due to hostile deposition in Court has value as corroborative evidence to the aforementioned medical and scientific evidence especially to appreciate the circumstances leading to the child victim turning hostile. They submitted that the victim, in her statement under Section 164 of the CrPC, implored the Court to let go the appellant since he was the sole earning member in the family.

29. They submitted that while the victim made up the identity of some unknown person called 'Vicky' to exculpate the appellant, in her cross examination, the victim was not able to furnish any explanation about the identity of 'Vicky'. They submitted that this Court in the case of ***Shri Pappu v. State*** **: 2016:DHC:4041** when faced with an identical situation of weighing hostile ocular evidence *versus* medical and scientific evidence had observed that when the explanation rendered by the victim is absurd, forensic evidence of unimpeachable character would suffice to sustain a charge.

30. They submitted that the appellant further failed to rebut the presumptions under Section 29/30 of the POCSO Act and also discharge his burden under Section 106 of the Indian Evidence Act, 1872 as to how the appellant's semen was found on the underwear of

the victim as rightly noted by the learned ASJ. They consequently submitted that the present appeal is liable to be dismissed.

Submissions on behalf of the amicus curiae

31. The learned *amicus* appointed by this Court also tendered certain submissions regarding relevance of the evidence of hostile witnesses in such cases.

32. She further submitted that although certain schemes and statutory provisions are in place for protection of witnesses, there is a rising need for certain guidelines to scuttle the possibility of minor victims being persuaded by their family members.

Analysis

33. Before adverting to deal with the contention of the parties and the evidence presented threadbare, it is important to take note of the scope of Appellate Jurisdiction that is vested in this Court. While dealing with an appeal against judgment on conviction and sentence, this Court is required to reappreciate the evidence in its entirety and apply its mind independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi v. State of M.P.*** **: 2021 SCC OnLine SC 3709** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

> *"9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently*

and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in Majjal v. State of Haryana [(2013) 6 SCC 799], where the Court held:

> *'6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 of the IPC where the accused is sentenced to life imprisonment unsatisfactory.*
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> *7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to*

the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order."

34. This Court is thus tasked to move past the endless mists that circumference the present case in its quest to find the grains of wheat hidden in piles of chaff. In doing so, this Court deems it apposite to tread lightly and examine carefully the events that transpired during and post the occurrence of the alleged incident. The inception of the present case occurred on a complaint given by the victim alleging that in the early hours of 25.03.2016 at around 3/3:30 AM when the victim was asleep, the appellant removed the victim's undergarments and inserted his private part in the victim's genitalia. It is alleged that the victim experienced pain as a consequence of which she pushed the appellant, went to the lavatory and thereafter went back to sleep. It is alleged that in the morning at around 10AM, the victim narrated the events to her elder sister 'Y' who then communicated about the same to their mother after which the victim was taken to the police station to give the complaint.

35. The prosecution examined eleven witnesses to prove its case, including, principal of the school where the victim was admitted in 1st class (PW1), the victim (PW2), the doctor who produced the MLC (PW3), the victim's mother (PW4), the victim's sister (PW5), teacher from another school where the victim was a student (PW7), Investigating Officer (PW8), Sr. Scientific Officer from FSL Rohini (PW8A– inadvertently also numbered as PW8 during trial) and some other police officers (PW6, PW9 and PW10).

36. Unlike most criminal cases where the Court is inundated with conflicting assertions and defences in relation to contradictions, the present case is one where the victim resiled from her case during her examination-in-chief and left the prosecution to establish the alleged offences beyond reasonable doubt *without* the support of their star witness. Additionally, the victim's mother and sister also turned hostile. Despite the added burden of accounting for hostile witnesses, the learned Trial Court returned a finding of conviction on the basis of medical evidence as well as the victim's prior statements recorded under Sections 161 and 164 of the CrPC. This Court is thus confronted with the task of discerning the truth of the allegations which are obscured with the shifty stance of a vulnerable victim and her family members.

37. The entire case of the appellant is essentially premised on the victim and her family members turning hostile during her examination. It is sought to be impressed upon this Court that once the victim has failed to support the case of the prosecution and asserted that the perpetrator was one Vicky, the appellant could not have been convicted by relying on the statements given by the victim to the police and Magistrate. On the other hand, as if the facts of the case were not perplexing enough, the counsel representing the victim has now argued in favour of upholding the conviction.

38. Undoubtedly, the appellant's conviction cannot be legitimately sustained without addressing the point of the material witnesses turning hostile. The peculiar dilemma confronting this Court is thus as

to whether the prosecution has been able to establish its case beyond reasonable doubt *despite* the victim and her family members turning hostile at the time of recording of evidence? This Court finds itself compelled to answer the said question in affirmative on account of a number of reasons which are strengthened by the presumptions stipulated under POCSO Act.

Statutory Presumptions

39. Before further elaborating on the facts that have persuaded this Court to uphold the conviction, it is expedient to examine the design of the POCSO Act, especially in the backdrop of the legislative intent that motivated the legislature to incorporate the statutory presumption in relation to commission of certain offences and culpable mental state of the accused as embodied under Sections 29 and 30 of the POCSO Act respectively. Finding that the criminal system was plagued by such infirmities which were causing the decline of conviction rate of offences of rape against children, the Parliamentary Standing Committee on Human Resource Development in its 240th Report on the Protection of Children from Sexual Offences Bill, 2011 considered the need for a special legislation to shield children from predatory crimes. Attention of the Committee was drawn to the fact that the Constitution of India provided for a positive discrimination in favour of children and further provided that the State *shall* direct its policy to secure that children are not abused.

The parliamentary debates as well as the report further reflect a staunch emphasis on the vulnerability of victims, especially when the perpetrator happens to be a family member. It was categorically noted in the report that incest cases seldom get reported and even when such cases are reported, they fall out during the course of the trial, as is the case in the present matter. Vulnerability of the minor victims as well as difficulty in collection of evidence were noted to be the two factors leading to incorporation of the presumptions in the statute.

In the case of ***Just Rights for Children Alliance v. S. Harish* : 2024 SCC OnLine SC 2611**, the Hon'ble Apex Court had discussed the concept of statutory presumptions under POCSO Act (with specific emphasis on the presumption under Section 30 of the POCSO Act) and principle of foundational facts. It was noted that the presumptions were specifically provided for by the legislature so as to ensure that the legislation is effective in addressing the rising cases of child sexual abuse cases. Placing reliance on statutory presumptions in other statutes, the Hon'ble Apex Court discussed the effect of presumptions as well as the rule of foundational facts. The relevant portion of the judgment is as under:

> *"157. In* ***Attorney General*** **[Attorney General for India v. Satish, 2021 INSC 762]** *this Court while considering the aforesaid Section(s) 29 and 30 of the POCSO observed that the same had been specifically incorporated by the legislature in view of the serious nature of the offences punishable under the POCSO and the object behind the enactment of the said legislation. Furthermore, this Court in view of the importance of the aforesaid provisions, held that any offence under the Act pertaining to*

sexual, assault, harassment etc., ought to be construed viz-a-viz the other provision (sic Section(s) 29 and 30) of the POCSO…

158. The statutory presumption of culpable mental state is neither a concept which is alien to the law nor is it something which is exclusive to the POCSO alone. In fact, there are several legislations which also contain similar provisions relating to the statutory presumption of culpable mental state….

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166. What can be discerned from the above is that the idea behind providing for a statutory presumption of culpable mental state is in view of the exigency posed by the ***difficulty that often exists in establishing certain types of offences such as inchoate offences due to its clandestine nature.*** *Such presumptions are in essence an exception to the cardinal principle of criminal jurisprudence that the act does not make a person guilty unless the mind is also guilty.*

*167. Traditionally, it is the prosecution who bears the burden of proving every element in a particular offence, including the accused's mental state, beyond a reasonable doubt….****Due to the elusive and concealed nature of such offences there is often little to no direct evidence available to establish what was in fact in the mind of the accused at the time when the particular act in question occurred or that the said act was done only with a particular intention.***

168. ***It is in such scenarios, the legislature consciously provides for a statutory presumption of a culpable mental state to overcome the aforesaid hurdles and assist the prosecution to prove its case.*** *This presumption of a culpable mental state is neither a conclusive proof of guilt for any particular offence nor does it completely replace or absolve the prosecution of its burden of proof and should not be understood as such, but rather it is a potent tool to assist the prosecution in discharging its initial burden and establishing its case.* ***It seeks to bridge the evidentiary gap that exists between the actus reus and the mens rea in complex clandestine offences which otherwise cannot be proved through conventional means.***

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170. ***However, since the courts were in seisin of the harshness of such presumptions and the inherent danger they pose - particularly in blurring the line between the presumption of a culpable mental state and the presumption of the guilt itself and thereby undoing or compromising the fairness of such criminal***

proceeding, this Court for the first time in Baldev Singh (supra) sowed the seeds for a test to ascertain as to when such presumption can be safely attracted which was later more fully evolved in Noor Aga (supra) wherein a brightline test was laid down in the form of the 'Rule or Principle of Foundational Facts'.

171. ***This 'Rule or Principle of Foundational Facts' simpliciter lays down that before the statutory presumption of culpable mental state could be validly invoked, the prosecution must first establish certain foundational facts.*** *These foundational facts typically involve or correspond to proving those facts or elements that cogently establish the actus reus required for the offence alleged by the prosecution.* ***It is only after such foundational facts have been proved beyond a reasonable doubt that the prosecution may take recourse of the statutory presumption provided by the legislature.*** *The rationale behind the same is two-fold. First, in the absence of any actus reus there is no possible way to ascertain the corresponding mens rea that is required to be established. This is because it is the actus reus which demarcates or delineates the mens rea which is to be looked for and established...* ***Secondly, and more importantly it ensures that the statutory presumption does not overreach or take the place of proof of guilt under the guise of 'presumption of culpable mental state'****.*

172. It would be too much to shift the entire onus onto the accused and to then ask him to prove a negative fact. ***Thus, any statutory presumption would operate only after the prosecution first lays the foundational facts necessary for the offences that have been alleged beyond a reasonable doubt.*** *This is because a negative cannot be proved in the initial threshold, in order to prove a contrary fact, the fact whose opposite is sought to be established must be proposed first. Thus, in law it is trite that the initial burden always lies on the prosecution.* ***This why, the establishment of foundational facts by the prosecution is a prerequisite for triggering the statutory presumption for shifting the onus on the accused to prove the contrary.*** *It is a delicate balance struck between the practical need for such presumption in law and the cardinal principles of criminal jurisprudence to ensure that the presumption does not cross or transgress the fine line that demarcates presumption of 'culpable mental state' from the 'presumption of guilt' itself.*

> *173. Since a negative cannot be proved, an accused cannot be asked to disprove his guilt even before the foundational allegations with supporting material thereof are placed and duly established by the prosecution before the court.* ***Unless the prosecution is able to prove foundational facts in the context of the allegations made against the accused under any specific provision of the POCSO as the case may be, the statutory presumption of culpable mental state under Section 30 of the POCSO will not come into the picture****.*
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> *174.* ***Even if the prosecution establishes such foundational facts and the presumption is raised against the accused, he can rebut the same either by discrediting prosecution's case as improbable or absurd or the accused could lead evidence to prove his defence, in order to rebut the presumption****, however the said presumption under Section 30 of the POCSO will be said to have been rebutted only where the accused by way of his defence establishes a fact contrary to the presumption and proves the same beyond a reasonable doubt."*
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> (emphasis supplied)

The aforesaid judgment makes it clear that the presumptions are not absolute and are helmed on the establishment of the foundational facts by the prosecution. It is only when the presumptions are raised that the onus shifts upon the accused to dissipate and rebut the same by leading evidence. At the same time, it cannot be ignored that while the principle of foundational facts was read into statutory presumptions to safeguard accused persons from being relegated to prove a negative, however, the threshold of establishing of foundational facts cannot be raised to such an extent so as to make it akin to proof of guilt beyond reasonable doubt. The same would frustrate the very purpose of presumptions which have been provided to overcome the hurdle of difficulty faced by prosecution in proving the case beyond reasonable doubt. As opined in ***Just Rights for***

Children Alliance v. S. Harish (*supra*), the Couts have to toe the thin line between ensuring that the presumptions do not transgress into being presumptions of guilt and also ensuring that the practical need for such presumptions in law are not rendered otiose by an excessively quixotic standard for establishing foundational facts.

Appraisal of prosecution evidence and defence of the appellant

40. One of the key elements for invocation of the presumptions is to prove that the victim is a minor at the time of the incident. The prosecution in this case sought to establish the victim's age by examining PW1, who is the principal of the school where the victim was admitted in 1st class in the year 2010. He had adduced the certificate of the date of birth of the victim which showed her date of birth as 20.10.2004. Further, PW7 (a teacher in the school where the victim was admitted in 6th class) was also examined to prove the school record which indicated the victim's date of birth as 20.10.2004. As per the same, the victim was rightly determined to be below 12 years of age at the time of the incident. The appellant has not raised any objection to the victim's date of birth before the learned Trial Court and this Court, and thus, in view of the date of birth certificate, the said foundational fact of the victim's minority stands established.

41. That said, in the opinion of this Court, the presumptions were ignited when the charges came to be framed against the appellant on the basis of the victim's statements under Section 161 and 164 of the CrPC as well as the FSL analysis which indicated that the DNA

profile of the appellant matched with the one generated from the underwear of the victim. The said presumptions cannot be brushed off lightly merely on account of the victim or certain other witnesses subsequently turning hostile, especially when the victim's statement under Section 164 of the CrPC also reflects that she was being weighed by her family being financially dependent on the appellant.

42. Pertinently, in her statement under Section 161 of the CrPC, the victim made categorical allegations of rape against the appellant. In her statement recorded under Section 164 of the CrPC on 28.03.2016, the victim stated that the appellant had committed '*galat kaam*' with her. On being asked about the nature of '*galat kaam*', the victim stated–"*Jaise mummy papa karte hai vaisa kiya. Uske baad mai toilet gayi fir wapas aakar so gayi. Mai darr gayi thi ki ghar mein jhagda na ho jaaye isliye kisi ko nahi bataya. Subha mummy ko bataya kyuki mummy ko batana zaruri tha aur kuch nahi kehna hai.* ***Papa ko chodd do. Ghar mein koi kamane waala nahi hai. Hum akele padd jayenge. Papa ko chodd do***." On being further asked by the Magistrate as to who had told her to give such a statement, the victim categorically stated that "*kisi ne nahi kaha*" and that her papa (the appellant) had said sorry to her at night itself. Subsequently, during her evidence, the victim asserted that her signatures were taken by the police on blank pages and she was coerced by a female police officer into implicating the appellant while giving her statement before the Judge (under Section 164 of the CrPC) under threat of her mother being put behind bars.

43. Similarly, the victim's sister (PW5) also stated in her statement under Section 161 of the CrPC that the victim had told her about the appellant raping her, whereafter, PW5 had informed her mother about the same. The victim's mother (PW4) also stated in her statement under Section 161 of the CrPC that the victim's statement had been recorded in front of her, wherein the victim had asserted that she had been raped by the appellant. Like the victim, during examination, her mother and sister turned hostile and contradicted their statement under Section 161 of the CrPC.

44. The sudden somersault of the aforesaid witnesses inspires a fair amount of wariness in this Court. Such conduct is undoubtedly not natural. While assertions of coercion on part of an unnamed female police officer have been made by the victim, the same appears to be a façade oriented at shielding the appellant, who is the victim's step-father. The evidence cannot be considered in isolation without duly considering the surrounding circumstances in the present case. The statement tendered by the victim under Section 164 of the CrPC evinces the hesitation of the victim in implicating the appellant, who is her step-father. The victim has implored that the appellant may be let off as he is sole bread earner in the family.

45. Pertinently, the victim as well as her family members supported the prosecution in the immediate aftermath of the offence which was allegedly committed on 25.03.2016. It is only after a significant amount of time had passed, when the victim's evidence was recorded in April, 2017 and the evidence of her mother and sister was recorded

in May, 2019, that the witnesses deposed in favour of the appellant. It appears that the witnesses were swayed in the intervening period and their kinship with the appellant was the impetus behind the deviation from their previous statements. It cannot be ignored that the victim was merely thirteen years of age at the time of recording of her evidence. A child who is confronted with the prospect of condemning someone who provides her shelter and financial stability is undoubtedly faced with a grave conflict. The child's instinct for survival coupled with the fear of ostracization and the desire to preserve the family unit may compel the victim to retract from the truth. In the present case as well, the subsequent hostility of the victim can be traced from her statement under Section 164 of the CrPC itself.

46. In such circumstances, considering the victim's evident worries about finances as is reflected in her statement under Section 164 of the CrPC, the possibility of her being pressured by supervening circumstances cannot be brushed off.

47. Had the present case been helmed solely on the evidence of the witnesses, this Court might have been constrained to acquit the accused due to absence of corroboration, however, as is rightly said, truth is truth to the end of reckoning and the presence of other cogent evidence has proved fortuitous for the prosecution in the present case.

48. The only defence raised by the appellant to rebut the presumptions is that as per the testimony of the victim, her mother and her sister, the alleged act of sexual assault was committed by one Vicky and not the appellant. It has been argued that since the victim

and the other witnesses have themselves asseverated that the attempted rape was attributable to one *Vicky*, no finding of guilt could have been returned in favour of the appellant on the basis of the medical evidence.

49. In that regard, this Court first deems it appropriate to examine the testimonies of the victim, her mother and her elder sister in this aspect in the quest to unveil the identity of the perpetrator. It is pertinent to note that the victim, her mother as well as the victim's sister, in their deposition before the Court, did not resile on the factum of the alleged rape committed upon the victim. The bone of contention pertained in relation to the identity of the alleged perpetrator. As is evident from the testimony of the witnesses, they deposed that in the early hours of 25.03.2016, when the victim woke up to use the lavatory, she found the said Vicky standing outside her gate who thereafter took her to a nearby vacant plot and attempted to rape her. The victim, in her testimony, stated that the said Vicky tried to remove her clothes and also kissed her. She further stated that the said Vicky tried to insert his private part in her genitalia and stated that upon hearing her cry, the appellant came to the spot whereafter the said Vicky fled the spot. The evidence of the mother as well as the sister of the victim would reveal that the same stance has been taken by them as well, and the blame has been attributed to the said Vicky. It is however pertinent to note that no specifics in relation to the phantom of Vicky as conjured by the witnesses or clarification pertaining to his whereabouts could materialise during the course of the trial.

50. However, peculiarly, despite the attempt of the witnesses and the victim herself to divert the blame towards the said Vicky, the medical evidence in the present case indicates to the contrary. From the record, it is borne out that the incident as alleged occurred in the early hours, that is, around 3-3:30 AM of 25.03.2016. The FIR indicates that the information pertaining to the commission of the alleged offence by the appellant was received at around 4:15 PM on 25.03.2016. The MLC report of the victim (as proved by PW3/ medical Report Technician at AIIMS Hospital who identified the signature of the concerned doctor on the report) would reveal that the medical examination of the victim was conducted on the same day, that is, on 25.03.2016, at around 4:34 PM, that is within 13-14 hours of the occurrence of the alleged incident.

51. Significantly, the MLC further spells that no whisper of the alleged act being committed by the illusory – Vicky was made. Infact, the column titled "*sexual assault history*" makes it conspicuous that the allegation pertained to *sexual assault by father after drunk at home at around 2:30 AM on 25.03.2016.* The MLC of the victim further makes it manifest that while the victim had changed her garments, she did not change her undergarments.

52. Although the omission on the part of the victim to disclose the name of this apparition – *Vicky* is not *per se* fatal to the case of the prosecution, considering the fact that in the first account of the case, allegations were attributed to the appellant and no hint whatsoever was given about there being any other perpetrator and further considering

that the same was maintained by the victim at the time of recording of her statement under Section 164 of the CrPC, the subsequent hostility in the opinion of this Court does not dent the case of prosecution especially considering the presence of scientific evidence.

53. Further, in the present case, the FSL report indicates that the DNA of the accused matched with the DNA present on the underwear of the victim and the result of the FSL analysis materialised that the "*alleles from the source Ex. 10 (gauze cloth piece of accused) are accounted in the alleles form the source of Ex. 8 (underwear of the victim*)".

54. In that regard, insofar as the undergarment of the victim is concerned, the MLC of the victim further makes it manifest that while the victim had changed her garments, she did not change her undergarments. The seizure memo indicates that the exhibits of the victim were collected on the same day, that is, on 25.03.2016.

55. At this juncture, it bears emphasis that the chain of custody of the seized exhibits in the present case is infallible. The prosecution has examined the concerned police officer (PW10) who had deposited the exhibits in the *malkhana* after receiving them from the Investigating Officer (PW8). The relevant *malkhana* entries were proved by PW10. The testimony of PW10, and the entry no. 1013/16 in the *malkhana register*, make it clear that the exhibits of the victim were also deposited in the *malkhana* on 25.03.2016 itself.

56. Furthermore, what emanates from the record is that the arrest of the appellant was effected on 25.03.2016. Thereafter, his medical

examination was conducted on 26.03.2016 at around 10:45 AM whereafter, the sealed parcels containing the exhibits of the appellant were deposited in the *malkhana* on the same day itself, as evidenced by PW8 and PW10. The said aspect is also materialised in the entry no. 1014/2016 in the *malkhana* register.

57. The said parcels were sent for FSL on 07.04.2016 and the same were collected from the *malkhana* and deposited with FSL Rohini by PW6, who also specifically deposed that the samples remained untampered whilst in his custody. The said officer was also not cross-examined by the accused. PW9, who collected the result and samples from FSL, has also been examined by the prosecution.

58. The FSL Report dated 09.01.2017 makes it apparent that the 17 parcels were received in the office on 07.04.2016 and the seals were intact. The testimony of PW8A/FSL expert would also reveal that on 07.04.2016, 17 parcels were received in the office of FSL and that all the parcels were duly sealed and the seals were intact. She further stated that the DNA profile generate from Ex. 10 (gauze cloth piece of accused) was found to be matching with the DNA profile generated from source of Ex. 8 (underwear of the victim). It is relevant to note that despite being granted an opportunity, no question was put to PW8A/FSL expert by the learned counsel for the accused in relation to the tampering of the DNA samples.

59. In such circumstances, the appellant's failure in impeaching the credibility of the findings in the FSL report will prove fatal to his case. The unbreached chain of custody of FSL coupled with the initial

statements of the victim as well as her mother and sister make out a strong case beyond reasonable doubt against the appellant.

60. In the light of the aforesaid discussion, this Court does not find any infirmity in the conviction of the appellant and the same cannot be faulted with.

Necessary Addendum– Measures for safeguarding vulnerable victims

61. Having dealt with the facts of the present case, this Court also considers it apposite to take notice of the plight of such victims, who are defenceless against pressure from their family members and are susceptible to influence. This Court is particularly moved by the statement of the victim under Section 164 of the CrPC which evidences that she was burdened by the financial reality of her father figure being indicted in the case. Nothing can justify a child being faced with the burden of shielding their perpetrator. In cases of sexual assault against minors, the State incurs an additional responsibility of treating the victim like a child in need of care and protection. Being cognizant of the aforesaid considerations, this Court deems it fit to appreciate the guidelines already in place to ensure a more fruitful protection of victims against additional harassment and pressure borne as a result of reporting of the offence.

62. The legislature has specifically obligated the Special Juvenile Police Unit or local police to refer children, who are victims of such offences, to shelter homes and to make immediate arrangements for

them in Section 19(5) of the POCSO Act. Rule 4 of the Protection of Children from Sexual Offences Rules, 2020 ('**POCSO Rules**') (similar to Rule 4 of the Protection of Children from Sexual Offences Rules, 2012) provides that the Committee must make a determination within three days as to whether the child needs to be taken out of the custody of their family or shared household. History of family violence involving the child is stipulated to be a relevant consideration for making such a determination. The Rule also provides for appointing a support person to the child, with the consent of the child and child's parent or guardian or any other person in whom the child has trust, to render assistance *throughout the process of investigation and trial*.

63. The Juvenile Justice (Care and Protection of Children) Act, 2015 and Juvenile Justice (Care and Protection of Children) Model Rules, 2016 ('**JJ Rules**') also provide that any child in need of care and protection is to be produced before the Child Welfare Committee, which can issue directions for placing the child with the parent or guardian or Children's home/ in safe custody of a fit person or a fit facility. The JJ Rules also provide that the Legal Services Authority may provide a support person or para legal volunteer for pre-trial counselling to the victim so as to familiarize her to the Court environment in advance. It is also provided that while parents or guardians shall accompany the victim at all times during trial, in case of conflict of interest, another person of the child's choice, or fit person, or representative of the fit institution identified, or

psychologist appointed by the Committee or Court, shall accompany the child at all times, on approval of the Court. Apart from rehabilitative stay, the JJ Rules also provide that in case the child expresses his unwillingness to be restored back to family, the Committee shall interact with the child to find out reasons for the same and no child be coerced or persuaded to go back to the family.

64. Certain model guidelines have been framed in respect to support persons by the National Commission for Protection of Child Rights in the year 2024 pursuant to directions of the Hon'ble Apex Court in ***We the Women of India v. Union of India & Ors.* : Writ Petition(s) (Civil) No(s) 1156/202** and ***Bachpan Bachao Andolan vs. Union of India* : Writ Petition No.427 of 2022**, whereby it is provided that it is the duty of the support person to protect the child from external pressure and to assess the presence of any such threat, coercion or pressure. It is mandated that a support person should conduct regular home visits to the child and to submit monthly reports to the Committee regarding the child's well-being. It is also specifically provided that in incest cases, the support person shall assist the child and the family in finding alternate residences.

65. The aforesaid mechanisms assuage this Court that a framework has at least been put in place for guarding the child against harassment and pressure at hands of their family members, who may be motivated to protect the accused. The model guidelines that were framed after conclusion of trial in the present case are especially expansive in relation to role of support persons. Merely because a victim turns

hostile, she ought not lose protection of State, and rather, the protective measures should be dialled up to ensure that the victim is not being harassed.

66. However, the said mechanisms will be of no benefit if the provisions remains merely on paper with no ground implementation. The Courts can play a crucial role to limit such a possibility by proactively ensuring that the guidelines are being complied with and the child has adequate support, especially where the child turns hostile subsequently in cases of incest and remains in custody of family. For this purpose, it is imperative that the learned Trial Courts and the Child Welfare Committees, as well as any appointed support persons, exercise due care that the victim is able to avail all such safeguards.

67. Moreover, as done by the Trial Court in the present case, the Courts ought to also be more circumspect and sensitive in examining the evidence of hostile witnesses in such cases, when there is reason to believe that they may have been won over or persuaded due to ancillary factors of influence.

Conclusion

68. As discussed above, in the present circumstances, considering the unblemished scientific evidence as well as the MLC of the victim and her stance in Section 164 of the CrPC, this Court is of the opinion that the foundational facts stood established by the prosecution. As noted above, since the foundational facts were established, the presumptions under Section 29 and 30 of the POCSO Act were

triggered and the burden was then on the appellant to prove otherwise. The subsequent hostility of the victim though a circumstance of immense significance ought not to be considered in isolation and ought to be viewed in the light of the attendant circumstances.

69. This Court thus finds no infirmity in the impugned judgment. Insofar as the impugned order on sentence is concerned, it is pertinent to note that the minimum sentence provided under Section 6 of the POCSO Act is rigorous imprisonment for a period of twenty years, as has been awarded by the learned Trial Court in the present case. This Court does not find any reason to interfere with the impugned order on sentence as well.

70. This Court appreciates the efforts put in by Ms. Anu Narula, Advocate, learned *Amicus Curiae* in assisting the Court.

71. The Delhi High Court Legal services Committee is directed to pay the fees of the learned *Amicus Curiae* as per its scheduled rates and rules.

72. The present appeal is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

DECEMBER 23, 2025
"SS"