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

% Reserved on: 27.01.2023

Decided on: 03.02.2023

+ **CRL.A. 134/2022**

MOHD ABID HUSSAIN

..... Appellant

Through : Mr. Sanjeev Kumar Baliyan, Mr.
Imran Khan, Advs.

versus

THE STATE

..... Respondent

Through : Ms. Richa Dhawan, Addl. PP for
the State.
SI Padam Singh, PS Burari

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

JUDGMENT

03.02.2023

1.0 Vide this appeal under Section 374 Cr.P.C, the appellant is assailing the judgment dated 13.01.2021 ('**impugned judgment**' in short) passed by Ld. Special Judge (POCSO Act)/ASJ-05 (Central), Tis Hazari Courts, Delhi, whereby the appellant was convicted for the offences punishable under Section 354 IPC and Sec. 10 of The Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**' in short), in Sessions Case No. 29030/2016, in case FIR no. 485/2016, Police Station Burari, u/Ss. 354 IPC & 8/10 POCSO Act; and order on sentence dated 06.10.2021, whereby the appellant was sentenced to undergo rigorous imprisonment for five years for the offence punishable under Section 354 IPC and to undergo rigorous imprisonment for a period of six years for

the offence punishable under Section 10 of POCSO Act and to pay a fine of Rs.15,000/- and in default to undergo simple imprisonment for four months; and both the sentences shall run concurrently.

2.0 Criminal Justice System was set into motion on receipt of a telephonic information at 11:07 pm on 28.09.2016, at PP Jharoda, PS Burari, Delhi about quarrel at the house (address withheld to protect the identity of the victim) which was reduced into writing vide DD 34 PP/ Ex.PW10/A. The same was marked to SI Rambir for inquiry, who proceeded to the spot with PW-11 Constable Janendra Kumar. Soon thereafter, at about 11:15 pm another information regarding rape of girl child aged about 4 to 5 years at a place (address withheld) and the accused having been nabbed, was received, which was recorded vide DD no. 35 PP /Ex.PW10/B; and information of the said DD was also telephonically given to SI Rambir for necessary action and in-charge police post was also informed in that regard. Accordingly, W/SI Alma Minz/PW-12 (Investigation Officer) was directed to proceed to the spot for necessary action. On reaching the spot, the victim 'N' and her mother 'G' (names of the victim and mother are withheld to protect their identity) were found present. On inquiry, the mother of the victim did not give her statement in absence of her husband. The next day, i.e., on 29.09.2016, the mother of the victim visited police post along with her husband and the victim girl and gave her statement/complaint (PW 2/A) to PW-12 W/SI Alma Minz. On which, PW-12 W/SI Alma Minz prepared *rukka*/Ex.PW12/A and handed over the same to PW-11 Constable Janendra Kumar for registration of FIR. PW-11 after getting

the FIR registered, handed over the same to the PW-12 for investigation. In her complaint/Ex.PW2/A, mother of the victim/PW-2 stated that her daughter (victim) aged about six years, who was studying in UKG used to go to the appellant's house in the evening at about 3 pm for learning *Kayda*. On previous day i.e., 28.09.2016, when her daughter returned after attending *Kayda* class, she informed PW-2 that as she could not recite *Kayda*, Hafiz Ji, whose name she came to know as Mohd. Abid Hussain i.e. the appellant/accused, did *gulguli*, pointing towards her private parts in front and at the back. She further stated that her *jeth*/brother-in-law 'SM'/ PW-7 on coming to know about the same called number 100. She also stated that since her husband was not at home at that time, she did not give statement to the police.

2.1 It is also the case of the prosecution that thereafter, the victim was counseled and was got medically examined at Aruna Asaf Ali Hospital by PW-6 Dr. Vaibhav Chaudhary vide MLC Ex. PW2/B. Thereafter, the complainant/PW-2 and the victim PW-3 were taken to the spot and site plan Ex. PW12/B was prepared at their instance. The appellant/accused Mohd. Abid Hussain was apprehended vide arrest memo Ex. PW2/D. His disclosure Ex. PW11/B was recorded. Thereafter on 01.10.2016, Investigation Officer PW-12 produced the victim before the Learned Magistrate and got her statement under Section 164 Cr.P.C recorded. The victim in her said statement stated that "... हाफिज ने मुझे गुली गुली करा था। मैंने मम्मी को बता दिया। मम्मी ने पापा को बता दिया। बड़े पापा ने Police को फ़ोन कर दिया। Police को फ़ोन कर दिया। रोज़ करते थे। दो दिन करते थे। ..." Victim also stated that the appellant/accused used to do *gulguli* at her 'latrine ki

jagah’ and also used to beat her ‘latrine ki jagah’ (indicated by the victim by patting at her back side).

2.2 During the course of investigation, Investigation Officer (‘IO’) obtained the school record with respect to victim’s date of birth, which was verified to be 09.11.2010.

2.3 After completion of investigation, charge-sheet under Section 354 IPC and Section 8/10 POCSO Act was filed in the court.

3.0 The prosecution in order to prove its case examined 12 witnesses.

4.0 On incriminating evidence being put to the appellant while recording his statement under Section 313 Cr.P.C, the appellant denied the allegations and stated that he has been falsely implicated in this case, as 15 days prior to the incident, an altercation took place between him and the father of the victim over the water sprinkled on cot of the father of the victim when he (appellant) was watering plants.

4.1 In his defence, the appellant examined one witness – DW-1 Sh. Mohd. Arshad.

5.0 Ld. Counsel for the appellant/accused argued that the victim has not supported the prosecution case. She has simply stated that she was beaten when she did not learn her lesson. She was cross-examined by Ld.

Prosecutor but nothing material could be extracted to support the prosecution story. Ld. Counsel also argued that even PW-2/complainant/mother of the victim did not support the prosecution story and was declared hostile. Even in her cross-examination by the Ld. Prosecutor, she stated that she did not remember whether the victim/PW-3 had told her that the appellant/accused used to do *gulguli* in her private parts. Rather she stated that as nothing had happened with her daughter/victim she was not interested in getting her medically examined; and that even in the Police Station she had told that she was not interested in registering any case as the victim was only beaten and tickled. Ld. Counsel also argued that even as per MLC, no injury was found on the private part of the victim. Ld. Counsel further argued that as the main witnesses of the prosecution have not supported the prosecution case, the appellant deserved to be acquitted and in support, he placed reliance upon judgment in *Debu Hait vs. The State of West Bengal, bearing C.R.A. No. 9 of 2017, decided on 17.09.2019.*

5.1 In the alternative, Ld. Counsel for the appellant submitted that the appellant has already been incarcerated for a period of about 2½ years. He has four minor children and a wife to look-after and there is no male member in the family. He has clean antecedents. His conduct in the jail has also been good. Therefore, the appellant/accused be released on the period of incarceration already undergone.

6.0 On the other hand, the Ld. Prosecutor argued that the victim has been consistent all through, i.e., in her narration about the incident to her

mother, in her statement u/S. 164 Cr.PC as well as in her deposition before the court. Throughout she has stated that the appellant/accused used to do *gulguli* at her “*latrine wali jagah*”. Further, the appellant/accused has himself admitted that he used to do *gulguli*. The victim’s testimony is corroborated by her mother/PW-2, at whose complaint, the present FIR came to be registered. Even in MLC/Ex.PW2/B, the history given by the victim’s mother records that the appellant/accused touched the victim inappropriately after asking her to remove her pants. Ld. Prosecutor further submitted that the testimony of the witnesses has to be read in totality. Merely because PW-2 did not fully support the prosecution case, her entire testimony cannot be discarded.

6.1 Ld. Prosecutor also argued that there was no occasion for any injury to be found on the private parts of the victim as it was not a case of penetrative sexual assault.

6.2 Ld. Prosecutor further argued that the foundational facts i.e., the age of the victim/PW-3, that she was taking tuition from the appellant/accused and that the appellant/accused used to do *gulguli*/tickle the victim, though stated to have done so to make her laugh, have been admitted by the appellant/accused. In view of the same, presumption of guilt u/S. 29 of POCSO Act arose against the appellant/accused. It was for the appellant/accused to demonstrate that he was not guilty of offence punishable u/S. 10 POCSO Act. The appellant has failed to discharge the same.

7.0 I have duly considered the submissions made by both the sides and have perused the record.

8.0 PW-2/complainant/mother of the victim testified that her daughter/victim/PW-3, who is aged about six years, used to take tuitions of Arabic language/“*Kayda*” from one of their neighbours Hafiz Ji. In her cross-examination by Ld. Addl. PP, she admitted that the name of the Hafiz Ji is Mohd. Abid Hussain. Even otherwise, the identity of the appellant/accused has not been disputed. PW-2 further stated that on 29.09.2016 (during her cross-examination by Ld. Addl.PP she admitted that the date of incident was 28.09.2016), her daughter/victim/PW-3 on her return from tuition told her that the appellant/accused had been giving beatings to her for the last two days on the pretext of her not learning the lesson properly; and she also told that, “Hafiz Jee ne mere peeche (witness pointed towards her lower back side (buttocks) *gulguli ki thi*”. In the meantime, her husband (PW-5) also reached home and her daughter narrated the incident to her husband also. Thereafter, her brother-in-law (*Jeth*)/PW-7 made a call on number 100. Police arrived at her residence and after making inquiry, they apprehended the appellant/accused and took him to the Police Station along with her, her husband and her daughter/victim. PW-2 also deposed that her statement/Ex.PW2/A was recorded in the police station. Subsequently, the police officials took her daughter to the hospital where she was medically examined vide MLC/Ex.PW2/B.

8.1 As PW-2 did not fully support the prosecution case and resiled from her previous statement, she was cross-examined by the Ld. Prosecutor. In her cross-examination, PW-2 initially stated that she did not remember whether her daughter had told her that, “*Hafiz Jee mere private parts ke aagey aur peeche gulguli karte hain*”. However, in her further cross-examination she admitted that her daughter/PW-3 had told her the said facts by pointing towards her private parts. She also admitted that she had not given statement to the police on 28.09.2016 as her husband was not home at that time and that she had made the statement on 29.09.2016. She also admitted that they had made a call to the police because the appellant/accused had committed *Galat Kaam* with her daughter.

8.2 It is noteworthy that by way of a suggestion put to PW-2 in her cross-examination, the appellant/accused admitted that the appellant did *gulguli* to the victim/PW-3. PW-2’s response to the said suggestion reads - “*It is correct that my daughter had told me that Hafiz Jee had made “gulguli” to my daughter as she had not learn her lesson*”. It is further seen that though PW-2/mother of the victim stated that she was not interested in getting her daughter medically examined and stated that as “*Kuchh galat kaam nahi hua tha*”; and also stated that the appellant/accused has been falsely implicated further mentioning that, “*hum to chowki me bhi mana kar rahe the ki aisi baat nahin hui hai aur hamen case bhi nahin karna hai bas mara hai aur gulguli ki hai, chhoti bachhi hai*”; and stated that her daughter/victim had told that the appellant/accused had not done *gulguli* at any wrong place. However, in

her re-examination by the Ld. Addl.PP, PW-3 clarified that since she did not want to lodge FIR against the appellant/accused, she in her cross-examination stated that the appellant/accused has been falsely implicated.

9.0 PW-3/victim deposed that she was taking tuition of Arabic language from the appellant/accused and when she could not remember the *Sabak*, the appellant/accused used to beat her '*aur kuchh nahin karte the*'. Her *bade papa* had called the police and that she had told the police aunty about the same. She also stated about being taken to the hospital for her medical examination along with her parents and her visit to the court for recording of her statement by the Magistrate. However, she could not recollect the statement made by her before the Magistrate. As she resiled from her previous statement, PW-3 was cross-examined by the Ld. Prosecutor. In her cross-examination, the PW-3/victim admitted that she had told the Magistrate that the appellant/accused made *gulguli* at her "*latrine wali jagah*" and that she had also told this fact to her mother. She also admitted having told the IO W SI Alma Minz (through her mother/PW-2) that "*Hafiz Jee mujhe (ishara karte huye private parts aage aur peeche) gulguli karte hain*". She further admitted that she had told all these facts to her mother/PW-2 and her mother had told the same to her father/PW-5; and her father/PW-5 had told the same to her *bade papa/tauji*/PW-7.

9.1 It is significant to note that by virtue of his own suggestion put to PW-3/ victim in her cross-examination, the appellant/accused admitted that he used to beat her/PW-3 when she did not learn lesson; and that

whenever she cried, he used to make *gudgudi*, the relevant portion of the cross-examination reads :

“Question: I put it to you whenever you use to cry, Hafiz Jee use to make efforts to laugh you by making gudgudi in your stomach, waist and back”?

Answer : It is incorrect.”

9.1.1 From the above response it is also evident that the PW-3/victim categorically denied that the appellant/accused used to do *gudgudi* in order to make her laugh. Further, PW-3 also denied in her cross-examination that the appellant/accused had never done *gulguli* on her “*latrine wali jagah*” and did not hit her on her “*latrine wali jagah*”. PW-3/victim further denied that on the date of incident, she had returned home before time, as she had not learnt the lesson. Further, in response to a specific question put to her, PW-3 stated :

“Question: When Hafiz jee use to beat you, the other students were use to be there or not?”

Answer : No, “vo chale jaate the tab maarte the”.

9.1.2 Thus, the victim/PW-3 has even been categorical about her being beaten/hit at her *latrine wali jagah* after the other children had left.

10.0 PW-5, father of the victim deposed on the same lines as PW-2 & PW-3 and stated that his daughter/victim/PW-3 used to go to the house of the appellant/accused to learn Urdu at about 03:00 p.m. Although, he could not recollect the date of incident but in response to a leading

question put to him by the Ld. Prosecutor, he admitted the date of incident to be 28.09.2016 and clarified that he could not recollect the same due to lapse of time. It is seen that PW-5's testimony was recorded on 21.05.2018, i.e., after about two years of the incident. PW-5 stated that his daughter/PW-3 had complained to his wife/PW-2 that the appellant/accused had touched her private parts. As he was not at home at that time, his elder brother/PW-7 had made a call at number 100. When he returned home, he was informed by his wife about the incident but as it was late at night, they did not go to the police station to lodge the complaint.

10.1 It is noteworthy that by virtue of suggestion put to PW-5 in cross-examination, the appellant/ accused admitted that PW-5 was informed about the incident by his wife; and that his (PW-5's) brother /PW-7 had made a call at number 100 regarding the quarrel. Same shows that PW-2 and PW-3 were truthful when they stated so in their testimonies. PW-5 categorically denied that the appellant/accused has been falsely implicated in the present case, though, he stated that he did not want to proceed with the present case. From the testimonies of PW-2 and PW-5 it is apparent that they were reluctant to pursue the matter against the appellant/accused. Same explains PW-2's initial hesitation in stating complete facts.

11.0 The testimonies of PW-2 and PW-5 are further corroborated by PW-7/paternal uncle of the victim/PW-3. He deposed that on 28.09.2016, at about 10:30/11:00 p.m. when he was at his home, he came to know

about the quarrel in the adjoining gali, where his brother/PW-5 (father of the victim) lived. On reaching there, he learnt that the appellant/accused had done *chhed chhad* with the minor daughter of his brother/PW-5; and that he made a call at number 100; the police had arrived and recorded his statement. PW-7's version has remained unchallenged as he was not cross-examined in that regard. Rather, in response to a question put to him in cross-examination, PW-1 stated that when he reached the spot he found his brother and the appellant/accused were quarreling and he made a call at number 100 to avoid escalation in the quarrel, which has remained uncontroverted. PW-7's version also finds corroboration in DD No. 34PP/Ex.PW10/A and DD No. 35PP/ Ex.PW10/B made at 11:07 p.m. and 11:15 p.m., respectively, on 28.09.2016 at PP Jharoda, PS Burari, Delhi.

12.0 PW-8/Mohd. Basir, landlord of the appellant/accused (which fact has been admitted by the appellant/accused in response to question no. 1 in his statement u/S. 313 Cr.PC) deposed that the appellant/accused used to give tuitions to his daughters as well as the victim and other children of the locality. He further stated that on the date of incident he was in his office and when he returned home at about 11:00 p.m., he came to know that the person residing in Gali No. 7 had made call at 100 number; and the residents of locality were saying that the appellant/accused had molested one small girl/victim. He further stated that the uncle of the victim had quarreled with the appellant/accused. In his cross-examination, PW-8 stated that he had come to know that there was a quarrel between the father of victim and the appellant/accused.

Truthfulness of this witness is evident from the fact that the appellant/accused himself has admitted (by way of suggestion to PW-5 in cross-examination) that PW-7 (brother of PW-5) had made a call at number 100 regarding the quarrel and even PW-7 (*tau* of the victim) in his cross-examination stated that when he reached the spot, his brother/PW-5 and the appellant/accused were quarreling and he made the call to the police. Further, PW-8 in his cross-examination has admitted that although the appellant/accused had vacated his house, he is still having cordial relations with him and vouched for moral character of the appellant/accused. Thus, there was no occasion for PW-8 to make false deposition against the appellant/accused.

13.0 PW-9/Sahista, wife of PW-8 (the appellant/accused's erstwhile landlord) also corroborated the version of above witnesses. She stated that her elder sister and some other children of the locality including victim used to take tuition classes from the appellant/accused. She has stated that the appellant/accused used to teach them in his room at the third floor of the house. She also deposed that on the day of the incident, which she stated to be 29.09.2016, she, victim and other children took tuition from the appellant/accused, but her elder sister had not attended the class that day; the class got over at about 04:30 p.m. and thereafter she came down-stairs. She has further stated that victim and other children were still there when she left the room at 04:30 p.m. As PW-9 did not fully support the prosecution version, leading questions were put to her by the Ld. Prosecutor, wherein she reiterated the date of incident as 29.09.2016 and denied that no other children were present in the room

on the date of incident. Her said denial and her admission in her cross-examination by the appellant/accused that the victim never remained alone with the appellant/accused at the time of tuition and even on the date of incident, does not inspire much confidence in view of her statement that the other children were not taking tuition but were present in the room. Moreover, she admittedly had left at 04:30 p.m. and could not have known about happenings thereafter.

14.0 Vide testimony of PW-1 Ajit Singh, Chairman, Marshal Model School, Milan Vihar, Jharoda, Burari, Delhi, and Ex.PW1/A, Admission & Withdrawal Register of the school and Ex.PW1/B/birth certificate filed by the victim's parents at the time of her admission in the school, it has come on record that the victim/PW-3's date of birth is 09.11.2010. Thus, the age of the victim at the time of incident was around six years. Same is not disputed by the appellant/accused as PW-1 was not cross-examined. Even otherwise, when the testimony of PW-1 and above documents were put to the appellant/accused during recording of his statement u/S. 313 Cr.PC, he simply stated that it is a matter of record. Thus, admittedly the age of the victim at the time of incident was around six years.

15.0 Appellant/accused's witness DW-1 has deposed that he was also taking tuitions from the appellant/accused where the victim used to come. DW-1 also stated that when the victim could not recite her lesson properly, the appellant/accused tried to slap her and his hand touched the waist of the victim/girl. Same is contrary to the appellant/accused's own

version that he did *gudgudi* in stomach, waist and back of PW-3/victim, whenever she cried. Interestingly, this witness/DW-1 tried to bring on record the fact that the incident had actually taken place on 29.09.2016, when he was present in the tuition class along with the victim. In his cross-examination, DW-1 firstly stated that he was sure that the incident took place on 29.09.2016, but again stated that he was not sure about the date and the date was told to him by the counsel for the appellant/accused. DW-1 also gave reason of false implication of the appellant/accused by stating, “*On 28.09.2016, a quarrel took place between accused and grandmother (Dadi) of the victim girl. Reason of that quarrel was that while I was sprinkling water in the plants and it fell on the grandmother (Dadi) of the victim girl. On hearing the noises, accused came out and quarrel started between him and grandmother of the victim girl.*” Whereas, the appellant /accused in his statement u/S. 313 Cr.PC in response to question no. 22 whereby he was asked whether he wanted to say anything, stated, “*15 days prior to the incident, an altercation took place between me and the father of the victim over the water sprinkled on caught of father of the victim when I was watering plants.*” In view of their contradictory versions, the very presence of the DW-1 in the class on 28.09.2014 and truthfulness of his version is highly doubtful. Moreso, as in his cross-examination DW-1 stated that, “*I was not learning my lesson at the time accused tried to slap her (PW-3) and his hand touched the waist of the victim girl.*”

16.0 In view of the above, considering the uncontroverted deposition of the witnesses, admission of certain facts by the appellant/accused by way

of suggestions put by him to the above witnesses in cross-examination, by way of his own statement u/S. 313 Cr.PC and vide deposition of DW-1, a witness produced by the appellant/accused in his defence, following facts stand admitted :

- 16.1** (i) the victim/PW-3 was aged about six years at the time of incident; she was taking tuition of *Kayda*/Arabic language from the appellant/accused at that time as admitted by the appellant/accused vide his response to Questions no. 2 & 19 in his statement u/S. 313 Cr.PC;
- (ii) the victim/Pw-3 used to visit the appellant for taking tuition/learning *Kayda* around 03:00 p.m. as has come on record vide testimony of the appellant's own witness/DW-1 Mohd. Arshad who claimed that even he was taking the classes of Urdu and Quran Sharif from the appellant/accused. DW-1 in his cross-examination stated that the timing of their class was 03:00 to 05:00 p.m., which corroborates the version of PW-2 in her statement/complaint made to the police Ex.PW2/A and testimony of PW-5/father of the victim, which mentions/who stated that their daughter used to visit the appellant/accused after school at about 03:00 p.m.;
- (iii) the appellant/accused used to do *gulguli* to PW-3/victim when she did not learn the lesson; he used to do *gudgudi* in stomach, waist and back of the victim/PW-3 (though he

justified it by stating that he used to do so to make the victim/PW-3 laugh whenever she cried on being given beatings for not remembering *Kayda*). On 28.09.2019, on reaching home, the victim/PW-3 narrated the said facts to her mother (PW-2). PW-2's *Jeth*/PW-7 also came to know about the same; PW-2's neighbours had also gathered on coming to know about the acts of the appellant/accused, hitting PW-2's daughter (PW-3) and making *gulguli* to her. PW-2 had also informed about the incident to her husband/PW-5;

- (iv) PW-7 (paternal uncle of the victim) on coming to know about the incident/learning that the appellant/accused had done *chhed chhad* with his brother's daughter/PW-3/victim, made a call at number 100.
- (v) PW-8 (erstwhile landlord of the appellant/accused with whom he maintained cordial relations and who even vouched for the appellant's character) also heard about molestation of a small girl/victim by the appellant/accused when he returned home from office at about 11:00 p.m.; and also learnt that PW-7 had made a call at number 100.

16.2 Testimonies of PW-3/victim and her mother/PW-2, to whom the victim narrated the entire happening, have to be considered in the light of the above admitted facts. When so considered, their version inspire

confidence. Although initially, PW-3 could not recollect and recount the entire incident and also what she stated before the Ld. Magistrate in her statement u/S. 164 Cr.PC. On being cross-examined by the Ld. Prosecutor, she recollected the same and admitted that she had told the Magistrate that the appellant/accused used to do *gulguli* ‘while pointing to her private parts, *aagey or peeche/latrine wali jagah*’.

16.3 The testimonies of PW-2 & PW-3 regarding victim/PW-3 being sexually assaulted by the appellant/accused also finds corroboration in MLC Ex.PW2/B, which records, “*H/o. sexual assault by known person (Maulvi) on 28/9/16. No H/o Physical assault. As told by guardian, mother/Mrs. G, her daughter ‘N’ (patient) had gone to school where Maulvi (teacher asked her to take her pants out & touched her inappropriately.*”.

16.4 In view of the above, the judgment relied upon by the Ld. Counsel for the appellant/accused in *Debu Hait’s case (supra)* is of no assistance to him.

17.0 The appellant/accused’s has pleaded that he was falsely implicated and tried to suggest that his false implication was motivated because of a quarrel. He in his statement u/S. 313 Cr.PC (Q.No. 22) stated that, “*15 days prior to the incident, an altercation took place between me and the father of the victim over the water sprinkled on caught of father of the victim when I was watering plants.*”. No such defence was put either to PW-2 & PW-5, the parents or to PW-7, the uncle of the victim or to any

other prosecution witness, in cross-examination. Further, the falsity of the said defence stands exposed from the deposition of DW-1 as per whom the quarrel took place on 28.09.2016 and not 15 days prior thereto, as averred by the appellant/accused. Further, DW-1 has stated that on 28.09.2016, while he/DW-1 was sprinkling water on the plants, it fell on the grandmother/*dadi* of the victim; on hearing the noise, the appellant/accused came out; and a quarrel started between the appellant/accused and grandmother of the victim girl.

18.0 Although, the appellant/accused tried to make out a case that he did *gudgudi* in stomach, waist and back of the victim/PW-3 in order to make her laugh, when she cried on being beaten, he failed to demonstrate the same. Thus, in view of the admitted facts/evidence on record, the appellant/accused has failed to rebut the presumption u/Ss. 29 & 30 of POCSO Act.

19.0 In view of the above, it is established that the appellant/accused sexually assaulted the victim, who was six years of age at the time of incident. Thus, I find no infirmity in the judgment of Ld. Trial Court in concluding that the appellant/accused is guilty of aggravated sexual assault in terms of Section 9 (m) POCSO Act, which is punishable under Section 10 POCSO Act and convicting the appellant/accused under Section 354 IPC and Section 10 POCSO Act.

20.0 Now coming to the appellant's alternate prayer of reduction in sentence to the period he has already been incarcerated. It may be mentioned that the appellant/accused is a *Maulvi/Hafiz*, who taught

Quaran Sharif and *Kayda* to the victim. A great faith and trust is reposed in the *Maulvi*/Hafiz, who teaches to others, the tenets of holy Quaran and is looked up to, with reverence. Thus, the appellant/accused held a position of great trust and faith, which he breached by sexually assaulting the victim, a gullible girl child of six years of age. Thus, the appellant/accused does not deserve any indulgence in this regard.

21.0 In view of the above, the impugned judgment and order on sentence do not call for any interference.

22.0 Appeal is accordingly dismissed.

23.0 Copy of the judgment be uploaded on the website and be sent to the Superintendent Jail for updation of record and intimation to the appellant.

POONAM A. BAMBA,J

FEBRUARY 03rd, 2023/manju