

(2025) 07 DEL CK 1003

In the Delhi High Court

Case No : Criminal Appeal No. 1190 Of 2024

Sonu S/O Shri Ben Singh

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 30-07-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 415(2), 528

Code of Criminal Procedure, 1973 — Section 428

Indian Penal Code, 1860 — Section 323, 342, 363, 367, 377, 506

Protection of Children from Sexual Offences Act, 2012 — Section 3(a), 5(m), 6, 29

Citation : (2025) 07 DEL CK 1003

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Manika Tripathy, Aakash Mahor, Gautam Yadav, Shubhi Gupta, Prateek Kumar, Ankita, Prassant Kumar Sharma

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. By way of the present appeal filed under Section 415(2) r/w Section 528 of BNSS 2023, the appellant assails the judgment of conviction dated 08.08.2022 as well as order on sentence dated 08.09.2022 passed in S.C No. 23/2018 arising out of FIR No. 696/2017 registered under Sections 342/377 IPC and Section 6 POCSO Act at P.S. Rajouri Garden, Delhi.

On being convicted, vide order on sentence, the appellant has been sentenced to undergo; RI for 3 years for the offence punishable under Section 363 IPC in addition to payment of fine amounting to Rs.1000/-, in default whereof he was directed to undergo S.I. for 3 months; RI for 4 years for the offence under Section 367 IPC alongwith fine amounting to Rs.2000/-, in default whereof he was directed to undergo S.I. for 3 months; RI for 10 years for the offence under Section 377 IPC and he was further sentenced to undergo RI for 10 years for the offence under Section 6 of the POCSO Act, alongwith fine amounting to

Rs.5000/- to be paid for conviction under both these sections, in default whereof he was directed to undergo S.I. for 6 months.

Further, for the commission of offences under Section 323 & 342 IPC, the accused was sentenced to a fine of Rs.1000/- each, and for the offence under Section 506 IPC, he was sentenced to fine of Rs.2000/-. All the sentences have been directed to run concurrently. The appellant was also given the benefit of Section 428 CrPC.

2. The FIR in the present case came to be registered under Sections 342/377 IPC and Section 6 of the POCSO Act in the context of an incident that statedly occurred on 06.12.2017 on the statement of one Lakshan Rana (complainant herein), who stated that on that day while he and his friend Bhawna Sharma were driving near backside of Sanjay Gandhi Animal Care Centre at Shivaji Enclave when one woman named Seema waived and stopped their car She disclosed that she could hear the screams of a child from the drainage pipe near the bushes. When the complainant reached near the drainage pipe he saw that in the pipe one person was sitting inside with a child and his pants were halfway down and he was trying to bring mouth of the victim towards his exposed crotch area which the child was resisting and saying that the said person had put his penis in his mouth. The said person (appellant herein) was dragged out, and a police call was made. The appellant was arrested from the spot, and the child victim was taken to the hospital for medical examination. On completion of the investigation, the charge sheet was filed and the charges were framed under Sections 363/367/323/342/506/ 377 IPC and Section 6 of POCSO Act vide order dated 05.03.2018, to which the appellant pleaded not guilty and claimed trial.

3. In total, the prosecution examined 9 witnesses. The child victim was examined as PW1, the complainant, namely Lakshan Rana and his friend Bhawna Sharma were examined as PW4 and PW2, respectively. Another eye witness, namely, Seema, the lady who stopped the car was examined as PW3. The mother of the child victim was examined as PW5. The age of the child victim was proved through the statement of Jai Prakash (PW8), Vice Principal of the school where the child victim was studying. Dr. Rochan, Sr. Resident Surgery, Guru Govind Singh Hospital was examined as PW9 who proved the MLC of the child victim. The appellant claimed false implication in the present case, however, did not examine any defence witnesses.

4. Learned counsel for the appellant has doubted the correctness of the impugned judgment by contending that on a reading of the statements of the witnesses there is variance in the timelines as to when the incident had taken place. Further, though a blade was stated to be used by the appellant, however, there is no recovery of the same. The MLC also does not support the prosecution case as it mentions only swelling and abrasion on the left cheek. In the testimony of Lakshan Rana it was stated that there were other children present at the place of incident but the said aspect was not stated by the other witnesses who were stated to be present at the spot. Lastly, the presence of the

complainant and his friend at the spot is also doubtful as though the said witnesses have stated that they were with other friends, those other friends were neither examined nor produced during trial.

5. Per contra, learned APP duly assisted by the counsel for the victim/complainant has refuted the contentions and contended that testimony of the child victim is duly corroborated by the testimony of many eye witnesses. He further stated that on being caught, accused was given beatings which finds corroboration in the form of his MLC (EX. 7/B.) Further, it is submitted that there is no doubt as to the identity of the appellant as he was not only caught red handed by the eye witnesses but also arrested at the spot.

6. It was argued at length that the timelines stated by the different witnesses do not match which cast shadow of doubt on the prosecution case. In this regard, Id. counsel for the appellant has invited attention of this Court to the testimony of the child victim where he stated that on 06.12.2017 his school was closed at 1.20 pm on the date of the incident. At about 2.00 pm when he was returning from his school, at a distance of 5 minutes from his home there is a crossing where the accused met him and asked him to accompany him to the police post. On this account, he was taken to a drainage pipe near Punjabi Bagh which took two and a half hours to reach. In the cross-examination, the child victim stated that when they reached drainage pipe it was night time. It was also pointed out that the complainant stated that his car was stopped at 5.30-6.30 pm, while the DD of the incident was registered at 2.15 pm.

On the strength of above, it is sought to be contended that prosecution version is not believable. At the time of the incident, the child victim was 9 years of age. The age was proved through Vice Principal of the school who deposed that the child victim's date of birth was as per the school records.

He deposed that the child victim was admitted in the school on the basis of birth certificate issued by the Sub-Registrar (Birth & Death). As per the records, the date of birth of the child victim was 29.10.2008 and he was less than 12 years of age at the time of the incident. Even otherwise, no contest on the aforesaid aspect was made in the trial as well as in the present appeal. The testimony of the child victim was recorded after nearly one year of the incident. In his deposition, the child victim had clearly stated that he met the accused at about 2.00 pm whereafter he accompanied the appellant who took him to drainage pipe at Punjabi Bagh. He categorically stated as under :

"06.12.2017 ko lagbhag din ke 2 baje mein apne school se paidal aa raha thha. Mere ghar se 5 minute ki doori par ek chauraha hai. Wahan mujhe ek aadmi mila. Ussne mujhe kaha ki mera baccha bimaar hai, mujhe police chowki tak le chalo. Aisa keh kar wo mujhe apne saath le gaya par wo mujhe Punjabi Bagh ke Naale par le gaya). Uss Chaurahe se Punjabi Bagh Ka Nala paidal 2 ½ ghante ka raasta hai. Hum uss jagah lagbhag 2 ½ ghante mein pahunche. Ussne mere per (feet) bhi chhuye.

Punjabi Bagh ke naale par pahunch kar, ussne mujhe ek khali bade pipe mein ghusa diya. Wahan ussne mujhe meri chaati par chaar mukke maare aur do mukke muh par maare. Ussne apni su-su wali jagah (Child is referring to the penis of the accused) mere muh mein daal diya.

Jab wo mujhe uss pipe ke andar le kar jaa raha thha to ussne mujhe blade dikha kar kaha ki agar shor machaya to maar doonga.

Jab ussne apni su-su wali jagah mere muh me in daali tab maine shor bhi machaya thha. Ek auntie ne meri awaz sun li. Unhone wahin se ek bhaiya ko bulaaya. Wo Bhaiya. wahan aaye aur unhone uss aadmi ko dande se maara. Jab wo usse dande se maar rahe thhe to wo aadmi nahi-nahi kar raha thha.

15-20 minute mein police bhi aa gayi. Mere saath wo bhaiya aur unke saath ek didi thhi wo, hum teeno police ke saath thaane gay. Wahan police ne mera bayan liya. Mere mummy-papa ko police ne thaane mein bula liya thha. Usske baad police mujhe hospital le kar gayi thhi. Mummy-papa bhi saath thhe. Police wale uss aadmi ko bhi hospital le kar gaye thhe jisne mere saath galat harkat ki thhi.”

7. The aforesaid aspect of the testimony of the child victim had remained consistent with his earlier statement. The testimony of the independent witness namely, Seema (PW3), who first heard the screaming and stopped the car of the complainant also corroborates the version of the child victim. She deposed that on hearing cries of the child victim from the drainage pipe, she stopped a car in which one boy and girl was sitting. The boy came out and went inside the pipe and dragged one person and child who was in a school uniform. The accused was beaten up by the public gathered there and when the police arrived, the accused was handed over. It is noted that the complainant (PW4) in his testimony categorically stated that when he went near the drainage pipe and peeped inside he saw that pant of that person was half way down and he was trying to bring mouth of the victim towards his crotch area and the child was resisting. He dragged the person out and called the police and parents of the child victim were also called. He identified his signatures on the arrest memo. He identified the accused in the trial. He also identified the appellant in the course of his deposition. In cross-examination, a suggestion was given that it was dark however, the same was denied. The testimony of Bhawna Sharma (PW2) who was accompanying the complainant in the car is also cumulative to the testimony of the complainant. The MLC of the child victim (Ex.PW7/B) as well as appellant, show injuries and thus lends support to the prosecution case. Ld. Counsel for the appellant contended that the ingredients of Section 6 of the POCSO are not made out, however, the contention is found to be specious. In light of the evidence that has come on record and plain reading of Section 3 (a) and Section 5 (m) of the POCSO Act negates the above contention. The prosecution has been able to lay foundational facts for his presumption stipulated under Section 29 of the POCSO, which the appellant failed to rebut. The testimony of the child victim is admissible as well as reliable and credible. The testimony is support of all fronts by the deposition of other independent witnesses as well as MLC of the child

victim and appellant.

8. In view of the above discussions, the appeal is dismissed and impugned judgment and order on sentence are upheld.

9. Copy of the judgment be communicated to the Trial Court as well as concerned Jail Superintendent for information and necessary compliance.