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IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 21st July, 2025******Date of Decision: 20th August, 2025***

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CRL.A. 826/2024 & CRL.M.(BAIL) 1481/2024**PRAVEEN @ LALLU****.....Appellant****Through: Mr. Kanhaiya Singhal & Mr. Rahul Bhaskar, Advs.****versus****STATE NCT OF DELHI****.....Respondent****Through: Mr. Ritesh Kumar Bahri, APP with Ms. Divya Yadav & Mr. Lalit Luthra, Advs.****Mr. Zishaan Iskandari & Mr. Madhur Mittal, Advs. for Complainant.****Insp. Harish Kumar, P.S. Karawal Nagar (9599793699).****CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****JUDGMENT****Rajneesh Kumar Gupta, J.**

1. This hearing has been done through hybrid mode.
2. The present appeal is filed under section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the CrPC**”) on behalf of the Appellant – Praveen @ Lallu to set aside the judgment dated 10th May, 2024 (hereinafter referred to as “**the impugned judgment**”) and the Order-on-Sentence dated 10th July, 2024 (hereinafter referred to as “**the impugned order on sentence**”) passed by the court of Additional Sessions Judge (SC-POCSO)-02, North – East District, Karkardooma Courts, Delhi (hereinafter



referred to as “**the trial court**”), in Sessions Case bearing SC No. 71/2019 arising out of FIR bearing No. 532/2018 registered at PS Karawal Nagar, Delhi. The Appellant, *vide* the impugned judgment, was held guilty for committing the offences punishable under Sections 363/366/376DA/377/34 IPC and Section 6 of the POCSO Act and the Appellant, *vide* the impugned order on sentence was sentenced as follows :-

“(a) Under Section 363 of IPC:

Rigorous Imprisonment for Two Years and fine of Rupees Five Thousand Only (Rs. 5,000/-). In default of payment of fine, the convict shall further undergo Rigorous Imprisonment of six months.

(b) Under Section 366 of IPC:

Rigorous Imprisonment for Three Years and fine of Five Thousand Only (Rs. 5,000/-). In default of payment of fine, the convict shall further undergo Rigorous Imprisonment of six months.

(c) Under Section 376DA of IPC

Rigorous Imprisonment for Life and fine of Rupees Ten Thousand (Rs. 10,000/-). In default of payment of fine, the convict shall further undergo Rigorous Imprisonment of twelve months.

(d) Under Section 377 of IPC

Rigorous Imprisonment for Ten Years and fine of Rupees Ten Thousand Only (Rs. 10,000/-). In default of payment of fine, the convict shall further undergo Rigorous Imprisonment of six months.

All the sentences shall run concurrently.

Benefit of Section 428 CrP.C. shall be granted to the Convict”



Brief Background:

3. Briefly stated, the prosecution's case, as reflected in the charge sheet is that on 12th November, 2018 at about 09:00 PM, the Appellant kidnapped the Prosecutrix ('assumed name-S') from the lawful guardianship of her parents with the intention to commit illicit intercourse. After kidnapping the Prosecutrix, the Appellant, along with co-accused Kalu, who is stated to be absconding, took the Prosecutrix to a jungle and committed gang rape and carnal intercourse with the Prosecutrix against the order of nature.

4. After the medical examination and counselling of the Prosecutrix, the statement of the Prosecutrix was recorded by the police. On the basis of that statement, an FIR under Sections 363/376D/377/34 IPC and Section 6 of POCSO Act was registered.

5. During investigation, the statement of the Prosecutrix was recorded under Section 164 of the CrPC. The Appellant was arrested on 29th November, 2018, and the TIP of the Appellant was conducted, where the Prosecutrix identified the Appellant. The co-accused Kalu was not arrested in this case as he had initially absconded and then passed away on 20th October, 2020. The statements of the witnesses conversant with the facts were recorded. Exhibits collected during the investigation were sent to FSL for examination.

6. Upon completion of investigation, chargesheet was filed against the Appellant. The prosecution, in order to prove its case, examined 13 witnesses. The statement of the Appellant was recorded under Section 313 of the CrPC, wherein the Appellant had denied the incriminating evidence and pleaded innocence and claimed false implication. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the Appellant.



Findings of the Trial Court:

7. It can be seen that the trial court has convicted and sentenced the Appellant of offences punishable under Sections 363/366/376DA/377/34 IPC and Section 6 of the POCSO Act. While convicting the Appellant of the said offences, the trial court has examined the evidence on record with respect to the following issues:

- **Age of the Prosecutrix:** The trial court has satisfied itself upon the age of the Prosecutrix at the time of the alleged offence by relying upon the testimony of the Principal of the school where the Prosecutrix was studying during the said time. Reliance has been placed upon the school admission form, register entries, and the birth certificate of the Prosecutrix, leading to the trial court's conclusion that on the date of incident, the Prosecutrix was 14 years old and thus, a 'child' under Section 2(d) POCSO Act.
- **Offence of kidnapping and commission of gang rape:**
 - i. The trial court, while deciding upon the issue of identification of the Appellant has held that the Prosecutrix had identified the Appellant not only in the TIP proceedings but also before the court and stated that the said person is the same person who had sodomized her along with the co-accused on the date of incident.
 - ii. Further, on the argument that the FSL report does not connect the Appellant with the offence as no male DNA was found on the exhibits of the Prosecutrix, the trial court has held the argument to be plausible but not sustainable. The trial court has further held that it is settled law that scientific or DNA examination is always corroborative in nature and such ocular evidence cannot take precedence over oral



testimony of the victim which is consistent and unambiguous.

iii. In so far as the argument on the FSL report is concerned to the effect that no male DNA profile have been generated from the source of exhibits of the Prosecutrix, the trial court has observed that there is serious lapse on the part of the investigating officers. The finding of the trial court further states that as much as the exhibits and samples of the Prosecutrix were seized on 13th November, 2018 and that of the Appellant were seized on 29th November, 2018, however, the same were sent to FSL only on 17th September, 2019 i.e. after almost 10 months and due to the said lapse, there is every possibility that the said samples were degenerated for the purposes of DNA examination.

• **Presumption of guilt under Section 29 of the POCSO Act:**

i. The trial court in its findings has also taken note of Section 29 of the POCSO Act which provides for the presumption of guilt under the Act. While taking a note of the said provision, the trial court has repeatedly pressed on the fact that the testimony of the Prosecutrix has not only remained constant but has remained unshaken by the cross-examination and through all stages of the trial. It has been held that the version of the Prosecutrix has been consistent throughout i.e. right from her complaint to the police, to her statement under Section 164 Cr.P.C., and also the statement before the court.

ii. The testimony of the Prosecutrix stating that both the accused persons kidnapped and took her away to a secluded place where both of them tried to commit vaginal intercourse with her but since they could not succeed, therefore they committed carnal intercourse with her, could not be shaken by her cross-examination. The trial court has



held that apart from minor inconsistencies, the testimony of the victim is cogent in material particulars.

iii. Further, the said testimony of the Prosecutrix is supported by the MLC of the victim which shows that there was a fresh hymen tear and anal dilation and PW-11, i.e. the doctor who has proved the MLC on record, has deposed that an infection cannot cause the red coloration on the private part of any person. Hence, the trial court finding is heavily relied upon the testimony of the Prosecutrix which is corroborated by other evidence.

iv. Trial court has also taken note of the fact that the Appellant has failed to show or attribute any motive against the Prosecutrix for falsely implicating him in the present case and thus, he has also failed to rebut the presumption raised against him.

8. We have heard the Id. Counsel for the Appellant, Id. APP for the State and Id. Counsel for the Prosecutrix and have examined the record.

9. Ld. Counsel for the Appellant has argued that the trial court has passed the impugned judgment on the basis of surmises and conjectures, and which is against the facts of the case. There is no reliable evidence on record on behalf of the prosecution to prove its case beyond reasonable doubt against the Appellant. From the evidence on record as led by the Prosecution, the age of the victim has not been proved, the identity of the Appellant has not been established. It has been argued that there are material inconsistencies in the testimony of the Prosecutrix and there is also no scientific evidence to link the Appellant to the commission of the alleged offence. On these grounds, it is prayed that the impugned judgment be set aside and the Appellant be acquitted.



10. Ld. APP for the State and the Id. Counsel for the Prosecutrix have argued that the trial court has passed the impugned judgment after considering the evidence on record. From the evidence on record, the Prosecution has proved its case beyond reasonable doubt against the Appellant. The arguments of the Appellant are without merit. The appeal is liable to be dismissed.

11. To prove the age of the Prosecutrix, the Prosecution has examined the Principal, Mr. Mahesh Kumar, as PW-7. PW-7 has proved the admission records of the Prosecutrix as Ex. PW-7/1 to PW-7/2. The date of birth (DoB) of the Prosecutrix has been recorded in the school record as 11th February, 2004. PW-7 has been cross-examined by the Appellant, but no suggestion was made to this witness that the DoB of the Prosecutrix, as recorded in the school record, is not correct.

11.1 The Prosecutrix, when examined in Court, testified her age as 14 years. The Appellant has also admitted the documents of the school of the Prosecutrix i.e., the original school certificate and the primary education certificate of the Prosecutrix, which were exhibited as Ex.C-3 and Ex.C-4 respectively during the trial of the case. From the evidence on record, it was proved that the DoB of the Prosecutrix is 11th February, 2004. Accordingly, the age of the Prosecutrix was below 14 years on the date of alleged commission of offence i.e., 12th November, 2018.

12. The Prosecutrix was examined as PW-3 and she has deposed as follows :

“At the time of the incident, I was residing in Shiv Vihar with my sister. On 12.11.2018, at night, I had a quarrel with my sister. She threw me out of the house and asked me to go to the house of my father which was nearby. I was on the way to my father's house. On the way, I met one



person namely Rohit. I had known Rohit bhaiya since the time I was studying in school. I told Rohit Bhaiya that I was hungry. He gave me Rs.200/-. I talked to him for sometime and then he said to me that he was going home and after eating something, I should go to my house. I left that place. I reached the shop and at that shop, I ate "bhalla papdi". Then I went to another shop which was selling momos. At that shop when I was eating momos, Praveen and Kalu arrived. At that time I did not know the name of Kalu, but I knew Praveen as he was friend of Rohit bhaiya. Praveen said to me that Rohit bhaiya was calling me. I thought he must be telling me truth so I sat on his bike. He drove his bike for a long time and then I said that I had to go home. He said to me that first I would have to kiss him. I refused and said that he should drop me there only and I would go home. He then said that he would drop me home. When we had almost reached near my house, we met Kalu. On seeing Kalu, he stopped the bike. Kalu sat behind me, Praveen turned the bike around and they proceeded in the same direction from which we had returned. Praveen was driving the bike at a very fast speed and finally thinking that something wrong was about to happen, I started crying. Kalu gagged my mouth with his hand. Finally they stopped the bike in a jungle. Praveen then said to Kalu that he should go as Praveen had to talk to me. Kalu stepped away and stood around 10-15 feet away. Praveen then asked me to kiss him. When refused, he started beating me. Praveen tried to forcibly remove my clothes. He removed his own clothes. Then he forcibly removed my clothes. Praveen then tried to put his penis in my vagina, but I had a lot of pain and he could not succeed, then he inserted his penis in my rectum (usne apni sushu wali cheez meri sushu wali jagah me dal ne ki koshish ki, lekin mujhe bahut dard huwa aur wo nahi dal saka, uske baad usne apni sushu wali cheez meri potty me dal di). After sometimes, he removed himself



from me. After he had gone a few steps away, I tried to run away without my clothes. We were on a higher place compared to the surrounding and so I jumped down. Praveen and Kalu also ran after me and caught me. Thereafter Kalu took off his trouser and inserted his penis in my rectum. Thereafter, Praveen returned my clothes and both of them left that place. After sometime, I wore my clothes and reached main road and at the main road I asked for help from one uncle and requested him to drop me at the road near Shiv Vihar. He took me on his motorcycle and dropped me at Shiv Vihar Road. Thereafter I found a vacant plot in a street. I laid down in that plot and spent the night. In the morning, one uncle came to that plot. I told him everything and then he informed the police. Police arrived. The police had taken me to the hospital. I was medically examined in the hospital and the clothes which I was wearing at the time of incident were collected and seized. Thereafter, I gave a written complaint to the police which is Ex. PW3/1. Thereafter I was sent to Sanskar Ashram and before that I had shown the police the place where I was taken.

She has proved her statement recorded under section 164 CrPC as Ex. PW3/2. She has identified the accused in the TIP which is Ex. PW3/3. After the TIP proceedings, I came to know the name of Praveen because prior to that I knew him as Sachin for the reason Rohit bhaiya used to address him as Sachin. I can identify the said Praveen and @ Sachin. She has identified the accused in the court.”

In the cross examination on behalf of the appellant PW3 has deposed that:

“I had been residing at the house of my sister M since the Diwali of 2018. I had left the house of M at around 7 p.m. I do not know the time at which Rohit had met me



and had given me Rs.200/-. The place where Rohit had given me money and the place where I had gone to take Bhalla Papri are at a distance somewhere 100 meters from each other. I had known Sachin @ Praveen for about 15-20 days prior to the incident. Sachin and Rohit knew each other very well. I do not remember the exact time at which Sachin told me to accompany him. I do not remember the registration number of the bike which Sachin was driving however, it was a splendor. Prior to that day, I was not acquainted with Kalu. I do not know the distance between the place where Sachin had met me and the place of incident however, the place of incident was quite far away from the place where Sachin had met me. I do not remember exactly but it took more than half an hour to reach the place of incident. There was no residential or commercial area near about the place of incident. During the investigation, I had led the police to a place which I thought was the place of incident but on reaching there, I realized that it was not the place of incident. I do not remember whether the police had prepared the site plan of the place of incident.

On realizing that something was wrong, I tried to jump of the bike but Kalu had held my hands as well as closed my mouth. I do not remember the details of the clothes which Sachin was wearing but I only remember that he was wearing a payjama. I do not remember the details of the clothes which Kalu was wearing but I only remember that he was wearing a pant. I did not inform about the incident to the uncle who had, after the incident, dropped me at Shiv Vihar road. The said uricle had inquired from me as to what had happened but I did not tell him anything and kept crying so he said that he would drop me somewhere but not at my house.

In my presence, Sachin did not have any telephonic conversation with Kalu before we met Kalu. It is wrong to suggest that accused Praveen is not the said Sachin who had taken me on that day or that the said Sachin was some other bay, It is further wrong to



suggest that in order to save Sachin, I have falsely implicated Praveen.

At the place of incident, I had shouted for help. It is wrong to suggest that I had not shouted for help.”

13. The testimony of the Prosecutrix is that on the date of the incident, she met Rohit and asked him to give her some money as she was hungry and Rohit gave her Rs. 200/-. This testimony of Prosecutrix is also corroborated by Rohit, who has been examined as PW-12 and he has deposed as under:

“I know the victim. She is my neighbour. On 12.11.2018 at about 5.30 p.m., I met the victim near a drain which is near my house. She said that she was hungry and asked me If I could give her 200 Rs. I gave her Rs. 200/- . Thereafter, she left.”

14. The version of the Prosecutrix is that she had spent the night in a plot and in the morning, one uncle came to that plot, she told him everything and he informed the same to the Police. Police had taken her to the hospital. This version of the Prosecutrix is also corroborated by Mr. Ashok Kumar, who has been examined as PW-6, who had deposed that there is a house in a dilapidated condition and near the house, at around 7 or 8 AM, he saw the girl lying in that house. Then he called the PCR.

15. On scrutinizing, it is evident that the Prosecutrix and the statement made to the police, which is Ex.PW-3/1, and her statement recorded under Section 164 of the CrPC, which is Ex.PW-3/2, shows that Prosecutrix consistently stated that the Appellant along with the co-accused Kalu took her on a bike to a jungle, where the Appellant committed sexual assault upon her. Thereafter, Kalu committed sexual assault on the Prosecutrix.

15.1 The material facts, as deposed by the Prosecutrix, remained



unchallenged and un-controverted in her cross-examination. No such material has come on record in the cross-examination of the Prosecutrix to prove that she had any prior enmity with the Appellant to falsely implicate him in the incident. There are no good and sufficient reasons to discard the evidence of the Prosecutrix.

15.2 The discrepancies, such as why the Prosecutrix left the home of her sister Mamta, the nature of the food which she was eating, as pointed out by the Id. Counsel for the Appellant in the statements of the Prosecutrix, are minor discrepancies which do not discredit the evidence of the Prosecutrix, which is reliable, cogent and trustworthy.

16. The Prosecution has proved the MLC of the Prosecutrix on record as Ex. PW-11/1. PW-11, Dr. Monika Bairathi has deposed that as per the MLC i.e., Ex. PW-11/1, there was a fresh partial tear of the hymen and anal dilation.

16.1 In cross-examination on behalf of the Appellant, PW-11 has deposed that she cannot tell if rape was committed or not upon the victim. Infection cannot cause red coloration on the private part of any person. She has denied the suggestions that infection caused the red coloration of the private part and that the release of hard stool during defecation can cause injuries to the anal region.

16.2 The MLC i.e., Ex. PW-11/1, supports the version of the Prosecutrix that she was sexually assaulted.

17. Id. Counsel for the Appellant, has also contended that from the evidence on record, the identity of the Appellant has not been established. The Appellant was not known by any of the names Sachin @ Devinder.

17.1 The Prosecutrix in her complaint to the Police has stated the name of the offender as Sachin @ Devinder. In her statement recorded under Section



164 of the CrPC, she has also stated the name of the offender as Sachin. The Prosecutrix has identified the Appellant in the TIP and also in the court.

17.2 It is true that the evidence of TIP is not itself substantive evidence, whereas the identification made by a witness in the court constitutes substantive evidence. A perusal of the cross-examination of the Prosecutrix reveals that no suggestion was put to the Prosecutrix that the Appellant was shown to her prior to the conduct of the TIP. The identification of the Appellant in the Court by the Prosecutrix and also the identification in the TIP leaves no doubt that it is the Appellant, who has committed the sexual assault upon the Prosecutrix.

18. It is also one of the arguments of the Id. counsel for the Appellant that the place of incident has not been identified by the Prosecutrix so it makes the case doubtful.

18.1 PW-5 who is the IO of the case had deposed that based on the description given by the victim, she prepared the site plan which is Ex. PW5/2.

18.2 Keeping in view the proved facts that the incident is of night time and it was in a jungle where there were no commercial or residential areas, the Prosecutrix who is of tender age cannot be supposed to identify the exact place of incident. Hence, we are of the view that this argument of the appellant is without merit.

19. It was further contended on behalf of the Appellant that the MLC and the FSL report does not support the Prosecution case as neither any external injuries were noted nor any semen was found on the exhibits. This contention is liable to be rejected as Prosecutrix has not deposed in her testimony about the presence of semen on her person and also that injury is not a *sine qua non* for deciding whether rape has been committed. (Relied upon the decision of



the Supreme Court in ***Lalliram and Anr. v. State of Madhya Pradesh MANU/SC/8036/2008***).

20. One of the arguments of the Appellant is also that as the alleged co-accused Kalu has not been arrested and only the Appellant has been convicted for the alleged offences, therefore, it is not the case of a gang rape. For the offence to be a gang rape, it must be that the Prosecutrix has been sexually assaulted by more than one person.

20.1 This argument is without any merit, as one offender can be convicted for gang rape, if the other offender managed to escape and could not be apprehended. On this aspect, it is relevant here to mention the judgment of ***Kailash Lal Singh Khangar v. State of Madhya Pradesh*** ILR 1996 MP 446.

The relevant paras of the said judgment are as follows:

“12. In such circumstances, when two persons are said to have committed rape upon a minor girl of aged 13 years at the times of the incident, it comes within the category of gang rape and there is no reason to discredit any of the prosecution witness in this incident.

13. Appellant had stated in his examination under Section 313, Criminal Procedure Code that he has been falsely implicated at the instance of one Bhagwansingh. But no evidence in defence has been led on this point.

14. The trial Court rightly came to the conclusion that the appellant was found guilty of committing rape upon Kumari Mathi, a minor girl of 13 years of age, which has been proved by her statement and medical evidence. The appellant was immediately arrested on the spot by the witnesses, reaching on the cries of the prosecutrix. The other-co-accused Lalu Thakur had managed to escape and could not be apprehended.

Therefore, in such a situation, it was a case of a gang-rape and the appellant was certainly guilty. The trial



Court had rightly convicted the appellant under Section 376, Indian Penal Code.”

21. It is settled law that the Appellant can be convicted on the sole testimony of the Prosecutrix, if it is unimpeachable, consistent, and without any ambiguity. In this respect, it is relevant to mention some of the judgments which are as follows:

21.1 Hon’ble Supreme Court in Criminal **Appeal No. 1231/2016** titled as ***State of Himachal Pradesh v. Sanjay Kumar***, observed as under:

“31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in



material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.”

21.2 Again, in **Wahid Khan v. State of Madhya Pradesh**, (2010) 2 SCC 9, the Supreme Court held as under:

“It is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are.”

22. In view of the analysis hereinabove, there is clear and unimpeaching evidence of the Prosecutrix which in terms of the settled legal position, is sufficient to hold the Appellant guilty. Hence, we are of the opinion that the evidence of the Prosecutrix, which is reliable and trustworthy, inspires confidence, and is also corroborated by her medical evidence. Thus, it stands proved beyond reasonable doubt that she was kidnapped and sexually assaulted by the Appellant.

23. Thus, the conviction of the Appellant by the Trial Court does not warrant any interference by this Court. The conviction and the sentence of the



Appellant are maintained.

24. The appeal is, accordingly, dismissed. All pending applications, if any, are also disposed of.

25. A copy of the judgment be communicated to the concerned Trial Court, Jail Superintendent and the Appellant.

RAJNEESH KUMAR GUPTA
JUDGE

PRATHIBA M. SINGH
JUDGE

AUGUST, 20 2025/nd/tsv/ss