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

Reserved on: 16.10.2026
Date of Decision: 30.10.2026
Uploaded on: 30.10.2026

\# **CNR No. DLHC010154512024**
\+ **CRL.A. 269/2024**

VISHNU PRASAD .....Appellant
Through: Mr. Harsh Prabhakar, Mr. Dhruv Chaudhary, Ms. Sakshi Gupta, Mr. Shubham Sourav and Mr. Vijit Singh, Advocates.

versus

STATE OF NCT OF DELHI .....Respondent
Through: Ms. Meenakshi Dahiya, APP with Ms. Vanshika Singh, Ms. Apoorva Khosla, Advocates for State.
Ms. Astha, Adv. (DHCLSC) and Ms. Megha Singh, Adv. for prosecturix.
Insp. Satbir Singh, PS: Jaitpur.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal has been preferred under Section 374 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C."), assailing the judgment of conviction dated 07.11.2023 and the order on sentence dated 15.02.2024 passed by the learned Additional Sessions Judge-06 (POCSO), South-East District, Saket Courts, New Delhi in Sessions Case No. 339/2021, arising out of FIR No.

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358/2021, registered at Police Station Jaitpur, Delhi.

2. Vide the impugned judgment, the appellant was convicted for the offences punishable under Sections 376AB, 354A and 506 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") and Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act").

BRIEF FACTS:

3. The prosecution case, as emerging from the record, is that on 23.07.2021, the complainant, namely, 'AR' (hereinafter referred to as the "complainant"), along with her husband 'DP' and their minor daughter 'K' (hereinafter referred to as the "prosecutrix"), approached Police Station Jaitpur and lodged a complaint alleging that the appellant, who was residing in their neighbourhood, had sexually assaulted the prosecutrix.

4. It was alleged in the complaint that on 22.07.2021, while the complainant was bathing the prosecutrix, the latter complained of pain in her private parts. Upon being enquired about the same, the prosecutrix disclosed that on the previous day, i.e., 21.07.2021, the appellant, whom she identified as the father of 'Astha Didi', had inserted his finger into her private part. It was further alleged that the appellant had kissed the prosecutrix and threatened to beat her if she disclosed the incident to anyone.

5. On the basis of the aforesaid complaint, FIR No. 358/2021 was registered on 23.07.2021 at Police Station Jaitpur for the offences punishable under Sections 376 and 506 IPC and Section 6 of the POCSO Act, and investigation was taken up.

6. During the course of investigation, the prosecutrix was taken to

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AIIMS Hospital, New Delhi, where she was medically examined on 24.07.2021. However, her parents declined to consent to her internal medical examination. The medical documents pertaining to her examination were collected during the investigation. The statement of the prosecutrix under Section 164 Cr.P.C. was also recorded before the learned Metropolitan Magistrate on 24.07.2021.

7. Upon completion of the investigation, a charge-sheet was filed before the learned Trial Court on 20.09.2021. Subsequently, a supplementary charge-sheet, along with the forensic examination report, was also placed on record.

8. Vide order dated 25.10.2021, the learned Trial Court framed charges against the appellant for the offences punishable under Sections 376AB, 354A and 506 IPC and Sections 6 and 10 of the POCSO Act. The appellant pleaded not guilty to the charges and claimed trial.

9. To prove its case against the accused, the prosecution examined seven witnesses before the learned Trial Court, whose testimonies have been discussed in the impugned judgment as under:

> *"**3.1 PW-1 Ms. 'K'** is the victim. She was aged about 06 years at the time of her evidence. She identified the accused in the court and has deposed regarding the facts of the case. She had deposed about her mother taking her to the police station and thereafter, by the police to the doctor. She has deposed about her coming to the court for getting her statement recorded.*
> ***3.2 PW-2 Ms. 'AR'** is the mother of the victim. She has deposed about the facts of the case and giving of her complaint Ex. PW2/A, she has deposed about her daughter being taking to AIIMS Hospital for the medical examination, her refusal of internal*

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examination of her daughter and signing of the clinical notes Ex. PW2/B & Ex. PW2/C. She identified her signatures on MLC Ex. PW2/D. She has deposed regarding showing the place of incident to the police and preparation of site plan Ex. PW2/E. She has deposed recording recording of the statement under Section 164 CrPC of her daughter K and herself as Ex. PW2/F & Ex. PW2/G.

***3.3 PW-3 Dr. Kaushik** had examined the victim girl on 24.07.2021 and had prepared MLC Ex. PW2/D. The emergency card prepared by him is Ex. PW3/A.*

***3.4 PW-4 Sh. Dinesh**, Sub Registrar, Birth & Death Unit, NDMC, Mandir Marg has produced the birth certificate of the victim girl Ex. PW4/A. According to birth certificate, date of birth of the victim is 07.10.2015.*

***3.5 PW-5 Sh. 'DP'** is the father of the victim. He has deposed regarding the facts of the case. He has deposed that he had signed the complaint Ex. PW2/A. He has deposed that his daughter was taken to the AIIMS Hospital for her medical examination. He has identified his signatures on Ex. PW2/B and Ex. PW2/C. He has deposed that police had visited the room in which the sexual assault took place with her daughter and the site plan Ex. PW2/E was prepared. He has deZposed that his daughter was produced before the Learned MM for recording of her statement.*

***3.6 PW-6 HC Subodh Nagar** is the part of investigation team. He had joined the investigation on 23.07.2021 along-with the IO. He has deposed regarding arrest of the accused vide Ex. PW6/A, conducting personal search of the accused vide Ex. PW6/B and recording disclosure statement of the accused vide Ex. PW6/C. He has deposed that he had taken the accused to the AIIMS Hospital and after the medical examination of the accused, the doctor collected the exhibits and handed over to*

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him. He handed over the exhibits to the IO which was seized vide Ex. PW6/D.

***3.7 PW-7 SI Madhuri** is the Investigation Officer (IO) of the case. She has deposed regarding the investigation done by her. She has deposed regarding receiving of the information on 23.07.2021 of the complainant coming to the police station. The examination of the complainant and victim and recording of complaint Ex. PW-2/A. She has informed regarding the preparation of Rukka Ex. PW7/A and getting the present case registered. She has deposed regarding the arrest of the accused vide memo Ex. PW6/A and conducting personal search of the accused vide memo Ex. PW6/B. She has deposed regarding recording of the disclosure statement of the accused vide memo Ex. PW6/C. She has deposed that the victim was sent for her medical examination and the blood sample of the victim was preserved. It was seized vide memo Ex. PW7/B. She has deposed regarding seizure of the exhibits collected from the accused during his medical examination vide memo Ex. PW6/A. She has deposed regarding moving of the application for recording of the statement of the victim under Section 164 CrPC vide memo Ex. PW7/C. Her identifying the victim before the concerned Judge vide memo Ex. PW7/D and recording of the statement of the victim under Section 164 CrPC vide memo Ex. PW7/E. She has deposed regarding preparation of the site plan Ex. PW2/E at the instance of the victim. Collecting the birth record of the victim and sending the exhibits to the FSL. She has deposed regarding preparation of the charge-sheet and of the supplementary charge-sheet and recording the statement of the witnesses under Section 161 CrPC and filing the charge-sheet after completion of the investigation.*

***3.8** Accused admitted copy of proceedings of*

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> *Learned MM dated 24.07.2021 for recording of statement of the victim under Section 164 CrPC as document A-1, Potency report of accused dated 23.07.2021 prepared by Dr. Venkatesh as document A-2, Statement of W/Ct. Sarla as document A-3, Statement of Ct. Ajay regarding deposit of exhibits in FSL vide RC No. 118/21 as as document A-4, A-5 & A-6, Statement of HC Vivekanand regarding deposit of exhibits in Malkhana as document A-7 and duty officer ASI Satish regarding copy of FIR No. 358/21 as document A-8 in his statement u/s 294 Cr. PC recorded on 23.12.2022.*
>
> ***4.*** *No other witness was examined by the prosecution and PE was closed."*

10. On the completion of prosecution evidence, an examination of accused U/s 313 Cr. P.C. was conducted on 14.10.2023, during his examination, he has negated all the allegations and has taken his defence that he is innocent and has been falsely implicated in the case. No defence evidence was led by the accused.

11. The learned Trial Court, vide the impugned judgment dated 7th November 2023, convicted the appellant and held as under:

> ***"26.*** *On the basis of above said discussions, the prosecution has been able to prove the case against the accused beyond all reasonable doubt. The accused inserted his finger into the vagina/ urethra of the minor victim aged about 4 years 09 months and committed rape on her as defined under Section 375 (b) of IPC and punishable under Section 376AB IPC. The accused committed sexual harassment of the victim girl and committed offence punishable under Section 354A IPC. The accused threatened the victim and committed the offence punishable under Section 506 (i) IPC. The accused committed penetrative sexual assault as defined under Section*

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3 (b) of POCSO Act and aggravated penetrative sexual assault as defined under Section 5 (m) of POCSO Act and committed the offence punishable under Section 6 of the POCSO Act. The accused committed aggravated sexual assault on the minor victim as defined under Section 9 (i) and (m) of the POCSO Act and committed the offence punishable under Section 10 of the POCSO Act 2012.

***30.** Therefore, the accused **Vishnu Prasad** is convicted for the offence punishable under **Section 376AB IPC, Section 354A IPC, Section 506 IPC, Section 6 & Section 10 of POCSO Act 2012.**"*

12. Consequent upon the judgment of conviction, the learned Trial Court, vide Order on Sentence dated 15th February 2024, imposed the following sentence upon the appellant:

"9.** On the basis of overall facts and circumstances, the convict Vishnu Prasad is sentenced to **Rigorous Imprisonment for Twenty years for the offence punishable under Section 6 of the POCSO Act** and a fine of Rs. 10,000/-. In default of the payment of fine, the convict is to undergo SI for one month. He is sentenced to **Rigorous Imprisonment for Five Year for the offence punishable under Section 10 of the POCSO Act** and fine of Rs. 10,000/-. In default of the payment of fine, he is **undergo SI for One month**. He is sentenced to **Rigorous Imprisonment for Three Years for the offence punishable under Section 354A IPC**. He is sentenced to **Simple Imprisonment for One Year for the offence punishable under Section 506 (1) IPC.

***10.** The convict is also directed to pay the expenses of the State to the extent of Rs. 4,514/- within one*

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month. He is also directed to pay the compensation of Rs. 2,00,000/- (Two Lacs only) to the victim.

11. Benefit of Section 428 CrPC be also given to the convict and it is directed that all the sentences shall run concurrently.

12. *On the basis of the entire facts of circumstances, the victim is also awarded* ***final compensation of Rs. 8,50,000/- (Eight Lac Fifty Thousand Only) to*** *be paid under the Delhi Victim Compensation Scheme 2018 r/w Rule 33(8) POCSO Act 2012. The above compensation to be paid under Delhi Victim Compensation Scheme is in addition to the compensation to be paid by the convict. However, any interim compensation awarded and received by the victim is to be adjusted in the final compensation to be paid under Delhi Victim Compensation Scheme.*

13. *Copy of the order of sentence be given dasti to the convict. The copy of the judgment be also given, if not received, to the convict. The copy of the judgment and the sentence be sent to the parents of the victim through Learned Counsel for DCW. The copy of the judgment and sentence be also sent to Learned Secretary, DLSA, South-East."*

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

SUBMISSIONS ON BEHALF OF THE APPELLANT

14. Learned counsel submitted that the testimony of the prosecutrix (PW-1) suffers from material inconsistencies regarding the place of occurrence. In her statement under Section 161 Cr.P.C., the prosecutrix referred to an empty room, whereas in her statement under Section 164

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Cr.P.C. and her deposition before the learned Trial Court, she referred to the terrace. Further, her mother (PW-2) described the place as a room on the upper floor, while her father (PW-5) referred to the appellant's room. The site plan, however, indicated a hall as the place of occurrence.

15. It was further submitted that the prosecutrix had given varying accounts of the alleged sexual act. While her statement under Section 161 Cr.P.C. referred to insertion of a finger into her private part, her statement under Section 164 Cr.P.C. referred to touching. During her examination-in-chief, she again referred to touching, whereas, in response to a question put by the learned Trial Court, she stated that the appellant's nail had touched the inside of her private part. Learned counsel also pointed out that the prosecutrix had referred to an additional incident involving the appellant's son, Anubhav, during her deposition. It was contended that these inconsistencies made it unsafe to rely upon her testimony without corroboration. Reliance was placed upon ***Chaggan Dame v. State of Gujarat, 1995 SCC (Cri) 182***, and ***Pradeep v. State of Haryana, 2023 SCC OnLine SC 777***.

16. Learned counsel further submitted that the medical and forensic evidence did not support the allegation of penetration. No external injury or redness was observed during the medical examination of the prosecutrix, and her parents had declined an internal examination. It was also pointed out that the FSL report did not reveal any incriminating biological material connecting the appellant with the alleged offence.

17. It was further submitted that the alleged incident occurred on 21.07.2021 and was disclosed to the mother of the prosecutrix on 22.07.2021, whereas the FIR was registered only on 23.07.2021. Learned

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counsel contended that this delay had not been satisfactorily explained.

18. Learned counsel further submits that even if the prosecution case were accepted, the evidence did not establish penetrative sexual assault beyond reasonable doubt. In the alternative, it was contended that the alleged act would, at best, constitute aggravated sexual assault punishable under Sections 9 and 10 of the POCSO Act. Reliance in this regard was placed upon the decision of the Division Bench of this Court in ***Ram Preet v. State, 2024:DHC:9936-DB.***

SUBMISSIONS ON BEHALF OF THE RESPONDENT-STATE

19. The learned APP on behalf of the State opposes the appeal and submitted that the prosecution had successfully established the guilt of the appellant beyond all reasonable doubt. It was submitted that the present case arose out of FIR No. 358/2021, registered at Police Station Jaitpur on the complaint made by the mother of the minor victim.

20. It was submitted that, on 23.07.2021, the complainant reported that her daughter, aged about five years and nine months, had been sexually assaulted by the appellant, who was their neighbour.

21. It was further submitted on behalf of state that the prosecution evidence, including the statement of the victim, the testimony of her mother and the other evidence brought on record, established the involvement of the appellant in the commission of the offences. Learned counsel submitted that the age of the victim was duly established through her birth certificate, produced by Sh. Dinesh, Sub-Registrar, Birth and Death Unit, NDMC, which recorded her date of birth as 07.10.2015.

22. It was further submitted that the learned Trial Court had duly

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appreciated the evidence on record and rightly convicted the appellant for the offences punishable under Sections 376AB, 354A and 506 IPC and Sections 6 and 10 of the POCSO Act, 2012.

FINDINGS AND ANALYSIS

23. This Court has heard learned counsel for both the parties and perused the material on record.

24. The principal question arising for consideration in the present appeal is whether the prosecution has established the commission of aggravated penetrative sexual assault upon the prosecutrix, or whether the evidence proves aggravated sexual assault without penetration.

25. Before examining the evidence, it would be apposite to refer to the relevant statutory provisions. Section 3(b) of the POCSO Act defines penetrative sexual assault to include insertion of any object or part of the body, other than the penis, into the vagina, urethra or anus of a child, to any extent. Section 5(m) provides that where penetrative sexual assault is committed upon a child below twelve years of age, it constitutes aggravated penetrative sexual assault, punishable under Section 6 of the Act. The relevant provisions of the POCSO Act are reproduced hereinbelow:

> *"**Section 3 Penetrative sexual assault**.—A person is said to commit "penetrative sexual assault" if—*
>
> *……*
> *(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or"*
>
> *"5. **Aggravated penetrative sexual assault**.—*

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…..
(m) whoever commits penetrative sexual assault on a child below twelve years; or"

*"6. **Punishment for aggravated penetrative sexual assault**.—(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.*
(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

26. Section 7 of the POCSO Act, on the other hand, deals with sexual assault involving physical contact with sexual intent, without penetration. Where such an act is committed upon a child below twelve years of age, Section 9(m) is attracted, making the offence punishable under Section 10 of the Act. The relevant provisions of the POCSO Act are reproduced hereinbelow:

*"7. **Sexual assault**.— Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."*

*"9. **Aggravated sexual assault**.—*
…….
(m) whoever commits sexual assault on a child

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> *below twelve years; or"*
>
> *"10. **Punishment for aggravated sexual assault**.— Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine."*

27. The distinction between the aforesaid offences lies in the nature of the act established by the prosecution. While insertion of a finger into the vagina or urethra, even to the slightest extent, would attract Section 3(b), touching of the private part of a child with sexual intent, without proof of penetration, would fall within Section 7. The aggravating circumstance of the child being below twelve years of age is separately recognised under Sections 5(m) and 9(m).

28. Insofar as the conviction under Section 376AB of the IPC is concerned, the relevant allegation pertains to penetration by a finger, which is covered by Section 375(b) IPC. Accordingly, proof of penetration is also essential for sustaining the conviction under Section 376AB IPC in the present case. Section 375 of the IPC is reproduced hereinbelow:

> *"375. Rape.—A man is said to commit "rape" if he—*
> *(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
> ***(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or***

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> *(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*
> *(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,*
> *under the circumstances falling under any of the following seven."*

29. In the present case, the date of birth of the prosecutrix, as established through the birth certificate (Ex. PW-4/A), is 07.10.2015. On the date of the alleged incident, *i.e.*, 21.07.2021, she was approximately five years and nine months old. Her age has been duly established and has not been disputed. The controversy, therefore, centres upon the precise nature of the act committed by the appellant.

30. The prosecution case rests primarily upon the testimony of the prosecutrix, examined as PW-1. During her deposition before the learned Trial Court, she identified the appellant as the person who had touched her private part. She further stated that the appellant had lifted her, touched her again and that his nail had hurt her private part. The relevant portion of her examination-in-chief is reproduced hereunder:

Witness	***Statement in examination in chief***
PW- 1 "K"- victim	*the uncle who is shown to me on the screen has touched me. The witness has pointed out towards her vagina.-She further deposed* ***– unhone mujhe god me uthaya tha or firse dubara chhuya tha or mujhe nakhun lag gya tha. On clarification, witness states that shushu vali jagah pe nakhun lag gya tha.*** *I*

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	do not recollect the name of didi whose father I have seen today. I used to go to the house of uncle for playing and his house was in front of my house. The said uncle has 3 kids. The name of one kid is Anubhav bhaiya and the other is Astha didi. I had gone to the roof top where Anubhav bhaiya was playing with bubble gum. Anubhav bhaiya told me- pehle mujhe kiss do, fir gubbara fulaunga. ***This uncle has touched me and also told me not to tell this to anyone and the uncle said this for four times. The uncle was on the roof and I was also on the roof and we both were alone on the roof when he did this. When the uncle did the act with me, I felt pain in my shushu vali jagah and also on the back as I was caught by him tightly. When my mother was giving me bath in the morning then I told her about the said incident. I have shown my mother my shushu vali jagah and also- jha pr chhil gya tha. Is the uncle shown to you on TV screen is the same person who did this with you. Victim says yes, vhi the***

31. During her cross-examination, the learned Trial Court put a specific question to the prosecutrix to ascertain whether the appellant's nail had touched the outside or the inside of her private part. The relevant question and answer are reproduced hereinunder:

Witness	***Statement in cross examination***
PW- 1 "K"- victim	…. ***It is wrong to suggest that no injury was cause to me by the accused with his nail inside my vagina****. It is wrong to suggest that I am deposing falsely.*

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	Court Question- Apko nakhun shushu vali jagah pr upar lga tha ya andar? ***Ans. Andar lga tha.***

32. Upon a careful examination of the testimony of PW-1, this Court finds that the prosecutrix has clearly identified the appellant and attributed an act of sexual touching to him. She pointed towards her private part while describing the occurrence and stated that the appellant had touched her and caused her pain. Her testimony sufficiently establishes the occurrence of sexual contact.

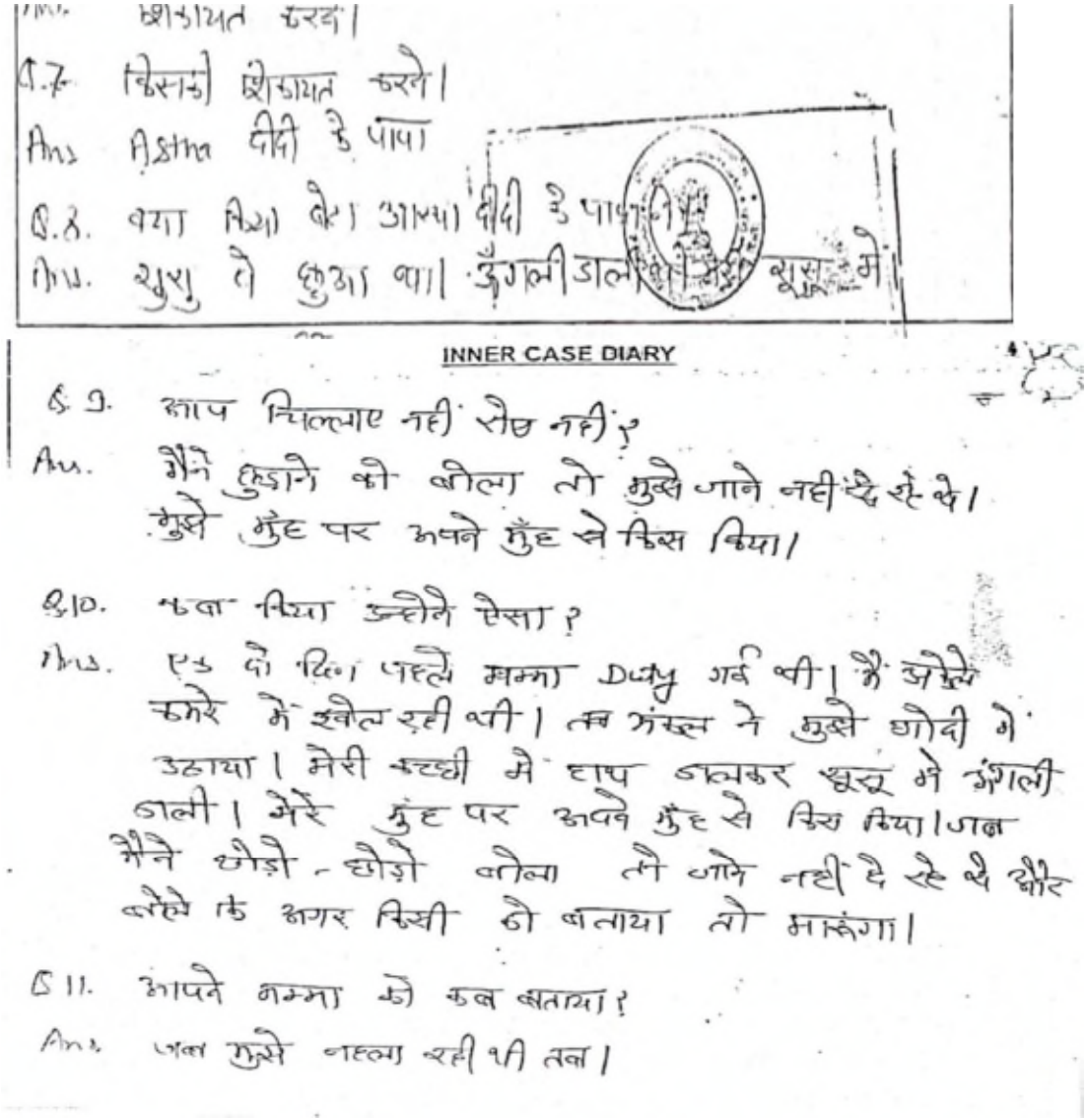
33. However, the evidence concerning penetration stands on a different footing. The prosecutrix consistently described the act in her examination-in-chief as touching and contact with the appellant's nail. Though she answered *"andar laga tha"* to the question put by the learned Trial Court, the said answer was in the context of identifying where the nail had touched her. It does not clearly establish that the appellant inserted his finger or nail into her vagina or urethra. The learned Trial Court proceeded to treat the said answer as proof of insertion without adequately distinguishing between contact with the private part and penetration into it.

34. This distinction assumes further significance upon examining the previous statements of the prosecutrix. In her statement under Section 161 Cr.P.C., she referred to insertion of a finger into her private part. However, in her statement recorded under Section 164 Cr.P.C., she described the act as touching. During her deposition before the learned Trial Court, she again stated that the appellant had touched her private part. The relevant portions

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of her previous statements are reproduced hereunder:

Statement under Section 161 Cr.P.C.



INNER CASE DIARY

Q 9. आप चिल्लाए नहीं रोए नहीं?
Ans. मैंने चिल्लाने को बोला तो मुझे जाने नहीं दे रहे थे। मुझे मुँह पर अपने मुँह से किस किया।

Q10. कब किया उन्होंने ऐसा?
Ans. एक दो दिन पहले मम्मा Duty गई थी। मैं अकेले कमरे में खेल रही थी। तब अंकल ने मुझे गोदी में उठाया। मेरी स्कर्ट में हाथ डालकर सुसू में उंगली डाली। मेरे मुंह पर अपने मुँह से किस किया। जब मैंने छोड़ो-छोड़ो बोला तो जाने नहीं दे रहे थे और बोले कि अगर किसी को बताया तो मारूंगा।

Q 11. आपने मम्मा को कब बताया?
Ans. जब मुझे पता चली तब।

"Q.7. किसकी शिकायत करेंगे।

Ans. Astha दीदी के पापा

Q.8. क्या किया बेटा आस्था दीदी के पापा ने।

Ans. सुसु में छुआ था। उँगली डाली थी मेरी सुसु में।

Q.9. आप चिल्लाए नहीं रोए नहीं?

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Ans. मैंने छुड़ाने को बोला तो मुझे जाने नहीं दे रहे थे। मुझे मुंह पर अपने मुँह से किस किया।
Q.10. कब किया उन्होंने ऐसा?
Ans. एक दो दिन पहले मम्मा Duty गई थी। मैं अकेले कमरे में खेल रही थी। तब अंकल ने मुझे गोदी में उठाया। मेरी कच्छी में हाथ डालकर सुसू में उंगली डाली। मेरे मुँह पर अपने मुँह से किस किया। जब मैंने छोड़ो-छोड़ो बोला तो जाने नहीं दे रहे थे और बोले कि अगर किसी को बताया तो मारूंगा।

Statement under Section 164 Cr.P.C.

"Statement of witness Ms. K d/o sh. D aged about X years, R/o as
Ques: What happened?
***Ans.- He did touch my Vagina**.*
Ques: -Who?
Ans: - Uncle, I call him Uncle.
Ques: - Where was the touch?
Ans: - On the roof. They were saying let's go to the terrace.
Ques: - Did do you recognize him?
Ans: - Yes.
Yesterday I was playing in room lonely. Mom had gone on duty. Papa was making his own video. Uncle came into the room and caught me. Took it in lap. I got injured in my back. He kissed me on the lips on the terrace. He said that don't tell someone. I talk to Mummy that Uncle was teasing me."

35. It is settled that a statement It is settled that statements recorded under Sections 161 and 164 Cr.P.C. do not constitute substantive evidence. Their use is governed by the provisions relating to contradiction and

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corroboration, as applicable. The substantive evidence remains the testimony of the prosecutrix recorded before the learned Trial Court. Consequently, the allegation of insertion appearing in the statement under Section 161 Cr.P.C. cannot, by itself, establish penetration where the testimony before the Court does not sufficiently prove that ingredient.

36. This Court is conscious of the tender age of the prosecutrix and the fact that a child cannot be expected to describe an incident of sexual assault with anatomical precision. Nevertheless, the essential ingredient of penetration must emerge from the evidence with sufficient certainty. In the present case, the testimony of PW-1 establishes the act of sexual touching, but does not establish insertion into the vagina or urethra beyond reasonable doubt.

37. At this stage, reference may be made to the decision of the Division Bench of this Court in ***Ram Preet (supra),*** wherein the appellant had been convicted under Section 6 of the POCSO Act on an allegation involving insertion of a finger into the private part of a minor child. Upon examining the complaint, the testimony of the prosecutrix, her statement under Section 164 Cr.P.C. and the medical record, the Division Bench found that the evidence established sexual touching but did not establish penetration. Consequently, the conviction under Section 6 of the POCSO Act was set aside and the conviction and sentence were modified in accordance with the offence proved.

38. A similar distinction was drawn by a Coordinate Bench of this Court in ***Jeetu Ranjeet v. State (NCT of Delhi), 2025:DHC:8851***, wherein the prosecutrix had referred to insertion of a finger or nail in her statements during investigation but, while deposing before the learned Trial Court, had

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described the act as touching her private part. Upon reappreciation of the oral and medical evidence, this Court held that although sexual touching stood established, insertion of a finger had not been proved. Accordingly, the conviction under Section 6 of the POCSO Act was modified to one under Section 10, and the appellant was sentenced to rigorous imprisonment for five years.

39. Reference may also be made to ***Hamid Khan v. State (NCT of Delhi) 2026:DHC:78***. In the said case, despite allegations of fingering and penetration, this Court found that the evidence concerning such acts was insufficient to establish aggravated penetrative sexual assault beyond reasonable doubt. However, the evidence relating to the appellant fondling the private parts of the child victim remained consistent. Consequently, the conviction under Section 6 of the POCSO Act was altered to one under Section 10 of the Act.

40. The aforesaid decisions establish that where the evidence proves sexual touching but fails to establish penetration, the conviction must correspond to the offence actually proved. Applying the same principle to the present case, this Court finds that the act of sexual touching attributed to the appellant stands established, whereas the additional ingredient of penetration has not been proved beyond reasonable doubt.

41. Coming to the medical evidence, the prosecutrix was examined at AIIMS Hospital on 24.07.2021. The medical record does not disclose any external injury upon examination of her private part. It is also borne out from the record that her parents declined consent for an internal examination. Consequently, no internal examination was conducted to ascertain whether penetration had occurred. The forensic examination also

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did not yield any incriminating biological material connecting the appellant with the alleged act.

42. The medical evidence is required to be appreciated in conjunction with the testimony of the prosecutrix. The absence of injuries does not, by itself, exclude penetration, nor does the absence of an internal examination justify an adverse inference against the prosecutrix or her parents. At the same time, the medical evidence in the present case does not provide any finding capable of establishing the disputed act of insertion.

43. The appellant has also pointed out inconsistencies regarding the place of occurrence. The prosecutrix referred to an empty room and the terrace at different stages, whereas her parents referred to a room on the upper floor or the appellant's room. These variations, however, do not discredit her testimony concerning the act of sexual touching. The prosecutrix identified the appellant and consistently attributed the sexual contact to him. Considering her tender age, the discrepancies concerning the precise location of the occurrence do not affect the essential account of sexual assault.

44. Similarly, the delay in registration of the FIR does not render the prosecution case doubtful. The alleged incident occurred on 21.07.2021, the prosecutrix disclosed the same to her mother on 22.07.2021, and the FIR was registered on 23.07.2021. In the facts and circumstances of the present case, the said interval does not furnish a ground for rejecting the occurrence narrated by the prosecutrix.

45. The Hon'ble Supreme Court in ***Phool Singh v. State of Madhya Pradesh, (2022) 2 SCC 74***, reiterated that the testimony of a prosecutrix, where reliable and trustworthy, may form the sole basis of conviction

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without independent corroboration. The principle, however, does not dispense with the requirement that the evidence must establish the ingredients of the offence charged. In the present case, the testimony of PW-1 is sufficiently reliable to establish sexual touching, but does not establish penetrative sexual assault beyond reasonable doubt.

46. The scope of sexual assault under Section 7 of the POCSO Act was examined by the Hon'ble Supreme Court in ***Attorney General for India v. Satish, (2022) 5 SCC 545***, wherein it was held that touching the sexual part of a child's body with sexual intent, or any other act involving physical contact with such intent, constitutes sexual assault. The Court emphasised that sexual intent is the material ingredient for attracting Section 7 of the Act. Applying the said principle, the act proved against the appellant falls within Section 7, since he touched the private part of the prosecutrix with sexual intent.

47. It would also be appropriate to refer to Section 29 of the POCSO Act, which provides for a rebuttable statutory presumption in respect of the offences specified therein. Section 29 of the POCSO Act is reproduced hereinbelow:

> *"29.* ***Presumption as to certain offences****.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."*

48. In ***Deepak in JC v. State Govt. of NCT Delhi, 2026 INSC 1008***, the Hon'ble Supreme Court reiterated that the statutory presumptions under

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Sections 29 and 30 of the POCSO Act are not absolute. The prosecution must first establish the foundational facts of the particular offence, and the statutory presumption cannot be mechanically invoked to dispense with an assessment of the evidence. In the present case, while the evidence establishes aggravated sexual assault under Section 9(m), the foundational facts necessary to sustain a finding of penetration under Sections 3(b) and 5(m) have not been established with the requisite certainty.

49. Upon an overall appreciation of the evidence, this Court finds that PW-1 has clearly identified the appellant and established that he touched her private part with sexual intent. The nature of the contact, the circumstances surrounding the occurrence and the warning given to the prosecutrix against disclosure sufficiently establish the requisite sexual intent. Since the prosecutrix was below twelve years of age, the act constitutes aggravated sexual assault under Section 9(m), punishable under Section 10 of the POCSO Act.

50. However, the prosecution has failed to establish beyond reasonable doubt that the appellant inserted his finger or any part thereof into the vagina or urethra of the prosecutrix. The finding of the learned Trial Court that the appellant committed aggravated penetrative sexual assault under Section 5(m), punishable under Section 6 of the POCSO Act, is therefore unsustainable. For the same reason, the conviction under Section 376AB IPC, founded upon the allegation of finger penetration, cannot be maintained.

51. Accordingly, the appellant is acquitted of the offences punishable under Section 376AB IPC and Section 6 of the POCSO Act. However, his conviction under Section 9(m), punishable under Section 10 of the POCSO

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Act, is upheld. The finding under Section 9(i), insofar as it is founded upon an allegation of injury to the sexual organs, is not necessary to sustain the conviction under Section 10, which stands independently established under Section 9(m).

52. The convictions under Sections 354A and 506 IPC are also maintained. However, insofar as the offence under Section 354A IPC arises from the same act constituting aggravated sexual assault under the POCSO Act, the punishment shall be governed by Section 42 of the POCSO Act. Section 42 of the POCSO Act is reproduced hereinbelow:

> *"42. Alternate punishment.—Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, [376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], [376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000 (21 of 2000)], then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree."*

53. Coming to the question of sentence, the learned Trial Court sentenced the appellant to rigorous imprisonment for five years and a fine of Rs.10,000/- for the offence punishable under Section 10 of the POCSO Act. The learned Trial Court further directed that all substantive sentences would run concurrently and granted the benefit of Section 428 Cr.P.C. The sentence awarded under Section 10 of the POCSO Act is within the prescribed statutory limits and does not warrant interference.

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CONCLUSION:

54. In view of the foregoing discussion, the present appeal is **partly allowed**. The judgment of conviction dated 07.11.2023 and order on sentence dated 15.02.2024 passed by the learned Additional Sessions Judge-06 (POCSO), South-East District, Saket Courts, New Delhi, in Sessions Case No. 339/2021, arising out of FIR No. 358/2021 registered at Police Station Jaitpur, are modified to the extent indicated hereinafter.

55. The conviction of the appellant under Section 376AB IPC and Section 6 of the POCSO Act is hereby set aside, and he is acquitted of the said offences. Consequently, the sentence of rigorous imprisonment for twenty years, along with the fine of Rs.10,000/- and the default sentence imposed under Section 6 of the POCSO Act, is also set aside.

56. However, the conviction of the appellant under Section 9(m), punishable under Section 10 of the POCSO Act, is upheld. The sentence of rigorous imprisonment for five years, along with the fine of Rs.10,000/- and the default sentence of simple imprisonment for one month, is maintained. The convictions under Sections 354A and 506(1) IPC are also maintained, subject to the provisions of Section 42 of the POCSO Act concerning punishment for overlapping offences. The substantive sentences shall run concurrently, with the benefit of Section 428 Cr.P.C., as directed by the learned Trial Court.

57. As per the nominal roll available on record, the appellant had undergone 04 years, 01 month and 17 days of actual incarceration as on 09.09.2025, besides having earned remission of 04 months and 05 days.

58. In view of the modification of the conviction and sentence, the

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concerned Jail Superintendent is directed to ascertain the updated period of incarceration undergone by the appellant, after accounting for the benefit of Section 428 Cr.P.C., admissible remission and any period of *interim* bail or suspension of sentence.

59. **In the event the appellant has completed the substantive sentence of five years rigorous imprisonment maintained by this Court, he shall be released forthwith**, subject to payment of the outstanding fine or completion of the sentence prescribed in default thereof, and if not required in any other case.

60. The directions concerning compensation awarded to the prosecutrix under the impugned order on sentence shall remain undisturbed.

61. A copy of this judgment be communicated to the concerned Jail Superintendent and the learned Trial Court for necessary information and compliance.

62. The appeal, along with pending applications, if any, stands disposed of in the aforesaid terms.

MADHU JAIN
(JUDGE)

OCTOBER 30, 2026/P

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