2026 INSC 1008

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS._______ OF 2026
(Arising out of SLP(Crl.) Nos. 21271-72 of 2025)

DEEPAK IN JC **...APPELLANT**

VERSUS

STATE GOVT. OF NCT DELHI **...RESPONDENT**

J U D G M E N T

N.V. ANJARIA, J.

Leave granted.

2. These two appeals preferred by the appellant-convict raise challenge to judgment and order dated 03.07.2025 passed by the High Court of Delhi[1], which was a common judgment delivered in Criminal Appeal No.1029 of 2023 and Criminal Miscellaneous (Bail) No.1732 of 2023. Thereby, the High Court dismissed the appeals, in turn,

[1] **Hereinafter, "High Court"**

confirmed judgment and order dated 21.08.2023 of the Court of Additional Sessions Judge-01, (Designated Special Court under the Protection of Children from Sexual Offences Act, 2012), South-East, Saket Courts, New Delhi[2] in Sessions Case No.26 of 2016.

2.1 The trial court held the appellant guilty of the offences punishable under Section 363, Indian Penal Code, 1860[3] and under Section 6 of the Protection of Children from Sexual Offences Act, 2012[4]. It, however, acquitted the appellant for the offence punishable under Section 506, IPC.

2.2 For the conviction recorded under Section 6 of POCSO Act, the appellant came to be sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- with default clause to suffer simple imprisonment for 6 months. In respect of the offence punishable under Section 363, IPC, the sentence awarded to the appellant was requiring him to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.3,000/- with

[2] **Hereinafter, "trial court"**
[3] **Hereinafter, "IPC"**
[4] **Hereinafter, "POCSO"**

default clause to suffer simple imprisonment for 2 months. The trial court directed that out of the total fine of Rs.8,000/- as above, an amount of Rs.7,000/- shall be paid to the victim by way of compensation.

3. The prosecution story is revealed from the complaint dated 11.12.2015 lodged at Kalkaji Police Station by the mother of the victim. It was stated therein *inter-alia* that the complainant's daughter aged about 2.5 years, while playing in the evening at around 05.30 pm on 09.12.2015, went to the *jhuggi* of the appellant which was located next to the complainant's *jhuggi*. As her daughter did not return home for long, the complainant (PW-5) went to Sarvodaya Camp Park in search of her daughter where she came to know from her brother-in-law that the appellant had taken her to Hans Raj City Park for outing.

3.1 It was stated in the complaint that despite the brother-in-law of the complainant called the appellant asking him to bring back the victim, the victim did not return even after passage of more than 15 minutes. The complainant reached Hans Raj City Park in a taxi at about

06.30 pm. At that time, she saw the appellant along with her daughter. She took her daughter to home, where her daughter went asleep. It was stated that upon waking up at around 07.00 pm, she started crying, pulling her *pyjami* (Exh.6).

3.1.1 According to the complainant, when she removed the *pyjami* of her daughter, blood was noticed and further that the victim-daughter told the complainant that the appellant had put his private part inside her private part. The complainant called her husband, who came at about 09.30 pm. Dr. Rajesh Parthasarthy (PW-1), who was a private doctor, was consulted who advised them to visit the police station, it was stated. It was alleged that the appellant and his family had been threatening them to settle the matter.

3.2 First Information Report[5] No.1085 of 2015 was registered on 11.12.2015 for the offences punishable under IPC and POCSO. Statement under Section 161, Code of

[5] **Hereinafter, "FIR"**

Criminal Procedure, 1973[6] of the victim, though was sought to be recorded, the victim could not say anything because of her tender age of 2.5 years. Statements of the father and uncle (*chacha*) of the victim were thereafter recorded under Section 161, Cr.PC. Statement of the complainant (PW-5) under Section 164, Cr.PC was recorded.

3.2.1 A chargesheet came to be filed on 24.03.2016 for the offences punishable under Sections 363, 376 and 506, IPC and Sections 4 and 5 of the POCSO Act. The trial court framed the charge on 12.07.2017 in respect of the offences punishable under Sections 363 and 506, IPC and under Section 4 of the POCSO Act. The prosecution, in course of the trial, examined in all 13 witnesses.

3.3 The trial court, in convicting and sentencing the appellant, took the view that the evidence of the mother of the victim-complainant (PW-5) stood corroborated by Dr. Rajesh Parthasarthy (PW-1), as according to the trial court, the narration by both matched with each other. The trial court was also of the view that the other evidence on record

[6] **Hereinafter, "Cr.PC"**

supported the prosecution story and that the evidence of uncle of the victim (PW-6A) was also supportive, negativing the defence argument that the uncle (*chacha*) of the victim was an interested witness. The trial court relied on the judgment of this Court in **Seeman alias Veeranam vs. State, By Inspector of Police**[7] to accept the evidence of PW-6A for furthering the prosecution story in addition to the evidence of PW-5 and PW-1.

3.4 While confirming the conviction and sentence of the appellant, the High Court proceeded on the same reasoning as that of the trial court to observe that the evidence of mother of the victim (PW-5) and Dr. Rajesh Parthasarthy (PW-1) was corroborative with each other and that the incident of the appellant taking the victim to the park etc. was revealed from the deposition of uncle of the child (PW-6A). The High Court recorded the finding that the victim was taken away from the legal guardianship and held that the offence under Section 361, IPC was made out. The High Court was of the view that the alleged contradictions in the

[7] **(2005) 11 SCC 142**

statement of the witnesses were only on peripheral aspects and did not have the effect of discrediting the prosecution case.

3.4.1 The High Court referred to Section 29 of the POCSO Act, in particular, which raise a statutory presumption about the commission of the offence under POCSO Act. After discussing the evidence along with, took the view that the legal presumption of guilt would arise against the accused. The High Court stated that the burden would shift on the accused to rebut the presumption. The age of the victim and the attendant circumstances became aggravating factors as per Section 5(m) of the POCSO Act attracting enhanced punishment under Section 6 of the POCSO Act, stated the High Court. The contents of the FSL report were not accepted by the High Court on the ground of intervening time, stating that it was quite possible that the mother may have washed the *pyjami* of the victim.

4. Heard learned advocate on record Mr. Pulkit Prakash with other learned advocates for the appellant and learned Additional Solicitor General Mr. Davinder Pal Singh assisted by other appearing learned advocates for the respondent, at length.

4.1 Learned counsel for the appellant elaborated the contradictions in the ocular evidence relating to the details of the occurrence of the incident to further assert that the medical evidence did not support the prosecution case. On the other hand, on behalf of the respondent, learned Additional Solicitor General vehemently supported the impugned judgment and order of the High Court by submitting that the appellant was guilty of serious offence of committing rape on a girl of tender age and was rightly convicted and sentenced under the provisions of the POCSO Act and IPC. According to the submissions of the respondent, the discrepancies in the evidence could not be said to be of minor nature, and did not discredit the prosecution case.

5. Now, the prosecution evidence in this case, more particularly about accounting for and narrating the alleged incident is comprised of the testimony of mother of the victim-complainant (PW-5), uncle *(chacha)* of the victim or brother-in-law (*devar*) of the complainant (PW-6A) and Dr. Rajesh Parthasarthy (PW-1) who was the private doctor to whom the victim was stated to have been taken for the first time after the occurrence of alleged incident.

5.1 The medical evidence, in addition to the testimony of PW-1, included the evidence of Dr. Varnit, who was the only doctor who physically examined the victim. Dr. Mansi (PW-7), who appeared on behalf of Dr. Varnit had examined the victim. Dr. Naresh Kumar (PW-8), who was the FSL expert examined. Dr. Haritha Maddirala (PW-9) identified the signature of Dr. Varnit. FSL report was Ex.PW-8/A. Constable Kusum (PW-3) accompanied the Investigating Officer to AIIMS hospital on 11.12.2015 for conducting the medical examination of the victim and claimed to have witnessed the doctor conducting the examination.

5.1.1 Also examined was one Ram Bahori, ASI (PW-4) who stated about the registration of the FIR. Head Constable Dharmender (PW-6) seized the *pyjami* of the victim having joined the investigation with Investigating Officer on 11.12.2015. Inspector Krishan Kumar (PW-10) conducted the inquiry pursuant to the direction of the court regarding identification of the *pyjami* of the victim. Inspector Pankaj Gulia (PW-11) conducted inquiry and prepared the report. Inspector Pawan Kumar (PW-12) was examined who *inter-alia* stated that pursuant to the directions of the court, he sought clarification from the AIIMS regarding FSL findings and the alleged blood seen by the mother of the victim and Dr. Rajesh Parthasarthy (PW-1).

5.2 Eying the evidence on record analytically, the version of PW-5 was that, on the day of incident, her daughter had been playing in front of her *jhuggi* at around 05.30 pm, she went to the *jhuggi* of the appellant which was quite nearby to her *jhuggi* and did not return back. According to PW-5, she contacted her *devar* (PW-6A) to know that the appellant had taken her daughter to Hansraj City Park. PW-5 and PW-6A both went to Hansraj City Park and when reached there, according to say of PW-5, she saw the appellant coming back along with her daughter. When PW-5 asked the appellant as to why he had taken her daughter, the appellant told her that he had to lit fire in the park, that is why he took her daughter with him.

5.2.1 According to PW-5, on reaching home, the victim went asleep, woke up at around 7.30 pm and asked PW-5 to take her to toilet where she could not pass her urine and started crying. According to the victim, stated PW-5, the appellant had committed sexual act with her by contacting her private part. The say of PW-5 was that blood was noticed on the *pyjami* of her daughter. PW-5 stated that she called her husband and went to the dispensary of Dr. Rajesh Parthasarthy (PW-1) at around 9.30 pm in the night.

5.2.2 Dr. Rajesh Parthasarthy (PW-1) to whom the victim was stated to have been taken, deposed in his testimony that one woman along with her minor daughter had come to his place at about 4-5 pm and that the daughter had worn a *pyjami*. It was further stated by PW-1 that blood spots were noticed on the front portion of the *pyjami*. PW-1 stated that he did not prepare any treatment papers nor treated the victim for the reason that the patient had not come for any medical treatment and that there was no need for any first-aid to be provided to the victim child.

5.2.3 Juxtaposing the versions of PW-5 and PW-1, the account narrated by both of them revealed manifest contradictions. While PW-1 stated that the victim was brought by PW-5 at about 4/5 pm on 09.12.2015 and that PW-5 was the only one who accompanied the victim, PW-5 deposed that she had gone to PW-1 at 9.30 pm on 09.12.2015 and that she went to PW-1 along with her husband. While the doctor (PW-1) mentioned the time of the coming of PW-5 with the victim at about 4/5 pm, but PW-5 mother's say was that they had gone in the night at 9.30 pm. This inconsistency could not be brushed aside to be a minor kind or insignificant in nature more particularly when read with the facts of the case and other attendant evidence.

5.2.4 Even independently, the evidence of PW-5 was crippled with the contradictions and omissions. She gave her evidence before the court in an embellished way with material improvements over her prior and initial account, particularly in light of what she stated in her statement under Section 164, Cr.PC. PW-5 stated in her deposition before the court that the accused told her that he had lit fire in the park and took the victim to the park, for that reason. In the cross-examination, PW-5 also made a specific statement that the victim had told her that the appellant had committed a penetrative sexual act with her. However, noticeably these two facts and statements were not made in the FIR which was the first account given complaining about the offence.

5.2.5 A close reading of the evidence of PW-1 raises doubts as to the credibility of what he said. PW-1 stated that he did not prepare any case papers and that PW-5 and the victim did not come for any medical treatment. While according to PW-1, he himself informed by telephone Kalkaji Police Station that a child had come who was a victim of sexual assault, none of the police witnesses confirmed in their evidence about receiving any such call from PW-1. The incident allegedly took place on 09.12.2015 whereas the FIR was registered on 11.12.2015. The deposition of PW-1 in its very nature, coupled with the version of PW-5, in stating facts, reeled into unreliability and remained devoid of trustworthiness.

5.3 Turning now to the medical evidence on record, Dr. Rajesh Parthasarthy (PW-1), who stated to have examined the victim in the first instance on 09.12.2015, noticed reddishness on her *pyjami*. The evidence of PW-1 did not inspire creditworthiness for at least two good reasons. Firstly, there were discrepancies in his own testimony, and secondly, his version remained contradictory with other evidence. While PW-1 noticed reddishness on the private part of the victim, Dr. Varnit (PW-9/A) found no injury, nor any bloodstains present over the vulval area of the victim. Dr. Varnit further stated that the hymen of the victim was intact without any abnormality.

5.3.1 While the prosecution case was that the accused had committed a penetrative assault on the victim, Dr. Naresh Kumar, FSL Expert (PW-8) deposed that 7 parcels which were received at the Forensic Science Laboratory, Rohini and which were subjected to biological and DNA tests, no semen was detected on any of those exhibits. There was no male DNA which could be isolated from the relevant exhibits, PW-8 testified. The FSL report was proved by the evidence of PW-8, who, in his cross-examination, clarified to state that the blood could not be detected on the *pyjami* of the victim. In other words, the say of PW-1 and PW-5 about noticing the blood spots on the *pyjami* of the victim was falsified, and those aspects were dispelled by the said FSL expert as well in the FSL examination itself.

5.4 In a given state of facts, it may be a true proposition that the absence of injury or absence of semen does not *ipso facto* disprove the rapist act. **State of U.P. vs. Babul Nath**[8], was relied on by the prosecution for the aforesaid proposition. However, the instant case has a conspicuous differentiating factor inasmuch as the doctor's evidence, as highlighted above, read with the FSL report, completely ruled out the possibility of any penetrative act.

5.4.1 Even Dr. Mansi of AIIMS (PW-7) who appeared on behalf of Dr. Varnit and examined the victim in terms stated that though the child was brought with alleged history of

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[8] **(1994) 6 SCC 29**

sexual assault and pain in the vulval region, however, the physical examination revealed that nothing was abnormal or unusual. Dr. Mansi identified the handwriting and signature of Dr. Varnit reinforcing the proof of the expert medical opinion of Dr. Varnit.

5.4.2 In the totality of medical evidence emerging, it would indeed not be in the realm of guesswork, if it is concluded that even if the theory of reddishness is accepted for the sake of as furthered by PW-5, it could have occurred for any other reason. None of the medical experts suggested any abnormality much less noticing of blood on the *pyjami* or supporting the theory of reddishness. The medical evidence comprises of FSL Report and the testimony of the expert doctors individually and collectively hardly supported the prosecution case.

5.5 Having regard to the telling medical evidence as above, this Court is not inclined to believe the say of PW-1 and PW-5 that blood spots were found on the *pyjami* of the victim or that the reddishness on her private part indicated the sexual aggression on her on part of the accused. The reading of evidence indicated not merely an absence of penetration but negatived the very theory of sexual assault.

5.6 Rai Sandeep alias Deepu vs. State (NCT of Delhi)[9], though was a case of gangrape, the conflict in the oral as well as forensic evidence in that case regarding alleged forcible sexual intercourse, is comparable to the facts of the present case. The prosecution story in that case was that the accused had knocked the door in the night at about 01.30 am, entered the house, and committed gangrape, however, only an abrasion of minute nature was found on the right side of the neck of the victim below the jaw and no other injury on the private part of the prosecutrix was noticed. Like in the present case, there were material variation in the complaint and what was deposed thereafter by the witnesses, in that case by the prosecutrix.

5.6.1 In **Rai Sandeep alias Deepu** (supra), this Court stated that although in a given case the sole evidence of the prosecutrix can be the basis to prove the offence, the evidence has to be of sterling quality. If the witness is not

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[9] **(2012) 8 SCC 21**

found to be a sterling witness, the court would be slow to rely on the version of that witness especially when they contain contradictions within or stand with non-corroboration from the other evidence.

5.7 The observations in **Rai Sandeep alias Deepu** (supra) also repeated in **Ganesan vs. State represented by its Inspector of Police**[10] as to who can be said to be a sterling witness are relevant to be noticed for discarding the testimony of PW-5 as not creditworthy, extracting from **Rai Sandeep alias Deepu** (supra),

> "…..the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused."
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> (Para 22)

[10] **(2020) 10 SCC 573**

5.7.1 It was observed that there should be no prevarication in the version of such a witness. The witness should be in position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it.

5.7.2 It was further stated that the test to be applied is akin to one applied for appreciating the circumstantial evidence, stated this Court,

> "….Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished."
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> (Para 22)

5.8 In the present case, the prosecution projected the mother of the victim (PW-5) to be a prime witness for having the knowledge and occurrence of the incident. However, it could be well said in light of the evidence of PW-5 discussed above along with the other attendant evidence, the evidence of PW-5 could not be treated as the evidence of a sterling witness.

5.9 The various gaps in the testimony of PW-5, contradictions with evidence of other witnesses and the FSL and medical evidence revealing quite contrary, the prosecution story led by the evidence of PW-5 never remained intact but miserably descended to the stage of lack of proof. In any case, the prosecution could not establish the guilt of the accused beyond reasonable doubt.

6. The case does not end here. Stood in the background of the demolished prosecution case, a probable and acceptable defence version emanating from the evidence. It was the stand of the defence that the whole complaint and the allegations therein were generated and acted upon by the complainant out of enmity. In this regard, the statement of PW-5, that is the mother of the victim with regard to her cross-examination may be noticed. PW-5 stated and admitted in her cross-examination that there was a common water connection for four houses in the cluster of *jhuggis* which included the house of PW-5. She further stated that the *jhuggi* of accused Deepak was situated adjoining to her *jhuggi* and at that time 24 hours water supply through the said water connection was not available and that they used to store the water in various utensils and containers.

6.1 Although it was sought to be suggested by PW-5 that she did not keep the utensils and containers outside the *jhuggi* of accused, the factum of quarrel between the side of the complainant and the side of the accused over the water sharing and water fetching clearly came out from the cross-examination of PW-5. The case of the defence that it was this enmity relating to water sharing between the two sides led to trigger the action on the part of the complainant in filing the complaint with wrong and baseless allegations. The factum of common water connection amongst the four houses including the house of PW-5 etc. and quarrel in that regard were the proved aspects.

6.2 In wake of the inconsistent prosecution evidential version, further weakened by non-supportive medical evidence, the story of previous enmity on account of water quarrel could gain cogent ground to become believable and acceptable. It could therefore be said that the complaint was a motivated one filed with ill-intention and out of enmity.

7. Proceeding further, in the instant case, a close examination of the manner of appreciation of evidence and the consequent findings recorded by the Trial Court go to show that the Trial Court concluded that the prosecution could prove that the appellant-accused took the minor child from the lawful custody of her guardians, thereby the essential ingredients of the offence of kidnapping as defined under Section 361, IPC were established. The Trial Court, thereafter, proceeded to refer to Section 29 of the POCSO Act and with such reference in the background, proceeded to consider and appreciate the evidence concerning the commission of offence under the POCSO Act. It appeared on an attentive reading of the reasoning supplied by the Trial Court that it discussed and analysed the evidence under the shadow of Section 29 of the POCSO Act. Section 29 creates a statutory presumption, to ultimately conclude that the accused was guilty of the offence under the POCSO Act, liable to be sentenced for such offence.

7.1 Section 29 of the POCSO Act raises a presumption as to certain offences against a person who is prosecuted for committing or abetting etc. the offences. It reads thus,

> "**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."

7.1.1 In the same way, Section 30 of the POCSO Act raises presumption of culpable mental state on the part of the accused, which is reproduced herein,

> "**30. Presumption of culpable mental state**.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he

> had no such mental state with respect to the act charged as an offence in that prosecution.
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> (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.
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> *Explanation.*—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

7.1.2 Section 29 operates to provide that where a person is prosecuted for committing any offence under Sections 3, 5, 7 and 9 of the Act and where the victim child is below the age of 16 years, the court shall presume that such person has committed the offence, unless the contrary is proved. Section 30 pre-supposes a culpable mental state *mens rea* on the part of the accused. At the same time, it provides that a defence is possible to be raised by the accused to prove the fact that he had no such mental state with respect to the act charged as an offence against him. The factum of culpable mental state can be said to be proved, as sub-section (2) mentions, only when the court believes it to accept beyond reasonable doubt and not on the preponderance of probability.

7.1.3 The presumptive provisions of Sections 29 and 30 of the POCSO Act are a departure from the cardinal rule in criminal jurisprudence that the accused is presumed to be innocent till proved guilty. While a presumption of innocence of an accused runs through the jurisprudence of administration of justice in criminal cases, the legislature in the modern times has enacted in certain statutes, the provision which presumes, on part of the accused, about commission of offence. These presumptive provisions pre-suppose by creating a statutory presumption, the commission of act of offence and the existence of culpable mental state on part of the person accused of the offence under the statute concerned, until otherwise proved.

7.1.4 The presumption that the accused is guilty until contrary is proved is described as rule of reverse burden, which at the threshold discards the theorem of presumption of innocence. The provisions regarding presumption of guilt are enacted having regard to the gravity of the offence provided under different statutes and because of its serious and adverse consequence on the society. The POCSO Act is one such statute which is enacted with the object that it is a law enacted to protect children from offences of sexual assault, sexual harassment and pornography conduct by the committers of such heinous crime.

7.2 Similar provisions like Section 29 and Section 30 in the POCSO Act raising presumption of guilt and providing for rule of reverse burden are found in other statutes also. They are Sections 35 and 54 in the Narcotic Drugs and Psychotropic Substances Act, 1985[11], Section 20 in the Prevention of Corruption Act, 1988, Section 57 in the Wild Life (Protection) Act, 1972, Section 10C in the Essential Commodities Act, 1955, Section 10(7-B) in the Prevention of Food Adulteration Act, 1954, Sections 123, 138A and 139 in the Customs Act, 1962 and Section 39 in the Foreign Exchange Management Act, 1999. Sections 138 and 139 of the Negotiable Instruments Act, 1881 also create presumption about existence of certain facts relating to negotiable instruments and their negotiability.

[11] **Hereinafter, "NDPS Act"**

7.3 It has to be stated that presumptions of such kind as provided in Sections 29 and 30 of the POCSO Act are not absolute presumptions. The Bombay High Court in **Navin Dhaniram Baraiye vs. State of Maharashtra, through P.S.O., P.S. Ajni, District Nagpur**[12] pertinently observed about the nature and operational ambit of Section 29 of the POCSO Act,

> "A perusal of the above quoted provision does show that it is for the accused to prove the contrary and in case he fails to do so, the presumption would operate against him leading to his conviction under the provisions of the POCSO Act. It cannot be disputed that no presumption is absolute and every presumption is rebuttable. It cannot be countenanced that the presumption under Section 29 of the POCSO Act is absolute. It would come into operation only when the prosecution is first able to establish facts that would form the foundation for the presumption under Section 29 of the POCSO Act to operate."
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> (Para 18)

7.3.1 In the same paragraph, the High Court proceeded to state,

> "Otherwise, all that the prosecution would be required to do is to file a charge sheet against the accused under the provisions of the said Act and then claim that the evidence of the prosecution witnesses would have to be accepted as gospel truth and further that the entire burden would be on the

[12] **2018 SCC OnLine Bom 1281**

> accused to prove to the contrary. Such a position of law or interpretation of the presumption under Section 29 of the POCSO Act cannot be accepted as it would clearly violate the constitutional mandate that no person shall be deprived of liberty except in accordance with procedure established by law."
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> (Para 18)

7.4 The statutory presumptions cannot be read to mean that the prosecution version is liable to be treated as gospel truth in every case. It has to be additionally observed by this Court the presumptive provisions notwithstanding, the courts are not absolved from discharging their essential duty to analyse the evidence on record in light of the features emerging in a particular case. The court should not mechanically accept the *ipse dixit* of the prosecution riding on the provisions regarding presumption of guilt to give a stamp of approval to every prosecution even if they are absurd or improbable in its story. At the end of the trial, the accused should not stand at a discount or at disadvantage only for the reason that the particular statute under which he is tried for the offence contains presumptive provisions about the guilt of the accused.

7.5 The reverse burden contemplated in presumptive provisions could be said to be an additional weapon in the armoury of prosecution. However, this arm could be thwarted by the accused by leading evidence to the contrary. Differently stated, the presumption of commission of offence or the presumption of culpability mental state are rebuttable presumptions. The truthfulness of the factum raised by way of statutory presumptions can be countered by the accused by leading evidence. Although the prosecution may have established the primary facts relating to commission of offence, once the accused discharges his burden of shifting onus to be able to show that the state of things are otherwise or that the accused raises a valid defence, the presumption of guilt and culpability would start disappearing.

7.5.1 The rebuttal of presumption by the accused could be in several ways as may be permissible in law. The accused may demolish the prosecution version by discrediting the prosecution witnesses or falsify them in the cross-examination. The presumption could be kept at bay by showing inherent inconsistencies and contradictions in the evidence of the prosecution. The rebuttal may be achieved by pointing out the absurdities and the gaps in the prosecution story and by bringing out the loopholes therein. The absence of proof of relevant facts, mismatch of ocular and medical evidence and non-corroboration of the evidence in different walks may also be good tools for rebuttal. The accused may also raise available statutory defence or factual defence to counter the allegations of the prosecution. He may by his version in defence show the improbability of the prosecution case.

7.5.2 The presumption of commission of offence and that of guilty mental state which has been applied at the beginning of the trial in view of the presumptive provisions in that regard, may at the stage of the conclusion of evidence, vanish if the reverse burden is successfully discharged by the accused to rebut the prosecution case. In ultimate analysis, it will be the total canvass of evidence which would play a decisive role. The presumptive provisions do not operate to oust the evidence standing in favour of the accused.

7.5.3 The provision like Section 29 and Section 30 of the POCSO Act is only a rule shifting the evidential burden. Such presumption of guilt or *mens rea* has a role to play in the initial stages of the trial. Normally, the prosecution would fail even if the accused does not adduce any evidence or in the event where the evidence adduced by the prosecution does not prove the guilt of the accused beyond reasonable doubt. However, when the presumption of the nature such as Section 29 of the POCSO Act operates, once the prosecution adduces the basic and foundational facts constituting the offence. It would be presumed that the accused has committed or abetted or attempted to commit the offence alleged against him, unless contrary is proved by him. In other words, once the prosecution discharges the initial burden of showing the existence of essential facts constituting the offence, the ball would lie with the accused who has to discharge thereupon the onus to disprove the fact regarding commission of offence. The burden shifts on the accused to prove his innocence.

7.6 Again, the provision raising presumption of guilt against the accused cannot operate in any way to discount the norms of fair trial and the principles governing the fair trial realm. This Court in **Naresh Kumar alias Nitu vs. State of Himachal Pradesh**[13], while speaking with reference to the similar provision under the NDPS Act *inter alia* observed that in the stringent nature of the provisions of the NDPS Act, the concept of reverse burden of proof, the presumption of culpability under Section 35 and the presumption against the accused under Section 54, any reliance on Section 114 of the Evidence Act could be applied, in any case, only at the risk of a fair trial to the accused, suggesting thereby that the operation of provisions of such nature cannot be permitted to discount the fundamental norms of the fair trial, which is the right of the accused under Article 21 of the Constitution.

7.7 The provision regarding presumption of guilt or that the rule of reverse burden requiring the accused to prove his innocence does not change the rule of standard of proof as

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[13] **(2017) 15 SCC 684**

normally applied in the criminal cases. The principle is to be highlighted that even where there exists a presumptive provision with reverse burden of proof, the prosecution is obliged in law to prove the guilt against the accused beyond reasonable doubt. While the prosecution will have to establish the culpability ad guilt of the accused beyond reasonable doubt and that the accused cannot be held guilty on the preponderance of probability, when it comes to proving the innocence by the accused, the standard of proof would be the preponderance of probability. In other words, the accused would be able to counter the prosecution case by raising a defence and thereby to show himself innocent on preponderance of probability.

7.8 This Court in **Noor Aga v. State of Punjab and Another**[14] observed in the context of the similar provision under the NDPS Act emphasising that the presumption of culpability against the accused would not in any manner whittle down the rights of the accused which are available as part of the fair trial and to prove his innocence,

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[14] **(2008) 16 SCC 417**

> "An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established."
>
> (Para 58)

7.8.1 The Court further stated,

> "With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt."
>
> (Para 59)

7.8.2 In **Naresh Kumar** (supra) also, this Court underlined that the presumption against the accused about culpability does not dispense with the obligation on part of the prosecution to prove charge beyond all reasonable doubt. It was stated that the presumptive provision could not justify the conviction on the basis of preponderance of probability. This Court held that the reversal of acquittal of the appellant by the High Court was speculative by misapplying the presumptive provision about culpability.

7.8.3 The principle was reiterated in **Gangadhar alias Gangaram vs. State of Madhya Pradesh**[15]. This Court stated that the gravity of sentence and stringency of the provisions of the NDPS Act which contain the provisions regarding presumption of guilt of the accused, may in a way call for heightened scrutiny of evidence for the establishment of foundational facts by the prosecution, however, the guilt of the accused has to be invariably established beyond reasonable doubt.

7.8.4 The accused facing trial under the POCSO Act on the presumptive provision of guilt operating against him may rebut the prosecution case by offering an explanation which might reasonably be true and which is consistent with his defence of innocence. It is not that the accused is not required to establish his plea of defence by leading proper evidence, but the degree and character of proof which the

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[15] **(2020) 9 SCC 202**

accused is expected to provide in substantiation of his plea, cannot be equated with the degree and extent of proof expected from the prosecution which will have to invariably prove its case against the accused beyond reasonable doubt.

7.9 This Court in **V.D. Jhingan vs. State of Uttar Pradesh**[16] dealt with Section 4(1) of the Prevention of Corruption Act, 1947 interpreting the expression "unless the contrary is proved", to observe thus,

> "It is well-established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case; it is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt."
>
> (Para 2)

[16] **AIR 1966 SC 1762**

7.9.1 This Court in **Trilok Chand Jain vs. State of Delhi**[17] observed,

> "If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy it cannot be rejected out of hand as stillborn."
>
> (Para 11)

8. The operation of the statutory presumptions would also not permit the departure from the well-recognized principle, which is the golden thread running through the web of criminal justice administration that if two views are possible on the evidence adduced in the case, one pointing towards guilt of the accused and the other towards innocence, the view which is favouring the accused should be adopted. This again reiteration in different way of the dictum that the guilt of the accused has to be proved beyond reasonable doubt and not on the basis of preponderance of probability.

8.1 In **Kali Ram vs. State of Himachal Pradesh**[18], this Court observed that unless the evidence adduced in the case

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[17] **(1975) 4 SCC 761**
[18] **(1973) 2 SCC 808**

is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused, observed in paragraph 25.

8.1.1 **Kali Ram** (supra) also answered the aspect as to whether the above proposition should be applied and would hold truth for trying an accused person for the offences under the statute which raise presumption of guilt and culpability against the accused. It was observed,

> "There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal."
>
> (Para 23)

8.1.2 In **Kali Ram** (supra), following was further stated,

> "It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld

> from the accused. The Courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record……"
>
> (Para 26)

8.1.3 It was further observed that if an innocent accused is not acquitted, it would against not only the interest of the accused but also against public interest,

> "….Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, in our opinion, is more apparent than real. As observed on p. 3 of the book entitled *The Accused* by JA Coutts 1966 Edition, "When once it is realised, however, that the public interest is limited to the conviction, not of the guilty, but of those proved guilty, so that the function of the prosecutor is limited to securing the conviction only of those who can legitimately be proved guilty, the clash of interest is seen to operate only within a very narrow limit, namely, where the evidence is such that the guilt of the accused should be established. In the case of an accused who is innocent, or whose guilt cannot be proved, the public interest and the interest of the accused alike require an acquittal."
>
> (Para 26)

9. In the case of conviction or acquittal of the accused facing trial for any criminal offence, what is necessarily involved is the issue of his personal liberty. When an issue concerning the liberty of an individual is involved to be dealt with in law, the court has to be extra careful and cautious. The court should always undertake objective assessment and appreciation of evidence. Therefore, in addressing the entitlement of the accused to the acquittal, the court should not overweigh itself with the provisions like that of Section 29 or Section 30 of the POCSO Act.

9.1 Even as the statute concerned may be containing such presumptive presumption, the appreciation of evidence should be guided by all normal standards and yardsticks to be applied in law. The court is not expected to influence itself by the existence of presumptive provision so as to lean towards the prosecution while analysing and interpreting the evidence. The presumptive provision may have its play at the primary stage to have the effect of shifting the onus on the accused, however once the evidential emptiness is found in the prosecution case and the prosecution version lacks credibility or borders perversity, the presumption of guilt would no longer remain effective.

9.2 The court should not therefore be overshadowed or inhibited by the provision of presumption of guilt and commission of offence by the accused and would weigh the evidence with usual principles. The accused should be given full room to prove to the contrary to displace the presumption and demolish the case of the prosecution.

10. In the present case, the appellant-accused has been successful in rebutting the prosecution story. Even if initially the provisions of Section 29 and Section 30 of the POCSO Act operated to raise presumption against the accused, the evidence of the prosecution manifested inconsistencies, improbabilities and material contradictions. The medical evidence was non-corroborative in all respects, suggesting the non-commission of offence on part of the appellant. The defence story put forth by the appellant was cogent and its evidentiary value had the effect of crumbling the prosecution story. In the total perspective of evidence on record, it could hardly be said that the prosecution was able to prove the guilt of the appellant, much less beyond reasonable doubt.

10.1 For all the foregoing discussion and reasons, the impugned judgment and order dated 03.07.2025 passed by the High Court of Delhi confirming the trial court judgment to uphold the conviction and sentence of the appellant under Section 363, IPC and under Section 6 of the POCSO Act is liable to set aside. The same is hereby set aside. The appellant is held not guilty and stands acquitted of the aforesaid offences.

10.2 He shall be forthwith released if behind the bars, unless his custody is required for any other offence.

11. The appeals stand allowed.

……………………………………,J.
[PRASHANT KUMAR MISHRA]

…………………………………,J.
[N.V. ANJARIA]

NEW DELHI;
SEPTEMBER 17, 2026.