



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-A-1077-2023 (O&M)

Date of Decision: September 03, 2025

State of Haryana

.....Appellant (s)

Vs.

Surinder Kumar

.....Respondent(s)

**CORAM: HON'BLE MS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MRS. JUSTICE RAMESH KUMARI**

**Present: Mr. Shiva Khurmi, DAG, Haryana
for the appellant.**

RAMESH KUMARI J. (ORAL)

CRM-32691-2023

Application has been filed for condonation of delay of 148 days in filing the application for grant of leave to appeal.

Keeping in view the averments made in the application duly supported by affidavit of the concerned official, we are of the considered opinion that sufficient cause is made out to condone the delay as it is settled principle that each and every day's delay is not to be explained. Accordingly, delay of 148 days in filing the aforesaid application is hereby condoned.

CRM stands disposed of

CRM-A-1077-2023

1. The present application has been filed under Section 378(3) Cr.P.C. (corresponding Section 419(3) of BNSS) by the State for grant of leave



to file appeal against the judgment of acquittal dated 29.11.2022 rendered by the then learned Sessions Judge, (Fast Track Special Court, under POCSO Act), Yamuna Nagar at Jagadhari, in FIR No.215 (Ex.P-18), dated 27.08.2020, under Section 4 of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act), at Police Station Chhachhrauli.

2. Record reveals that FIR (Ex.P-18) against the accused was registered on the basis of complaint (Ex.P-4) of PW-2-victim alleging that on 27.08.2020, at around 3:00 p.m., she had gone to the house of Mayank son of accused-Surinder, who is studying alongwith her to bring the copy of school work. When she went to the house of Mayank, respondent/accused was alone at the house. He caught hold of her arm and took her to his bathroom, situated on the roof of the house and after removing her lower, committed bad act with her. After reaching her home, she informed her sister about the incident, who told her mother. She also informed her family members that accused threatened her that in case she disclosed about the occurrence to anybody, he would kill her.

3. Initially FIR (Ex.P-18) was registered under Section 6 of the POCSO Act, which was later on deleted and Section 4 of the POCSO Act was added. Statement of witnesses were recorded during investigation. PW-4 was got medically examined. Accused was also got medically examined. Medical and forensic samples were duly parceled, deposited with police and sent to FSL. After completion of investigation, challan was presented before learned trial Court.

4. Learned trial Court complied with the provisions of Section 207 Cr.P.C. (corresponding Section 230 of BNSS) and charge under Sections 376



(3), 506 IPC and Section 5 (M) (P), punishable under Section 6 of POCSO Act was framed on 12.01.2021 and the accused pleaded no guilty.

5. The respondent-accused is granted benefit of doubt for the charges which was framed against him under Section 4 of the POCSO Act, 2012. The learned Trial Court came to the conclusion that though the age of victim is proved to be 12 years 5 months, since her date of birth is 26.03.2008 and she was minor on the date of alleged incident but the prosecution failed to prove its case against the accused. Therefore, in view of evidence on record and totality of circumstances, the prosecution has failed to prove its case against the accused beyond shadow of doubt and accused is entitled for benefit of doubt. Extending the benefit of doubt to the respondent/accused, he is acquitted of the charges framed against him under Section 4 of the POCSO Act, 2012.

6. The learned trial Court appreciated the evidence and rendered the findings on the merits of the case but has not specifically framed any point for determination. Therefore, for the purpose of deciding this application, the following points for determination are framed:-

(i) Whether the prosecutrix was minor at the relevant time?

(ii) Whether the respondent/accused committed penetrative sexual assault upon the prosecutrix ?

(iii) Whether the presumption under Sections 29 and 30 of the POCSO Act can be raised against the respondent/accused?

7. Learned State counsel has vehemently argued that learned trial Court failed to appreciate the evidence. PW-4 victim had deposed against the respondent/accused. There was no justifiable reason as to why the minor girl



would depose against the respondent-accused and the learned Trial Court was not justified in granting the benefit of doubt to the accused and rendering the judgment of acquittal. She has specifically deposed about occurrence in her statement before the Court. She was medically examined and there is no reason for the prosecution to falsely implicate the respondent/accused.

8. Prosecution examined 09 witnesses before learned trial Court. PW-1 Mulakh Raj (Draftsman) who prepared the site plan Ex.P-1 of the place of occurrence. Victim herself stepped into the witness box as PW-2. Dr. Chhavi Mehta, Medical Officer (PW-5), who medico legally examined victim, took the clothes of victim and handed over the same to the police. She also took samples of vaginal swabs, cervical swab and pubic hair, Ex.MO-4, Ex.MO-5, Ex.MO-6 respectively of the victim and handed over to the police. PW-6 Dr. Prithvi Singh, (Medical Officer), medico legally examined the respondent/accused and proved MLR Ex.P-13 and gave the opinion that there is nothing to suggest that respondent/accused is incapable of performing sexual activity. He also took underwear Ex.MO-7, pubic hair EX.MO-8, coronal swabs MO-9 and blood samples EX.MO-11 of accused and converted the same into the parcel and handed over to the police. PW-7-Raj Kumar (Pharmacist) proved the date of birth of the victim vide Birth Certificate Ex.P-14. PW-8 Lady ASI-Menka proved the rough site plan Ex.P-15 at the instance of victim, application (Ex.P-11) for medical examination of victim and memo (Ex.P-6) parcel of clothes of victim. PW-9 SI Charanjeet Singh conducted a part of the investigation in this case and also proved memo Ex.P-6, (regarding taking in possession of parcel of clothes). Memo (Ex.P-7) vide which custody of victim was handed over to her father. Ex. P-8 is disclosure statement of the accused. Ex.P-9 demarcation of



place of occurrence. Application P-12 on the basis of which Mulak Raj, PW-1 prepared site plan (Ex.P1). Memo P-17 vide which birth certificate (Ex.P-14) of the victim was taken into police possession. He also proved FIR (Ex.P-18) and Endorsement (Ex.P-19). PW3-Male ASI Naresh Kumar proved the link evidence regarding deposit of case property with him and PW4-HC Labh Singh is attesting witness of Memos Exs.P-7, P-8, P-9 and P-10. Learned Public Prosecutor also tendered in evidence report of FSL vide PX.

9. Under Section 2D of the POCSO Act, 2012, the “child” means, any person below the age of 18 years. Prosecution examined PW-7 Raj Kumar, (Pharmacist), who proved the birth certificate of victim vide Ex.P-14. In this certificate, date of birth of victim is mentioned as 26.03.2008. The alleged occurrence is dated 26.08.2020.

10. The learned trial Court in Para 26 of the judgment rightly held that date of birth of victim is 26.03.2008 (12 years 05 months) and she is “child” under the definition of Section 2D of the POCSO Act. Moreover, the accused has not challenged the date of birth of a victim before the learned trial Court or before this Court, therefore, the victim is held as minor i.e. being below 18 years of age as on 26.08.2020 and the findings of learned trial Court regarding the date of birth of victim PW-2 are upheld.

11. The next important point is whether the respondent/accused committed penetrative sexual assault upon the prosecutrix and whether the presumption under Sections 29 and 30 of the POCSO Act can be raised against the respondent/accused ? The reasons given by the Trial Court for acquittal of respondent/accused are two fold. In short and substance, the points which weighed the Trial Court to disbelieve the statement of victim was non-



examination of her parents, whereas the respondent/accused had taken specific plea that wife of respondent/accused is working as Cook in the School, whereas father of victim is working as Sweeper in the same school. Father of the victim tried to take ration meant for school children and wife of respondent/accused objected. They had an altercation and for this reason, respondent/accused is falsely implicated in this case because father of a victim threatened the wife of respondent/accused that he will see her in future. Father of the victim got false case registered through his daughter upon the respondent/accused, who was husband of cook because he had dispute with wife of respondent/accused. DW-1 Jai Kishan son of Norata Ram and DW-2 Satish Kumar son of Dawarika Dass stated to this effect.

12. Another reason that weight the mind of learned trial Court is the absence of the injuries on the private part of victim and negative DNA report of the sample of vaginal swabs of PW-2.

13. The FSL DNA report is tendered vide Ex. PX. The learned trial Court in Para No. 29 observed as *“Further the DNA report Ex.PX clearly shows that no semen could be detected on any of the cloth of the child victim.....”* In para 30, it is also observed that *“ no semen having been detected anywhere on the clothes or person of the victim.”*

14. It is conceded by the learned State counsel that as per FSL report Ex.PX, no semen was detected from the samples of vaginal swabs Ex.MO-4, cervical swabs Ex.MO-5, pubic hair Ex.MO-6 and clothes i.e. Shirt (Ex.MO-1) Baniyan (Ex.MO-2), Capri (Ex.MO-3) of PW-2 victim. It is also come on record in testimony of PW-5-Dr. Chhavi Mehta, who medico legally examined PW-2-victim that there was no external injury seen on the person of the victim



and she during cross-examination also deposed that “*it is possible that if a mature person has physical intercourse with small child, injury will be there.*” Even if for the sake of arguments, it is presumed that the absence of injury could be attributed to non resistance to the alleged sexual assault or the extent of penetration but the fact remains that there was no external injury on the person of a victim and DNA report was negative. In such a situation, the solitary statement of victim is to be scrutinized with more care and caution. Although conviction can be based on the solitary statement of the victim but then the statement of victim has to be trustworthy, unblemished, credible and of sterling quality.

15. At the time of alleged occurrence, the victim was 11 years 05 months old and studying in 8th Standard in Government School. She has levelled allegations against the accused that “he removed his clothes and her clothes and committed bad act upon her”. She is not specific about the penetrative sexual assault allegedly committed by respondent/accused. Her allegation of “bad act” cannot be construed to the level “penetrative sexual assault” especially when FIR Ex.P-18 was not lodged on the basis of her statement recorded by investigating officer but it was on a written complaint Ex.P-4.

16. In such a situation, it was imperative for the investigating agency to get her statement under Section 164 Cr.P.C. (corresponding Section 183 of BNSS) recorded from the learned Illaqa Magistrate immediately after registration of FIR but her statement under section 164 Cr.P.C. (corresponding Section 183 of BNSS) was got recorded after two days of the registration of



FIR and the learned trial Court rightly observed that “the victim in all probability had given a tutored statement.”

17. The father and mother of victim were cited as witnesses but they were not examined by the prosecution and their evidence was given up. When the accused has taken a specific plea that father of the victim is working as a Sweeper in the school, where wife of respondent/accused is working as Cook and both of them had an altercation in the School about taking of ration by father of victim meant for school children, in such a situation, it was necessary for the prosecution to examine at least father of the PW-2 so that he could have confronted with the defence version that he had altercation with wife of respondent/accused on the matter allegedly taking away ration from the school, which was meant for school children. Thus, by non-examining father of the victim-PW 2 the learned trial Court rightly held that the benefit of doubt is to be given to the accused.

18. Learned trial Court also discussed the statement of DW-1 Jai Kishan and DW-2 Satish Kumar, who in their testimony before the learned trial Court explicitly narrated the reasons/motive for false implication of accused by deposing about altercation between wife of respondent/accused and father of the victim. The testimony of defence witnesses carries equal weight and credibility as the testimonies of prosecution witnesses and simply because defence witnesses are private witnesses, their testimonies could not be discarded and was rightly relied upon by the learned trial Court.

19. The learned trial Court observed that when two versions are possible, the accused should be given benefit of doubt and version, which is favourable to the accused, ought to be believed. Learned State counsel has



drawn our attention to Sections 29 and 30 of the POCSO Act, which reads as under:-

*“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.*

*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.*

(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.

20. Before raising the presumption of “reverse onus” on the accused as against the general principle of criminal law that prosecution must prove guilt against the accused beyond a reasonable doubt. The prosecution has to prove foundational fact by leading legally admissible evidence. The conditions before applying the statutory presumption of culpable intent against the accused, were enumerated in *Sahid Hossain Biswas Vs State of West Bengal*, in C.R.A. No.736 of 2016 with C.R.A.N No.1035 of 2017 decided on 04.05.2017 by Hon’ble Calcutta High Court. The relevant paragraphs are reproduced hereinunder:-



“ The law, therefore, provides for a reverse burden upon the accused in a prosecution under sections 3, 5, 7 and 9 of the aforesaid Act. The statutory presumption creates an exception to the ordinary rule of presumption of innocence available to an accused in a criminal trial and puts the onus on the accused to rebut such presumption and establish his innocence. Presumption of innocence is a basic human right which is a vital facet of fair trial rights enshrined in various international covenants like the Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights (to which India is a signatory) but is not a fundamental right under Part III of the Constitution. [See Noor Aga vs. State of Punjab, (2008) 16 SCC 417]. The concept of presumption of innocence has, in recent times, been reversed in many situations by creating statutory presumptions like under sections 113A, 113B or 114A of the Evidence Act shifting the burden on the accused to prove his innocence. Section 29 of the POCSO is, therefore, a species of such exception to the ordinary rule of presumption of innocence and must be borne in mind while appreciating the evidence of prosecution witnesses in a trial under the POCSO Act. The expressions "shall presume" and "unless contrary is proved" in the aforesaid provision creates a reverse burden on an accused to prove his innocence to earn an order of acquittal and absolves the burden of the prosecution to prove his guilt beyond reasonable doubt. How is the accused to discharge such burden? Sections 3 and 4 of the Evidence Act define the words 'proved', 'shall presume' and 'disproved' as follows:

Section 3:-

"Proved" - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.



"Disproved"- A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

Section 4: -

"Shall presume"--Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved."

A conjoint reading of the statutory provision in the light of the definitions, as aforesaid, would show that in a prosecution under the POCSO Act an accused is to prove 'the contrary', that is, he has to prove that he has not committed the offence and he is innocent. It is trite law that negative cannot be proved [see Sait Tarajee Khimchand vs. Yelamarti Satyam, (1972) 4 SCC 562, Para-15]. In order to prove a contrary fact, the fact whose opposite is sought to be established must be proposed first. It is, therefore, an essential prerequisite that the foundational facts of the prosecution case must be established by leading evidence before the aforesaid statutory presumption is triggered in to shift the onus on the accused to prove the contrary.

Once the foundation of the prosecution case is laid by leading legally admissible evidence, it becomes incumbent on the accused to establish from the evidence on record that he has not committed the offence or to show from the circumstances of a particular case that a man of ordinary prudence would most probably draw an inference of innocence in his favour. The accused may achieve such an end by leading defence evidence or by discrediting prosecution witnesses through effective cross-examination or by exposing the patent absurdities or inherent infirmities in their version by an analysis of the special features of the case. However, the aforesaid statutory presumption cannot be read to mean that the prosecution version is to be treated as gospel



truth in every case. The presumption does not take away the essential duty of the Court to analyse the evidence on record in the light of the special features of a particular case, eg. patent absurdities or inherent infirmities in the prosecution version or existence of entrenched enmity between the accused and the victim giving rise to an irresistible inference of falsehood in the prosecution case while determining whether the accused has discharged his onus and established his innocence in the given facts of a case. To hold otherwise, would compel the Court to mechanically accept the mere ipse dixit of the prosecution and give a stamp of judicial approval to every prosecution, howsoever, patently absurd or inherently improbable it may be.”

21. Thus, Statutory presumption under Sections 29 and 30 of the Act, does not mean that prosecution version has to be treated as a gospel truth. The presumption does not mean that Court cannot take into consideration the special features of the case. The presumption of a guilt against the accused would come into play only when the prosecution is able to bring on record the facts that would form the foundation for presumption. Otherwise all that the prosecution would be required to raise some allegations against the accused and to claim that the case as alleged by it, is true. The trial court needs to be on guard to see that application of presumption, without advertent to essential facts shall not lead to any injustice. Presumption under Sections 29 and 30 of the POCSO Act is not absolute. The statutory presumption would be raised only if the prosecution proves the essential basic/foundational facts and learned trial Court rightly held that the prosecution failed to prove its case against the respondent/accused beyond the shadow of doubt.



22. Therefore, keeping in view the cumulative background, we are of the considered opinion that prosecution failed to lead cogent and convincing evidence before learned Trial Court that respondent/accused committed penetrative sexual assault upon the prosecutrix PW-2 and presumption under Sections 29 and 30 of the POCSO Act can not be raised against the respondent/accused and Points No.2 and 3 for determination are decided against the prosecution and in favour of the accused. The judgment dated 29.11.2022 rendered by learned trial Court does not suffer from any perversity or infirmity or illegality as it has taken into account all the relevant statements and background of the parties. Therefore, keeping in mind the fact that there is double presumption of innocence in favour of a respondent/accused on account of the acquittal recorded, we are not inclined to interfere with the same.

23. Accordingly, for the reasons given above, the prayer for grant of leave to file appeal is declined and the present application is, hereby ***dismissed***.

24. Pending application(s), if any, also stand disposed of.

(MANJARI NEHRU KAUL)
JUDGE

(RAMESH KUMARI)
JUDGE

September 03, 2025
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Whether speaking/reasoned:	Yes
Whether reportable:	Yes