



2025:DHC:8164



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 16.09.2025*+ **CRL.A. 298/2025 & CRL.M.(BAIL) 557/2025 (for suspension of sentence)**

RAppellant

Through: Mr. Arjun Malik, Advocate

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State with Ms.
Puja Mann, Advocate and SI
Sangeeta Malik.+ **CRL.A. 473/2025 & CRL.M.(BAIL) 814/2025 (for suspension of sentence)**

HAppellant

Through: Mr. Dinesh Malik (DHCLSC),
Mr. Puneet Jain, Ms. Kiffi
Aggarwal, Advocates

versus

STATE THROUGH SHO PS BINDA
PUR & ANR.RespondentsThrough: Mr. Naresh Kumar Chahar,
APP for the State with Ms.
Puja Mann, Advocate and SI
Sangeeta Malik.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**



1. These criminal appeals have been filed, assailing the judgment dated 11.12.2024 [hereafter '*impugned judgment*'] and order on sentence dated 13.02.2025 [hereafter '*impugned order on sentence*'] passed by the learned Additional Sessions Judge-01 (POCSO), South West, Dwarka Court, New Delhi [hereafter '*Trial Court*'] in SC No. 667/2021 arising out of FIR bearing no. 757/2021, which was registered at Police Station Bindapur, Delhi for the commission of offence punishable under Section 324 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Section 6 of the Prevention of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].

FACTUAL BACKDROP

2. The present case concerns the child victim 'C', aged about six years. The account of her trauma, involving both sexual assault and physical abuse, came to light upon receipt of DD No. 80A on 13.08.2021. The said DD recorded that the victim had been assaulted by her parents with a hot *chimta*, causing burn injuries. The PCR van had taken the child to DDU Hospital, where her medical examination was conducted. During her medical examination, the victim disclosed that her father had beaten her on multiple occasions, inflicted burn injuries by exposing her to flame, and subjected her to sexual assault by touching and inserting fingers in her private parts. Due to her critical condition and mental trauma, she was not in a position to give a detailed statement at that stage, and she was provided counselling. In these circumstances, the FIR in question came to be registered against her parents.



3. Thereafter, the statement of the child victim was recorded before the Magistrate under Section 164 of Cr.P.C. In her statement, she revealed that her hand had been burnt by her father 'H', who also used to hang her from the fan in the house. She further stated that her mother 'R' would beat her, kick her in the stomach, and strike her with a *danda*. She also narrated that her parents used to beat her with bottles, deprive her of food, and burn her body with hot *chimtas*. Most significantly, she disclosed that her father 'H' would touch her private parts, including her vagina and chest, when her mother was away at work, and that he had subjected her to penetrative sexual assault by inserting his private part into hers, which caused her severe pain.

4. After investigation, a charge-sheet was filed against the accused persons. Charges were framed against appellant 'R' for offence under Section 323/34 of the IPC, Section 75 of the Juvenile Justice Act, 2015 [hereafter '*JJ Act*'] read with Section 34 of IPC, and for offence punishable under Section 17 read with Section 6 of the POCSO Act (*alternatively under Section 109 read with Section 376 (3)(2)(n) of the IPC*). The appellant 'H' was charged for offence under Section 323/34 of the IPC, Section 75 of JJ Act read with Section 34 of IPC, and for Section 6 of POCSO Act (*alternatively under Section 376(3)(2)(n) of IPC*) and for Section 10 of POCSO Act (*alternatively under Section 354 of IPC*).

5. During the course of trial, prosecution examined 12 witnesses, after which the statements of accused persons were recorded under



Section 313 of Cr.P.C., who then examined 3 witnesses in their defense.

6. After conclusion of trial, the learned Trial Court was pleased to convict the appellant 'R' and 'H' for the commission of offence under Section 75 of JJ Act read with Section 34 of IPC as well as Sections 323/34 of IPC. Appellant 'H' was also convicted for the offence punishable under Section 6 of POCSO Act and Section 376 of IPC *vide* impugned judgment dated 11.12.2024.

SUBMISSIONS BEFORE THE COURT

7. The learned counsel appearing for the appellants contend that the conviction recorded by the learned Trial Court is legally unsustainable and suffers from several infirmities. It is argued that the impugned judgment is based on conjectures and surmises without proper appreciation of the evidence recorded during trial. It is further submitted that the victim did not categorically name the appellants as having committed any offence against her at the time of her medical examination. It is argued that despite the prosecution examining twelve witnesses, none fully supported the prosecution case, and contradictions in the depositions of the child victim and other witnesses indicate that the appellants have been falsely implicated, allegedly at the instance of an NGO official with whom they had a prior enmity. The learned counsel submits that the child victim's statement was tutored and that, therefore, the appellants are entitled to acquittal. It is further contended that the child victim is the sole witness to prove the charges, and discrepancies in her statements



render the prosecution case doubtful. It is further argued that the learned Trial Court erred in observing that the presumption under the POCSO Act operates such that once the victim testifies, the onus shifts to the accused to rebut the presumption of culpability. The appellants submit that the victim herself has stated that appellant 'H' used to return home late and scold her, and that she did not tell appellant 'R' about her father's acts because her mother did not listen. It is therefore contended that the Trial Court's finding regarding the requirement of proving the presence of both accused and victim at the alleged place of occurrence is erroneous. The learned counsel further argues that the victim explained that appellant 'H' sexually assaulted her when appellant 'R' was at work, and in respect of appellant 'R', she did not disclose the acts of appellant 'H'. Even assuming that the prosecution, through the testimony of the child victim, had laid the foundation of the case and shifted the onus to the accused, the appellants discharged that onus in their statements under Section 313 of Cr.P.C., asserting that they were falsely implicated by a man associated with the NGO, who had a prior quarrel with them and acted out of revenge. It is also argued that due to the behaviour of her biological father, the child was mentally disturbed, and in her MLC she had mentioned that her biological father 'R' had beaten her. The appellants contend that she was in fact referring to her biological father and, because of those beatings, she was brought to the house of the appellants. Reference is also made to PW-2, who in cross-examination stated that the time and manner of injuries could not be precisely determined. The learned counsel for



the appellants submits that this further raises doubt regarding the identification of the persons who had inflicted the injuries. It is also contended that the *chimta* allegedly used in the assaults was never recovered from the possession of the appellants or the victim, which adds to the uncertainty of the prosecution case. In light of these contentions, it is argued that the conviction cannot rest solely on the testimony of the child victim, and the appellants pray that the impugned judgment be set aside and these appeals be allowed.

8. The learned APP for the State, on the other hand, contends that the appellants have been rightly convicted by the learned Trial Court based on cogent, credible, and corroborative evidence, including the testimony of the minor child victim and supporting medical and documentary evidence. It is submitted that the conviction is well-founded and stems from a detailed and reasoned judgment. The learned APP further points out that the victim child had consistently given a history of repeated physical assault, including beatings and burn injuries on her right arm and shoulder caused by the use of flame. It is also argued that the child victim had been brought by the appellants from the custody of her biological father by way of adoption, yet no adoption deed is on record. This, it is contended, renders the case serious, as the law governing adoption appears to have been compromised and the victim was kept illegally in the house of the appellants. The learned APP further notes that the person who had made the PCR call, examined as PW-10, has corroborated that he contacted the police after the child disclosed that



she had been burnt by her father and mother. It is contended that the defence advanced by the appellants is false and an afterthought. Moreover, the appellants have failed to rebut the statutory presumption under Sections 29 and 30 of the POCSO Act. In view of the above, it is submitted that the conviction of the appellants is fully justified and the present appeals deserve to be dismissed.

9. This Court has **heard** arguments addressed on behalf of the appellants as well as the State, and has perused the material on record.

ANALYSIS & FINDINGS

Relevant Provisions of Law

10. The appellants in this case have been convicted for commission of the following offences: Section 75 of JJ Act, Section 323 of IPC, Section 6 of POCSO Act and Section 376 of IPC.

11. Section 75 of JJ Act deals with punishment for cruelty to a child. It stipulates that whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child, or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with rigorous imprisonment which may extend to three years and fine of one lakh rupees, or with both. This provision addresses situations where a child is subjected to cruelty by persons responsible for his or her care, and aims to ensure that children are



safeguarded against abuse and neglect within their households.

12. Section 323 of IPC criminalizes the act of voluntarily causing hurt. It provides that whoever voluntarily causes hurt, except in cases where such hurt is otherwise punishable under the Code, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. The essential ingredients of the offence are that the accused must have caused bodily pain, disease or infirmity to another person, and such act must have been done voluntarily, i.e., with knowledge and intention to cause hurt.

13. Section 6 of POCSO Act prescribes the punishment for aggravated penetrative sexual assault. It provides that whoever commits aggravated penetrative sexual assault on a child 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, and shall also be liable to fine. The provision imposes stringent punishment in cases where the offence of penetrative sexual assault is committed under aggravated circumstances, such as by a person in a position of trust or authority, by a relative of child.

14. Having considered the provisions of law applicable to the present case, this Court shall now examine whether the offences alleged against the appellants have been established beyond reasonable doubt.

Age of the Victim



15. In the present case, the age of the child victim is not in dispute. The records reveal that since no documentary proof such as a birth certificate or school record was available, an ossification test of the minor victim was conducted during investigation, which has been duly admitted by the appellants during trial. The medical opinion placed the age of the victim between 10 to 12 years. The learned Trial Court has rightly observed that although there is no documentary evidence to establish the exact date of birth, the ossification test report clearly indicates that the victim was a child. Further, the appearance of the victim left no manner of doubt that she was not a major. Significantly, even the accused persons did not dispute the fact of her being a minor. In view of these circumstances, the finding returned by the Trial Court that the victim was a child within the meaning of Section 2(1)(d) of the POCSO Act calls for no interference. The applicability of the provisions of the POCSO Act thus stands established beyond doubt.

Appreciation of the Prosecution Evidence

16. The child victim in this case was examined as PW-1 by the learned Trial Court. During her deposition, she has identified the accused persons as her parents. She has further deposed that her father 'H' used to beat her with a hot *chimta* and even hung her from the ceiling fan. She has further stated that her mother 'R' also used to beat her, including with a hot *chimta*, at times while preparing food. PW-1 has also deposed that her father had subjected her to sexual assault by touching her private parts against her wishes and by



forcibly inserting his private part into hers, which caused pain to her. She has stated that these acts were committed when her mother was away at work and her father had returned home earlier than her. PW-1 has further deposed that her mother used to return home late in the evening, scold her, and that she was afraid of her mother. She has also explained that she did not disclose the acts of her father to her mother, since her mother never paid heed to her words.

17. PW-10 Sh. Pawan Kumar, who is the neighbourer and the complainant who had called the police, has deposed that the child victim was residing with the accused persons and had sustained burn injuries caused by a *chimta*. He has deposed that on the day of incident, near Ram Dulari Mandir, D-Block, a crowd had gathered and requested him to make a call to the police, which he did. He has further deposed that officials from an NGO had also reached at the spot and the victim child was handed over to them. He has identified the appellant 'R' in Court, though he was unable to identify appellant 'H' on account of lapse of time. He also stated that the child victim had disclosed to him that she had been burnt by her parents.

18. This Court thus notes that insofar as the aspect of sexual assault is concerned, the victim at the time of conducting her medical examination, her statement recorded under Section 164 of the Cr.P.C. as well as her testimony before the learned Trial Court, has consistently stated that appellant 'H' used to sexually assault by touching her private parts as well as by forcibly inserting his private part into hers, which caused her pain, whenever appellant 'R' was



away at work. The victim has clearly narrated the manner in which she was subjected to such acts, and her testimony has remained unshaken despite a lengthy cross-examination conducted on behalf of the appellants. The learned Trial Court, while appreciating this testimony, has rightly observed that her evidence could not be impeached in material particulars and inspires confidence in its truthfulness.

19. At this juncture, it is also relevant to consider that the provisions of the POCSO Act incorporate statutory presumptions under Sections 29 and 30 of the Act. Section 29 provides that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the said offence, as the case may be, unless the contrary is proved. Section 30 further prescribes that where a culpable mental state is required to be proved, the Court shall presume the existence of such mental state, though the accused may rebut the same by proving the absence thereof.

20. The learned Trial Court, in this regard, has observed that a bare reading of these provisions makes it clear that presumption of culpability of the accused is the basic postulate of the POCSO Act. Once the victim, in her testimony, has categorically alleged the commission of sexual assault upon her by the accused, the onus shifts on the accused to rebut this presumption and to establish his innocence by leading cogent and convincing evidence.



21. The statutory scheme of the Act thus places the burden on the accused, once the testimony of the child victim is found reliable and trustworthy, as in the present case.

22. *Similarly*, insofar as the aspect of physical assault or causing injuries is concerned, the minor victim child has consistently deposed regarding repeated acts of cruelty and violence by both her parents, the appellants herein. In her statement under Section 164 of Cr.P.C., she had specifically narrated that her father ‘H’ burnt her hand and also used to hang her from the fan in the house. She had further disclosed that her mother ‘R’ would beat her, kick her in the stomach and strike her with a *danda*. She had also described that both her parents would beat her with bottles, deprive her of food, and even burn her body with hot *chimtas*. These allegations were reiterated by her in her testimony before the Trial Court, where she has deposed that her father ‘H’ used to beat her with a hot *chimta* and would hang her from the ceiling fan, and that her mother ‘R’ too subjected her to beatings, including with a hot *chimta*, even at times while preparing food. Thus, her version regarding the infliction of physical assault, beatings, burn injuries and cruel treatment has been consistent and categorical.

23. This Court further notes that during the course of investigation, the child victim was medically examined on several aspects. PW-2 Dr. Ahmad, SR, DDU Hospital, who had conducted the medical examination of the child victim from the orthopedic point of view on 14.08.2021 had entered the witness box to prove the said medical



examination, in which no bone injuries were found by him on the body of the victim, but certain injuries on her left hand were discovered.

24. The prosecution further examined Dr. Ram Jaiswal (PW-3), Dr. Nidhi Gupta (PW-4), Dr. Nishad Hariom (PW-5) and Dr. Naved Lone (PW-6). PW-4 Dr. Nidhi Gupta has identified the handwriting and signatures of Dr. Samra Parveen, who had conducted the gynecological examination of the victim as reflected in the MLC of the victim (Ex.PW-4/A).

25. Dr. Naved Lone, CMO, DDU Hospital, who was examined as PW-6, had conducted the initial medical examination of the child victim on 13.08.2021. He has proved MLC Ex. PW-4/A, and has testified that the injuries on the body of the victim were simple in nature. Significantly, Dr. Naved Lone, who had prepared the MLC of the victim, was not cross-examined by the defence counsel, and thus, the said MLC stood unchallenged and unrebutted. This Court notes that the MLC of the victim in this case is comprehensive and mentions as many as nine injuries found on the body of the child victim. These injuries are as under:



- MLC →
- ① Old semi-healed abrasions over ② Hand & swelling & bluish discoloration
 - ② Old semi-healed linear abrasions over ③ Shoulder ④ arm
 - ③ Old semi-healed linear burn over ④ thigh
 - ④ Old semi-healed wound over ⑤ knee
 - ⑤ multiple old abrasions (semi-healed) abrasion over both feet
 - ⑥ Old semi-healed abrasion over ⑦ Hand & swelling & bluish discoloration
 - ⑧ Old semi-healed abrasion over ⑨ Shoulder ⑩ arm
 - ⑪ Old semi-healed abrasion over mid-thigh, mild swelling over ⑫ right leg
 - ⑬ Old semi-healed abrasion over ⑭ knee

26. Though the learned defense counsel had cross-examined PW-2 PW-2 Dr. Ahmed and PW-3 Dr. Ram Jaiswal on the aspect of exact time and manner of causing injuries where they had stated that no opinion can be expressed on the said issue, no suggestion was however given to the witnesses that the injuries were old or that they could not have been caused in the manner alleged by the child. It is apposite to note that several injuries mentioned in the MLC have been shown as “semi-healed” in addition to noting the swelling etc. on the hands of the victim, which rules out the possibility that they were very old. Also, as swelling over the right hand and forearm was noted in Ex-PW-2/A by Dr. Ahmad, such swelling could not have been caused due to any old injuries.

27. **Further, MLC no. 240 i.e. Exhibit A-3 – duly admitted by the accused during trial – records that medicines for pain were advised to the victim, which also supports the inference that the victim child was still suffering from pain due to the injuries**



sustained and that the wounds were not fully healed. Moreover, the child victim was even referred to a higher centre, i.e., Burns Facility at Safdarjung/RML/AIIMS Hospital, which demonstrates the seriousness of the injuries. The cumulative evidence thus establishes that the minor victim child had sustained multiple injuries, including burn injuries, which were noted by the doctors concerned at the time of medical examination, which is consistent with her allegations of being subjected to physical assault and cruelty by her parents.

28. The presence of as many as nine injuries on the body of a minor child, involving burn wounds, swelling, and pain requiring medical attention and referral to a specialized burn unit, cannot be brushed aside as casual or trivial. These medical findings, when read in conjunction with the consistent and detailed version of the child victim, lend strong corroboration to the prosecution case of physical assault and cruelty meted out to her by the appellants.

Statement of Accused Persons and Defence Evidence

29. Now, having taken note of the aforesaid aspects of the prosecution's case being established on the basis of testimony of minor victim and other prosecution witnesses, it is apposite to take note of the defense of the appellants.

30. In their statements recorded under Section 313 of Cr.P.C., both the appellants 'R' and 'H' have denied the allegations against them. They have stated that nothing wrong had been done to the child victim by either of them, and that she had been residing with them



peacefully. They have claimed that the case had been falsely registered at the instance of a man working with an NGO, with whom appellant 'R' had a prior quarrel, and that the complaint was lodged through the child victim in order to take revenge.

31. In support of their defence, the appellants have examined three witnesses. DW-1, Sh. Jogender Pal Singh, a neighbour, has deposed that the victim child was residing with the appellants, who had adopted her, and that he had never seen them beating her. He has professed ignorance about the reasons for registration of the present case. DW-2, Sh. Rohtash, another neighbour, has similarly deposed that the child was living with the appellant as their adopted daughter. He has stated that one day he had seen some persons beating the appellant near *chaudi gali*, in the presence of the child. On questioning, those persons had told him that the appellant had been beating the child, and therefore they had assaulted the appellant. However, DW-2 has clarified that he himself had never seen the appellants ill-treating the child. DW-3, Sh. Om Prakash, has deposed that on one occasion, while passing through the lane of the appellants, he had seen some persons beating them. He had stayed there briefly and then left, and did not know the reason why the appellants were being beaten.

32. Thus, the record of the case, in this Court's opinion proves the case of the prosecution beyond doubt and despite cross-examination and defence led by the appellants, the appellants have failed to cast a veil of doubt on the case of the prosecution. The learned Trial Court



has rightly held that the accused persons have not been able to explain why, if they were keeping the minor victim child happily, she would depose against her own parents and narrate in such detail the atrocities committed upon her. Also, in case, the child was living happily with them, they have not been able to explain the fresh, healed, semi-healed injuries and burn injuries on the person of the child, which is very shocking. They have neither been able to tender any explanation nor could produce any medical treatment record that they had ever got the child medically treated. It has further been rightly observed by the learned Trial Court that there is no explanation forthcoming as to how the child would have come in contact with the person working in NGO (which is the defence of appellants), particularly when the accused themselves claim that they have had previous quarrels with him. Most importantly, the name or identity of such a person working in an NGO, who would have tutored the victim, has never been disclosed by the appellants. Thus, in these circumstances, the learned Trial Court has also rightly observed that a child of such tender age would not have been in a position to depose in such minute detail regarding the acts of cruelty if she was merely tutored, especially when her testimonies corroborated by the injuries sustained by her and the defense of she being tutored by a person working in NGO is also of no help to the appellants.

33. Moreover, the defence witnesses examined by the appellants also did not advance their case. DW-1 had deposed that he had never



seen the appellants beating the child, but the learned Trial Court has correctly noted that the acts of cruelty were committed inside the house and thus could not have been within the knowledge of a neighbour, who was also an interested witness produced by the accused themselves. Similarly, testimonies of DW-2 and DW-3 are of no help to the appellants, since these witnesses had neither interacted with the victim child on any occasion, nor had they deposed about what had transpired inside the house of the appellants. The testimony of DW-2 rather points out that some persons were beating the appellant/accused since he was beating the victim, thus, rather supporting the prosecution case instead of supporting the accused. Thus, the defence evidence clearly falls short of discrediting the consistent and corroborated version of the minor victim, which stands further supported by medical evidence.

34. Furthermore, this Court is not persuaded by the argument raised on behalf of the appellants that since in her medical examination the child victim had named her father 'R' as the assailant, it must be inferred that she was subjected to sexual or physical assault by her biological father, and not by the appellants who are her adoptive parents. The learned Trial Court has correctly observed that the child victim was only about six years old at the relevant time and, within a short span, had been exposed to two different households – one that of her biological father in the village and the other of her adoptive parents, i.e. the appellants herein. A child of such a tender age was bound to be confused when questioned



about the person who had assaulted her and asked to identify her father by name. It is entirely possible, and indeed natural, that she had mentioned the name of her biological father while intending to refer to her adoptive father. It will be pertinent to mention that the defence witness DW-1 who has been examined by the appellants themselves deposed that the child had been adopted by the appellants and was living with them since long, which would rather point out and explain that the appellant itself had been referred as father.

35. What is also material is that in her subsequent and consistent statements, including her statement under Section 164 of Cr.P.C. and her testimony before the Trial Court, she categorically identified her adoptive parents, appellants ‘H’ and ‘R,’ as the perpetrators. She gave a detailed account of how she was subjected to repeated acts of sexual assault by appellant ‘H’ and physical beatings and burn injuries by both accused persons. She also clarified in her statement before the investigating officer that her biological father was “*Gaon me papa*” and that it was appellants ‘H’ and ‘R’ who had brought her to Delhi and inflicted the atrocities upon her. Also, as noted above, the medical evidence establishes that the injuries on the child victim were not too old, and therefore, her biological father, with whom she had not been residing for a considerable period, could not have been the one to inflict them. To reiterate, this fact has been rather supported by the testimony of DW-1 that the victim was staying with the appellants, who were her adoptive parents.

36. Therefore, the confusion crept in at the time of her medical



examination regarding the name of her father stands adequately explained by the subsequent statements of the victim, which are consistent, detailed, and corroborated by the medical evidence on record. This Court finds no merit in the argument advanced by the appellants, and the reasoning of the learned Trial Court on this aspect deserves to be upheld.

Prosecution's case proven beyond reasonable doubt

37. Clearly, the appellants have failed to discredit the testimony of the minor victim, which has remained consistent and trustworthy throughout the course of trial. Her version of events has found corroboration from the medical evidence as well as the circumstances on record. In terms of Sections 29 and 30 of the POCSO Act, once the victim has testified regarding the acts of sexual assault, the presumption of culpability squarely operates against the accused persons, and the burden then shifts on the accused to rebut the same by leading cogent and convincing evidence. In the present case, no such material has been brought on record by the accused/appellants herein to discharge this burden. Consequently, this Court is of the considered opinion that the presumption stands unrebutted and the testimony of the child victim remains unimpeached.

38. ***Before parting with this case***, this Court finds it necessary to highlight a disturbing feature of the present matter. The record reveals that a young girl child, badly tortured, traumatized, and subjected to brutal assaults, had been living with the appellants who were – admittedly – not her biological parents. Despite this, neither



the investigating agency nor the learned Trial Court thought it appropriate to probe into the background of the victim. The biological parents of the child were not even attempted to be traced by the investigating officer, nor was any inquiry conducted as to how the child came into the custody of the appellants in the first place. Such an omission leaves unanswered the grave question of whether the child had been trafficked or had been illegally transferred into the custody of the appellants, since even no inquiry was made into the aspect of adoption or trafficking of the minor child.

39. This Court is constrained to observe that cases of this nature require not only an investigation into the acts of cruelty and sexual assault but also a holistic approach towards the larger picture of child trafficking, abduction, or unlawful custody. The facts of the present case strongly suggest that the victim was not only subjected to inhuman torture but was also a vulnerable child who may have been possibly exploited after being trafficked. Unfortunately, this crucial dimension was altogether overlooked at the stage of investigation as well as during the consideration of charge by the learned Trial Court.

40. While it is true that Courts cannot direct the manner of investigation, they nevertheless bear the responsibility to point out glaring lapses where essential aspects of a heinous crime are ignored. It is the duty of the investigating agency to ensure that every aspect of a case, particularly one relating to trafficking or unlawful custody, is investigated and placed before the Court. This responsibility assumes even greater significance in cases involving children, who



are the most vulnerable members of society and deserve the highest degree of protection under law. The present case, therefore, should have been treated initially by the investigating agency, not only as one involving offences of rape/sexual assault and hurt/physical assault but also as one involving grave suspicions of human trafficking or illegal custody. The failure to investigate this aspect is a lapse that must be noted, for unless such omissions are addressed, the larger evil of trafficking and exploitation of children cannot be effectively curbed. The learned Trial Court also did not raise this question at any point of time, though it could have been addressed and investigated when the chargesheet was placed before it and the material had been perused for the purpose of taking cognizance or framing of charge. It was also essential since no adoption deed was placed on record and the biological parents of the child were not traced.

41. Be that as it may, since this Court at this stage is concerned with adjudication of the appeals preferred by the appellants against their conviction, it would be relevant to note that the Hon'ble Supreme Court in ***Edakkandi Dineshan v. State of Kerala***: (2025) 3 SCC 273 has held that an accused cannot be acquitted only on account of defective investigation, and it is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statements of the eyewitnesses, medical report etc.

The Decision



42. Thus, for the reasons recorded in the preceding paragraphs, this Court is of the opinion that the learned Trial Court has rightly convicted the appellant 'R' and 'H' for the commission of offence under Section 75 of JJ Act read with Section 34 of IPC as well as Sections 323/34 of IPC, and has also rightly held appellant 'H' guilty for commission of offence punishable under Section 6 of POCSO Act and Section 376 of IPC.

43. As far as the impugned order on sentence is concerned, the learned Trial Court after taking into consideration the gravity of the offence as well as certain mitigating circumstances, has sentenced the appellants 'R' and 'H' to rigorous imprisonment for one year for offence under Section 323 of IPC, and rigorous imprisonment for two years for offence under Section 75 of JJ Act. In respect of Section 75 of JJ Act, lenient view has already been taken as maximum punishment which may be awarded for said offence is upto three years. As far as appellant 'H' is concerned, he has been sentenced to rigorous imprisonment for a period of twenty-years for offence under Section 6 of POCSO Act, which is the minimum imprisonment for offence under Section 6 of POCSO Act.

44. Thus, this Court finds no infirmity with either the impugned judgment of conviction or the order on sentence passed by the learned Trial Court.

45. The present appeals alongwith pending applications are accordingly dismissed, and the conviction and sentence of the appellants in the present case is upheld.



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46. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

SEPTEMBER 16, 2025/A

T.D.