IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ALOK AWASTHI

CRIMINAL APPEAL No. 9612 of 2024

CNR No.: MPHC020283012024

YUSUF

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Aman Patidar, Advocate for the appellant.

Shri Ambuj Patel, Government Advocate for the respondent/State..

Heard on : 28.10.2026

Pronounced on : 16.11.2026

JUDGEMENT

Heard.

This criminal appeal u/S 374 of the Code of Criminal Procedure, 1973/Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred by the appellant/accused against the judgement of conviction and order of sentence dated 30.07.2024 passed by the 13th Additional Sessions Judge / Special Judge (POCSO Act), Indore in Special Case (ATR) No.112/2020, arising out of Crime No.368/2020 registered at Police Station Raoji Bazar, Indore, whereby the appellant has been convicted under Section 7 read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act") and sentenced to undergo rigorous imprisonment for three years and with fine of Rs.5,000/-, and in default of

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payment of fine, to undergo further rigorous imprisonment for 01 year.

2. The prosecution case, in brief, is that on 23.09.2020 at about 5:30 PM, at House No.69, Luniapura, Raoji Bazar, Indore, the appellant, who was working as a mason/mistri at the residence of the prosecutrix since 22.09.2020 went upstairs to the first floor where the prosecutrix (a seventh-standard student, aged about 12 years) was present alone, as her parents and elder sister had gone to the market. The appellant caught hold of her hand with sexual intent. Despite her protests, he did not release her hand. She screamed, managed to free herself, ran to the gallery, and bolted the door. The appellant threatened her not to disclose the incident, otherwise he would kill her. The frightened prosecutrix telephoned her mother and requested her to return immediately. She then went to the terrace of her elder maternal relatives and narrated the incident. Upon the return of her parents, she disclosed the full facts. A prompt report was lodged at Police Station Raoji Bazar, leading to registration of Crime No.368/2020 under Sections 354, 354-A(1)(i) and 506 of the Indian Penal Code and Sections 3(1)(w)(i) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Investigation followed. Age proof, caste certificate, site map, Section 164 of Cr.P.C. statement, and other documents were collected. After completion of investigation, charge-sheet was filed.

3. Charges were framed under Sections 354, 354-A(1)(i) and 506 (Part II) of IPC and Sections 3(2)(va) and 3(1)(w)(i) of the SC/ST Act and Sections 7/8 and 11/12 of the POCSO Act. The appellant pleaded not guilty and claimed trial. The defence version was that there was a dispute regarding

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non-payment of wages and that the appellant had been falsely implicated. No defence evidence was led.

4. After evaluating the evidence, learned Special Judge held that the prosecutrix was a "child" within the meaning of Section 2(1)(d) of the POCSO Act, whose date of birth was 14.04.2008, which has been proved by birth certificate Ex.P-1, school scholar register Ex.P-7, and school records. The prosecutrix belonged to the Mehtar community (Scheduled Caste) and the appellant belonged to the Muslim community (non-SC/ST). Learned Judge found the testimony of the prosecutrix (PW-2) and her mother (PW-3) reliable and consistent on the core allegation that the appellant caught hold of the prosecutrix's hand with sexual intent while she was alone. Minor discrepancies were held to be natural and not material. The independent witness Antarsingh Parihar (PW-1) corroborated the presence of the appellant at the spot and his running away. Presumptions under Sections 29 and 30 of the POCSO Act were attracted. Consequently, the appellant was convicted under Sections 354 and 354-A(1)(i) of IPC and Sections 7/8 and 11/12 of the POCSO Act. He was acquitted of the charges under Section 506 (Part II) of IPC and the SC/ST Act provisions for want of proof that he knew the caste of the prosecutrix and of the specific threat in the dock evidence of the prosecutrix. Applying Section 42 of the POCSO Act and Section 71 of IPC, learned Judge sentenced the appellant only for the graver offence under Section 7/8 of the POCSO Act to the minimum prescribed sentence of 03 years rigorous imprisonment with fine of Rs.5,000/- with default stipulation.. The period of custody already undergone was directed to be set

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off under Section 428 of Cr.P.C.

5. Learned counsel for the appellant reiterated the grounds taken in the memo of appeal that the judgement is contrary to law and facts; that the Trial Court erred in believing the prosecution witnesses and discarding the defence version; that there is no allegation of sexual assault and the only allegation is of catching hold of the wrist; that the Trial Court drew unwarranted inferences and ignored material omissions and contradictions; and that the conviction is bad in law. It was submitted that the incident, even if accepted, does not attract Section 7 of the POCSO Act and that the sentence is excessive.

6. Learned counsel for the State supported the impugned judgement and prayed for dismissal of the appeal.

7. I have carefully examined the entire record, the impugned judgement, and the rival submissions.

8. The age of the prosecutrix stands conclusively proved by contemporaneous official documents (birth certificate issued within a month of birth by the competent municipal authority, and the school scholar register maintained in the ordinary course). There is no challenge to these documents. The prosecutrix was, therefore, a “child” under the POCSO Act on the date of the incident.

9. The testimony of the prosecutrix (PW-2) is consistent on the material particulars that the appellant was working as a mason in the house; her parents and sister had gone to the market; she was alone upstairs; the appellant came up, asked personal questions about her age and class, and

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then caught hold of her hand with improper intent; she protested, screamed, freed herself, and locked herself in the gallery; she immediately telephoned her mother; and she disclosed the incident to her parents upon their return. The FIR was lodged promptly the same day without any delay. Her statement under Section 164 of Cr.P.C. is consistent. Her mother (PW-3) fully corroborates the prompt disclosure and the circumstances of the report. The independent witness (PW-1) confirms the appellant's presence at the place of work and his flight after the incident. Minor variations between the police statement and the dock evidence, or between the accounts of the mother and the child, are natural and do not go to the root of the prosecution case. It is well settled that the sole reliable testimony of the victim of a sexual offence is sufficient for conviction and does not require independent corroboration unless there are compelling reasons to the contrary. Learned Special Judge has correctly applied this principle.

10. Catching hold of the hand of a minor girl with sexual intent, in the circumstances proved (alone in the house, personal questions about age and appearance, refusal to release the hand despite protest, followed by threat), squarely constitutes "sexual assault" under Section 7 of the POCSO Act ("whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration"). The act of catching the hand with sexual intent is itself sufficient. The presumption under Sections 29 and 30 of the POCSO Act further fortifies the prosecution case. The defence of

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false implication on account of a wage dispute is unsubstantiated and has been rightly rejected.

11. The acquittal under the SC/ST Act and Section 506 of IPC does not affect the conviction under Section 7/8 of the POCSO Act. The sentence awarded is the statutory minimum under Section 8 of the POCSO Act. No ground for interference with the quantum of sentence is made out.

12. In view of the foregoing discussion, the appeal is devoid of merit and is hereby **dismissed.** The judgement of conviction and order of sentence dated 30.07.2024 passed by the Special Judge is **affirmed.**

13. The appellant was not in custody at the time of filing of the appeal; sentence was suspended till 02.09.2024. He had remained in custody from 25.09.2020 to 05.10.2020. The appellant is directed to surrender before the Trial Court within immediately to undergo the remaining sentence. The period of custody already undergone (25.09.2020 to 05.10.2020) shall be set off under Section 428 of Cr.P.C. / corresponding provision of the BNSS. Bail bonds, if any, stand cancelled.

14. Let a copy of this judgement alongwith the record be sent to the concerned Trial Court for necessary information and compliance.

(ALOK AWASTHI)
JUDGE

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