

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

% Decided on: 13<sup>th</sup> October, 2022

+ **CRL.A. 584/2015**

STATE (GOVT OF NCT OF DELHI)

..... Appellant

Through: Ms. Shubhi Gupta, APP for State  
with SI Nakul, PS Subhash Palace.

versus

PAPPU

..... Respondent

Through: Ms. Supriya Juneja, Adv.  
(DHCLSC) for the respondent  
with respondent in person.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**HON'BLE MR. JUSTICE ANISH DAYAL**

### **J U D G M E N T**

#### **MUKTA GUPTA, J. (ORAL)**

1. The present appeal has been filed by the appellant/State being aggrieved by the order on sentence passed by the learned Additional Sessions Judge whereby pursuant to the conviction of the respondent for offences punishable under Section 363 IPC and Section 10 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'), vide order on sentence dated 10<sup>th</sup> February, 2015, the respondent was released on the period undergone. In this regard, it would be relevant to note the concluding paragraphs of the order on sentence passed by the learned Special Judge.

*"6. I have considered the rival submissions made by the Ld.APP and of counsel for convict. It is an admitted case that this is the first offence of the convict u/s 363 IPC and Section 10 of POCSO Act which is punishable with maximum imprisonment for five years with fine. Convict is*

*stated to be having responsibility of his family. In the facts, and circumstances, having regard to the fact that this is the first offence of the convict, that offence u/s 363 IPC and 10 of POCSO Act is punishable with maximum five years imprisonment, to the economic condition of the convict's family and recommendation for probation made by the Probation Officer, Rohini, therefore, convict deserves to be given a chance for reformation by taking a lenient view. Accordingly, prayer of counsel for convict is accepted. Instead of sentencing the convict to punishment, convict is given the benefit of probation and is directed to file a personal bond of good behaviour and conduct in the sum of Rs.10,000/- with one surety in the like amount for a period of one year with the condition that he shall remain under the supervision of Probation Officer, Rohini Court for one year and shall report before the Probation Officer once every month and shall not commit similar offence during this period of one year and if any such offence is brought to the notice of this court during this period of one year, then this court will be at liberty to impose appropriate sentence upon the convict u/s 363 IPC and Section 10 of POCSO Act.*

7. *Copy of order be also sent to Probation Officer, Rohini Court for compliance.*

8. *Coming now to the aspect of compensation to the victim, who is a minor girl aged about 4 years, the Hon'ble Apex Court has time and again observed that that subordinate Courts trying the offences of sexual assault have the jurisdiction to award the compensation to the victims being an offence against the basic human right and violative of Article 21 of the Constitution of India. In a case titled as **Bodhisattwa Gautam vs. Subhra Chdkraborty**, AIR 1996 SC 922, it has been held by Hon'ble Supreme Court that the jurisdiction to pay compensation (interim and final) has to be treated to be a part of the overall jurisdiction of the Courts trying the*

*offences of rape, which is an offence against basic human rights as also the Fundamental Rights of Personal Liberty and Life.*

9. *Even otherwise, the concept of welfare and well being of children is basic for any civilized society and this has a direct bearing on the state of health and well being of the entire community, its growth and development. It has been time and again emphasized in various legislations, international declarations as well as the judicial pronouncements that the Children are a “supremely important national asset” and the future well being of the nation depends on how its children grow and develop. In this regard reference is made to the following observations of Hon'ble Supreme Court in case of **Laxmi Kant Pandey Vs. Union of India** (1984) 2 SCC, 244, that:*

*“The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breath, depth and height of its emotional intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. Now obviously children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves. That is why there is a growing realization in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balance view of life with full appreciation and realization of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity because a large segment of the society*

would then be left out of the developmental process. In India this consciousness is reflected in the provisions enacted in the Constitution. Clause (3) of Article 15 enables the State to make special provisions inter alia for children and Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clauses (e) and (f) of Article 39 provide that the State shall direct its policy towards securing inter alia that the tender age of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the Welfare of Children. This Policy starts with a goal-oriented perambulatory introduction.”

10. Therefore, in order to provide Restorative and Compensatory Justice to the victim girl, I hereby direct learned Secretary, D.L.S.A, North West Distt. to grant compensation of Rs. 50,000/- (Rs. Fifty thousand only) to the victim. The said amount shall be used for her welfare and rehabilitation, under the supervision of Welfare Officer, so nominated by the Government of NCT of Delhi.

11. A copy of this order be sent to learned Secretary, D.L.S.A, North West Distt., Rohini Courts, Delhi and Director, Department of Woman and Child Development,

*GNCT of Delhi, for information and necessary action under intimation to this Court.*

*12. The convict is informed that he has a right to prefer an appeal against this judgment. He has been apprised that if he cannot afford to engage an advocate, he can approach the Legal Aid Cell, functioning in Tihar Jail or write to Secretary, Delhi High Court, Legal Services Committee, 34-37, Lawyers Chamber Block, High Court of Delhi, New Delhi.”*

2. It is apparent that the learned Special Court grossly erred in noting the fundamental fact that the conviction under Section 10 of POCSO Act entails a maximum punishment of imprisonment for five years with fine whereas as per the Section 10 of POCSO Act, it entails a minimum punishment of imprisonment for five years with fine and a maximum punishment of imprisonment for seven years with fine.

3. Section 10 of the POCSO Act reads as under :

*“10. Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”*

4. The respondent has not challenged the conviction for offences punishable under Section 363 IPC and Section 10 of POCSO Act. However, still to satisfy ourselves, this Court has gone through the deposition of the minor victim who was aged 4 years at the time of alleged incident which was duly proved and not disputed by the defence. In her testimony, the prosecutrix/victim stated as under :

*“Q. - Aap batao kaya hua tha ?*

*Ans. Pappu meri chadi me haath dal raha tha. Chus raha tha. Nalke ka paani daal raha tha. Keh raha tha kisiko mat bataio.*

*Court question: Beta batau Pappu kaha chus raha tha?*

*Ans. The witness has touched her private part with her hand and stated yaha par.*

*Court question: Pappu konse nal se ganda pani daal raha tha?*

*Ans. Wo nal bathroom ke bagal me tha.*

*Court Question: Wo ganda pani kaha par daal raha tha?*

*Ans. The witness has touched her private part with her hand and stated yaha par.*

*Q. Pappu ne ye sab kahapar kiya?*

*A. Kisi aur ke ghar me legaya tha.*

*Q. Pappu apko kahapar mila tha?*

*Ans. Main tuition se akar chej lene ja rahi thi tab Pappu mila tha.*

*Q. Kya aap Pappu ko jante ho ?*

*Ans. Ha.*

*Q. Aap Pappu ko kaise jante ho?*

*Ans. Usne meri saheli Prachi ke saath bhi aisa kiya tha, meri nani ne dekh liya to usne jhuth bola ki ice cream dilane le ja raha h., Bathroom ke pass Prachi ke saath aisa kiya.*

*Q. Pappu ne Prachi ke saath aisa kab kiya tha?*

*Ans. Bahut din pahle meri nani ne mummy Ko bataya tha*

*Q. Pappu kaha rehta hai ?*

*Ans. Hamare ghar ke pass gali mai jahapar chij ki dukan hai.*

*Q. Kya aap Pappu ko pehchan sakte ho?*

*Ans. Ha.*

*At this stage, the witness has identified the accused Pappu, present in the court today in police custody. The accused is sitting behind the wooden partition in last row of chairs in the courtyard.*

*Q. Kya aap pehle bhi court mai ayethe?*

*Ans. Ha, Mummy, nana aur nani ke saath ayi thi. Upar court mai madam mili thi, uhko sab bataya tha (the statement of the witness u/s 164 Cr. PC has been recorded by Ms. Shefali Barnala Tandon, Ld. MM).*

*XXXXXX by Ms. Sharda Garg, Adv. Ld, Counsel for the accused.*

*Question: Kya aap apni nani ke ghar rehte ho?*

*Ans. Mummy ke ghar bhi rehte hai aur nani ke ghar bhi rehte hai. Jab nani bulati hai tab aajate hai phir chale jate hai. Papa dadi ke saath rehte hai. Dadi he ghar bhi rehte hai.*

*Question: Aap Pappu ko kaise bulate the?*

*Ans. Main kuch nahi kehti thi. Pappu mujhe bulata tha 'idhar aa'.*

*Question: Aapki saheli Prachi kaha par rehti hai?*

*Ans. Meri nani ke ghar ke bagal wale ghar ke waha par rehti hai.*

*Question: Kya aap aaj mummy ke kehne se sab bol rahe ho?*

*Ans. Nahi. Pappu ne aisa kiya tha."*

5. Even in the cross-examination of this child victim, nothing has been elucidated to show that the respondent did not commit the offence punishable under Section 10 of the POCSO Act.

6. As noted above, Section 10 of the POCSO Act provides for a minimum punishment of five years imprisonment. The learned Special Court grossly erred in releasing the respondent on the period already undergone which as per the nominal roll was 9 months 26 days on 11<sup>th</sup> February, 2015, when he was released from custody.

7. The appeal filed by the State is therefore, liable to be allowed. Considering the mitigating factors that the respondent has to look after the family, during the period from 11<sup>th</sup> February, 2015, the respondent is

not involved in any other offence, the sentence of the respondent is modified from the period already undergone to sentence of rigorous imprisonment for a period of five years and to pay a fine of ₹25,000/- in default whereof to undergo simple imprisonment for three months. The compensation amount as directed by the learned Special Court for a sum of ₹50,000/- to be paid by the Secretary, DLSA North-West District would remain the same.

8. The appeal is accordingly disposed of.

9. SI Nakul and Constable Bhanwar Lal Verma, P.S. Subhash Palace, present in Court, are directed to hand over the custody of respondent/Pappu, who is also present in Court, to the Superintendent, Central Jail, Tihar to serve the remaining sentence.

10. The Registry is directed to prepare the necessary warrants expeditiously.

11. Copy of this judgment be uploaded on website and be given *dasti* under signature of Court Master to the Investigating Officer.

**(MUKTA GUPTA)**  
**JUDGE**

**(ANISH DAYAL)**  
**JUDGE**

**October 13, 2022/mk**