Yogesh Tanwar vs State

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Court : Delhi

Decided On : Jun-18-2026

Judge : Hon'Ble Mr. Justice Navin Chawla,Hon'Ble Mr. Justice Ravinder Dudeja

Appeal No. : CRL.A./199/2020

Appellant : Yogesh Tanwar

Respondent : STATE

Advocate for Pet/Ap. : Mr. Shivek Trehan, Ms. Manika Pandey, Mr. Aman Usman, Mr. Manvendra Yadav, Ms. Taruna Ardhendumanli Prasad, Mr. Siddharth Kumar, Ms. Anusha Rathore, Mr. Aman Usman, Mr. Manvendra Yadav, Ms. Taruna Ardhendumanli Prasad, Mr. Siddharth Kumar, Ms. Anusha Rathore, Mr. Shivek Trehan, Ms. Manika Pandey

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 28.04.2026

Pronounced on: 18.06.2026

+ CRL.A. 199/2020 & CRL.M.(BAIL) 756/2024 YOGESH TANWAR .....Appellant Through: Mr. Shivek Trehan (DHCLSC), Ms. Manika Pandey, Mr.Akash Chandna, Advs.

versus

STATE ....Respondent Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Adv. for State, with Insp. Subhash Chand, PS-Malviya Nagar for the State. Ms. Taruna Ardhendumanli Prasad, Mr. Siddharth Kumar, Ms. Anusha Rathore, Advs. for the victim.

AND

+ CRL.A. 205/2022 STATE OF NCT OF DELHI .....Appellant Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Adv. for State, with Insp. Subhash Chand, PS-Malviya Nagar for the State. Ms. Taruna Ardhendumanli Prasad, Mr. Siddharth Kumar, Ms. Anusha Rathore, Advs. for the victim.

versus

Ms. Manika Pandey, Mr.Akash Chandna, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. The appellant Yogesh Tanwar has filed CRL.A. 199/2020 under

Section 374(2) of the Code of Criminal Procedure, 1973 [Cr.P.C.], assailing the judgment of conviction dated 28th November, 2019 and the order on sentence dated 29th November, 2019, passed by the learned Additional Sessions Judge-01, Special Court (POCSO), South District, Saket Courts, New Delhi [Trial Court] in case arising out of FIR No. 1009/2014, registered under Section 376(2) of the Indian Penal Code [IPC] and Section 4 of the Protection of Children from Sexual Offences Act, 2012 [POCSO] Police Station Malviya Nagar.

2. On the other hand, the State has also preferred CRL.A.

sentence dated 29th November, 2019 and praying that the appellant/convict namely Yogesh Tanwar, be awarded the maximum punishment prescribed by law.

3. Since both the appeals emanate from the same FIR and assail

the common impugned judgment and order on sentence, they are

being disposed of together by this common judgment. Factual Background

4. The prosecution case, as per charge sheet, is that on 11th

August, 2014, at about 11.00 pm, while SI Rampal Singh (PW-13) along with Constable Matu Ram (PW-9) were returning back to the police station after conducting enquiry in respect of DD No. 70-A (Ex. PW-10E)

and when they reached near Sai Temple, complainant S (name withheld), mother of the child victim, met them and informed that her daughter A, aged about four years (name withheld), was sexually assaulted by her cab driver namely Yogesh Tanwar. PW-9 and PW-13 then went to the house of S and Women Constable Jasbir Kaur (PW-8) was also called at the house of S. The victim and her parents were then taken to AIIMS Hospital for medical examination of the victim. The medical examination of the victim was conducted vide MLC No. 13550/2014. The victim was counselled by a counsellor Ms. Usha Rani from Butterfly NGO, and her version was recorded. In the meanwhile, SI Rita (PW-14) also came at AIIMS. Complainant S (PW-4) handed over a written complaint (Ex. PW- 4/A) to her. PW-14 prepared the rukka Ex. PW-14/A and sent the same at PS Malviya Nagar through PW-9, and on the basis of the said rukka, FIR (Ex. PW-10/A) was recorded by Duty Officer ASI Raj Kumar (PW-10). After registration of the FIR, investigating was handed over to SI Beena (PW-15).

5. On 12th August, 2014, IO SI Beena alongwith Ct. Kuldeep went

to House No. 43, Christian Colony, Fatehpur Beri where they met accused Yogesh Tanwar and one Navneet Masih PW-6, the owner of

the vehicle used in the present case. After interrogation, accused Yogesh Tanwar was arrested and his disclosure statement [Ex. PW11/C] was recorded. Thereafter, he was medically examined at AIIMS vide MLC Ex. PW-5/A.

6. The vehicle used in the present case, being a red-colour Santro

car bearing registration no. DL 9CA 8878, was seized vide seizure memo Exhibit PW6/A from Navneet Masih PW-6, who stated that he runs the business of school vans and had hired accused Yogesh Tanwar as a

driver. He also stated that this was the same car which he had given to the accused on 11th August, 2014 to pick and drop kids from Delhi Public School, Vasant Vihar. The car was deposited in malkhana.

7. On 07th September, 2014, the IO also interrogated one Rishi,

who stated that he is the registered owner of the Santro car and that he had sold the said car to Navneet Masih PW-6 on 10th August, 2014 for Rs. 65,000/- and produced Cash receipt [Ex. PW 6/B] and Delivery receipt [Ex. PW 7/A]. The car was later released on superdari after Rishi, being the registered owner of the car, moved an application for releasing the car on superdari to him [Ex. PW 7/B].

8. During the investigation, IO collected the birth proof of the

victim to prove that the age of the victim was approximately four years at the time of incident.

9. Upon completion of investigation, chargesheet was filed against

accused Yogesh Tanwar under Section 4 POCSO Act and Section 376(2)(f) and (i) of IPC.

10. Initially, the charges were framed against the accused under

Section 4 of the POCSO and Section 376(2) IPC. During the course of trial, the charges were amended in terms of Section 216 Cr.P.C, and amended charges were framed against the accused for the offences punishable under Section 6/10 of the POCSO Act and Sections 376(2)/354 IPC. Accused pleaded not guilty and claimed trial.

11. In order to prove its case, prosecution examined 15 witnesses,

including the victim and her mother.

12. The statement of accused was recorded under Section 313

Cr.P.C, wherein, he denied all the incriminating circumstances put to him and claimed false implication. He stated that he has been falsely implicated at the instance of PW-4 (mother of the prosecutrix) as he had an altercation with her few days prior to the registration of the FIR on the issue of non-payment of cab charges, and due to this reason, she had got annoyed and falsely implicated him in the present case. He further stated that it seems that when something had gone wrong with her daughter, she deliberately took his name. He also stated that it seems that since now a days the issues pertaining to sexual offences against the children have become more sensitive, therefore, without going into the depth of the case, he has been implicated falsely by the police as well, who have not conducted the investigation in a fair and proper manner. The accused further stated that he is a married person and father of two children and during the course of his duties, he had always handled the children carefully and he cannot even think of such a heinous crime, being himself father of a daughter.

13. Upon appreciation of the evidence and the material on record,

the learned Trial Court vide Judgment dated 28th November, 2019

convicted accused Yogesh Tanwar for offences under Sections 376(2)/354 IPC and Section 6 read with Section 5/3 of the POCSO Act and Section 10 read with 9/7 of the POCSO Act and vide order on sentence dated 29th November, 2019, sentenced accused Yogesh Tanwar as under: [7]. . (i) Rigorous imprisonment for a period of ten years for the commission of the offence punishable under section 6 read

with section 5/3 of the Protection of Children from Sexual Offences Act and to pay fine in the sum of Rs. 20,000/- (Rupees Twenty Thousand Only). In the event of his failure to pay the said fine amount the convict shall further undergo simple imprisonment for a period of one month. The entire fine amount be paid to the victim as compensation.

(ii) Rigorous imprisonment for a period of five years for

the commission of the offence punishable under section 10 read with section 9/7 of the Protection of Children from Sexual Offences Act and to pay fine in the sum of Rs. 10,000/- (Rupees Ten Thousand Only). In the event of his failure to pay the said fine amount, the convict shall further undergo simple imprisonment for a period of one month. The entire fine amount be paid to the victim as compensation.

14. Feeling aggrieved by the judgment of conviction and order on

sentence, appellant/accused Yogesh Tanwar has preferred CRL.A.

15. The State has preferred CRL.A. 205/2020, seeking enhancement

of the sentence awarded to the accused on the ground that the punishment imposed was inadequate considering the gravity and nature of the offence. Submissions of the learned counsel for the Appellant Yogesh Tanwar

16. The learned counsel appearing on behalf of the appellant

submitted that the learned Trial Court failed to appreciate the evidence in its proper perspective and convicted the accused despite serious infirmities in the prosecution case.

17. It was argued by the learned counsel for the appellant that the

testimony of the prosecutrix [PW-1] was not reliable and did not inspire confidence. Particular emphasis was laid upon the fact that during her deposition before the Court, the prosecutrix failed to identify the accused despite having being declared hostile and subjected to cross-examination by the learned Additional Public Prosecutor. It was submitted that this aspect goes to the root of the matter and creates a serious doubt regarding the identity of the accused.

18. The learned counsel further submitted that there existed a strong

possibility of tutoring of the child witness. It was contended that the testimony of the prosecutrix was not clear and appeared to be influenced. On her being cross-examined by counsel for accused, she admitted that her parents asked her to tell the Court that the accused touched her vagina and scratched her chest. It was argued that the inability of the prosecutrix to identify the accused in Court, coupled with the possibility of tutoring, materially weakens the prosecution case and entitles the accused to the benefit of doubt.

19. The learned counsel for the appellant also contended that the

allegations regarding penetrative sexual assault were vague in nature and unsupported by cogent medical evidence. It was argued that there were no external injuries and no allegation of penile penetration. The absence of injuries and the nature of allegations, it was argued, do not

disclose the existence of extremely aggravating circumstances warranting imposition of a harsher sentence.

20. It was further submitted that the present case pertains to the

unamended provisions of the POCSO Act, under which the maximum punishment prescribed for the offence under Section 6 of the POCSO Act was ten years imprisonment. Learned counsel argued that the learned Trial Court had already imposed the adequate punishment after detailed consideration of evidence and therefore, there was no justification for enhancement of sentence.

21. On the question of sentence, learned counsel for the appellant

submitted that the learned Trial Court had not specifically directed whether the sentences awarded under different provisions were to run concurrently or consecutively. Relying on the judgment of Supreme Court in Gagan Kumar Vs, State of Punjab, (2019) 5 SCC 154 and the judgment of Rajasthan High Court in S.B. Criminal Misc. Appli. No. 13/2023 titled Sohanlal and Anr. Vs. State of Rajasthan, it was contended that the Courts are obligated to specify whether the sentence of the convict is to run concurrently or consecutively.

22. It was argued that since the alleged acts arose out of the same

transaction, the sentences had ought to run concurrently in terms of Section 31 Cr.PC. It was contended that directing the sentences to run consecutively would effectively result in incarceration for fifteen years, which would defeat the mandate contained in the proviso to Section 31 Cr. PC. Learned counsel argued that it is a thumb rule that if there are offences arising out of a single transaction, sentences are to run concurrently. Reliance was placed on Nagaraja Rao Vs. Central

Bureau of Investigation, (2015) 4 SCC 302 and Kuldeep Singh Vs. State of Haryana and Anr., (2018) 18 SCC 652.

23. The learned counsel further argued that the proviso to Section

31 Cr.PC. clearly stipulates that in no case shall the aggregate punishment exceed fourteen years. It was submitted that the language of the proviso is absolutely clear and does not carve out any exception in cases involving offences punishable with life imprisonment. According to learned counsel, the expression in no case used in the proviso admits of no qualification or exception and therefore the aggregate sentence cannot exceed fourteen years. Reliance was placed on Zulfiwar Ali and Anr. Vs. State of UP, 1986 SCC Online All 325 and Chattar Singh Vs. State of MP, (2006) 12 SCC 37. Learned counsel further stated that the appellant has undergone more than six years of incarceration, has maintained good conduct in jail and has no previous criminal antecedents. He prayed that CRL.A. 199/2020 be allowed and the impugned judgment and order on sentence be set aside. Submissions of the learned Additional Public Prosecutor for the State

24. Per contra, learned Additional Public Prosecutor [APP]

appearing for the State, submitted that the learned Trial Court had passed a detailed and well-reasoned judgment based on just appreciation of evidence. It was argued that the offence committed by the accused was gruesome involving aggravated penetrative sexual assault upon a child aged about four years.

25. The learned APP submitted that the accused was admittedly the

driver of the school cab used for transportation of the prosecutrix and was therefore in a position of trust. It was argued that the breach of such trust itself constitutes a significant aggravating circumstance. Learned APP further pointed out, that even the owner of the vehicle had identified the accused as the driver of the cab on the relevant date.

26. Learned APP also rebutted the defence raised regarding alleged

non-payment of van charges by the family of the prosecutrix. It was argued that the accused was merely the driver of the vehicle and not its owner, and therefore any alleged dispute regarding payment of cab charges had no relevance to the allegations in question. It was further submitted that the owner of the vehicle in his statement had nowhere stated that the family of the prosecutrix had defaulted in payment of charges.

27. It was further submitted that the inability of the prosecutrix to

identify the accused during her deposition after passage of considerable time cannot be treated as fatal to the prosecution case. It was contended that the testimony of a child witness is required to be appreciated with due regard to the age, mental condition and trauma suffered by the child. Learned APP argued that the substantive portion of the testimony of the prosecutrix, wherein she clearly attributed acts of sexual assault to the van driver Yogesh Tanwar, remained intact and stood duly corroborated by her statement recorded under Section 164 Cr. PC as well as the testimony of her mother. It was argued that the prosecution had succeeded in proving the guilt of the accused beyond reasonable doubt.

28. On the aspect of sentence, learned APP argued that despite the

seriousness of the offence, the learned Trial Court had imposed only the minimum sentence prescribed under law. It was submitted that the learned Trial Court had failed to adequately consider the aggravating circumstances including the tender age of the victim and the breach of trust by the accused. According to him, there were no mitigating circumstances justifying award of only the minimum punishment of 10 years.

29. Learned APP further submitted that the proviso to Section 31

Cr. PC operates only in cases where the maximum sentence prescribed is not life imprisonment. According to him, in the facts of the present case, this Court is fully empowered to direct the sentences to run consecutively. Learned APP accordingly prayed that the sentence be enhanced and that the accused be directed to undergo consecutive sentences, contending that at least twenty years imprisonment ought to be imposed considering the gravity of the offence. Reasoning and Analysis

30. We have considered the submissions made by the learned

counsel for the appellant Yogesh Tanwar and learned APP on behalf of the State and have perused the material on record.

31. In a case of sexual assault and particularly under the POCSO

Act, the age of the victim is of considerable importance. The prosecution case is that victim A was subjected to aggravated sexual assault and aggravated penetrative sexual assault by the appellant/accused Yogesh Tanwar, a school cab driver, who was in a position of trust and authority vis a vis the minor victim.

32. Admittedly, the prosecutrix was a child of tender age,

approximately four years old at the time of incident. The birth certificate Ex. PW-15/A, collected during investigation, proves her date of birth as 08th June, 2010. The birth certificate has been proved by PW-12 Sh. Shiv Kumar, Record Clerk from the Office of Sub Registrar (Birth & Death), MCD. There is no cross examination of PW-12 with regard to the age of the victim. In his statement under Section 313 Cr. PC, the birth

certificate of the victim was put to the accused but he did not dispute the same. It is thus proved that the age of the victim was about four years at the time of commission of the alleged offences, and accordingly, the provisions of POCSO Act are squarely applicable in the present case.

33. The principal contention raised on behalf of the appellant is that

the testimony of child witness (PW-1) is unreliable, inasmuch as, she failed to identify the accused before the Court, and further admitted during cross examination that her parents had asked her to state that the accused had touched her private parts and scratched her chest. Thus, as per appellant, PW-1 is a tutored witness and her failure to identify the accused demolishes the prosecution case.

34. The aforesaid submission, though attractive at first instance,

does not merit acceptance in the facts and circumstances of the present case. The testimony of a child witness cannot be appreciated in the same manner as that of an adult witness. A child of a tender age is susceptible to fear, confusion and lapse of memory owing to passage of time. The prosecutrix was examined before the Court after a considerable delay of almost one and a half years from the date of the incident. Merely because the prosecutrix failed to identify the accused

in Court after a long lapse of time, cannot by itself, render the prosecution case doubtful, particularly when the identity of the accused otherwise stands established from independent evidence on record.

35. PW-1 deposed that the driver of the van namely Yogesh had

touched her vagina and had scratched her chest. She further stated that after the incident, when she was brought before the Court, she narrated

the entire incident to the learned Judge and her statement under Section 164 Cr. PC was recorded, which is Ex. PW-1/A. She also deposed about the recording of her statement by the police officials. It is evident from her testimony that her van driver namely Yogesh had committed the offence. The learned Trial Court rightly observed that the identification by the victim in the Court is only one of the factors which is to be considered to find out as to whether the accused had committed the offence or not. If the identity of the accused can be established from the other evidence on record and there is some explanation for non-identification of the accused by the victim, then the fact that the victim has failed to identify the accused would not be fatal to the prosecution case.

36. The learned Trial Court took note of the fact that the victim was

made to identify the accused through video link on the TV screen in the Vulnerable Witness Room and was personally not produced before the witness (face to face) and merely his face was displayed on the TV screen and it is possible that the appearance of the accused might have changed due to his being lodged in jail for a considerable period of time and therefore it is reasonable to conclude that it was difficult for

the child, aged about four years, to clearly identify the accused in such circumstances after a lapse of considerable time. Such view taken by the learned Trial Court appears to be just and reasonable and does not call for any interference.

37. The identity of the appellant as school van driver stands

conclusively established from the testimony of PW-4 Ms. S and PW-6 Navneet Masih. PW-4 categorically deposed that she had hired the school van through PW-6 Navneet Masih and appellant Yogesh was the driver of the said vehicle. She further stated that the victim had been

travelling in the said van and she recognized the appellant.

38. PW-6 Navneet Masih, the owner of the school van (Santro car)

also deposed that accused Yogesh Tanwar was employed by him as the driver of the school van for picking and dropping the children to school. He categorically deposed that victim Ms. A was one of the children amongst the six children whom the accused used to pick and drop. He identified accused Yogesh Tanwar in Court as the driver of the school cab of the victim.

39. During cross examination of PW-4, accused himself gave

suggestion to the witness that the van belonged to Navneet Masih and accused Yogesh was working as a driver on the said van. He further gave suggestion to her that on 11th August, 2014, accused Yogesh had demanded the van charges in the morning and she had promised to pay the charges after he returned from the school. He gave yet another suggestion to PW-4 that when her daughter was dropped by the accused, she was happy and had not made any complaint against the accused. It is evident from the suggestions given that accused has not

disputed his identity that he was the cab driver, employed by PW-1 for picking and dropping her daughter from the school on the relevant day. Similarly, there is no cross examination of PW-6 Navneet Masih to contest the identity of accused as the school cab driver. In his statement under Section 313 Cr. PC, accused admitted that he was hired by PW-6 Navneet Masih as a driver of the school van since July 2014 and was assigned the work of picking and dropping of six children from the location of Malviya Nagar, Vasant Kunj and Khirki Extension and the victim was amongst one of the said six children whom he used to pick and drop.

40. It is thus apparent that at no point during the trial, accused

Yogesh Tanwar disputed his identity as school van driver of the victim on the day of incident. The material on record when viewed in the light of the testimony of the victim, establishes the identity of accused Yogesh Tanwar as the offender.

41. The prosecutrix, in her deposition, categorically stated that the

van driver Yogesh had touched her vaginal part and had scratched her chest. Her statement was also recorded under Section 164 Cr PC before the Magistrate. In cross examination, PW-1 stated that whenever the van driver got late, her mother never scolded him. She denied the suggestion that nothing had happened in the van on 11th August, 2014. She denied that her mother and father used to quarrel with the van driver on account of money. She further denied that she gave statement before the learned Magistrate as well as the IO at the instance of her parents.

42. The core allegation regarding sexual assault by the van driver

Yogesh has remained consistent throughout. The contention regarding tutoring of the prosecutrix also does not persuade this Court to discard her testimony in toto. The evidence of a child witness is not to be rejected merely because there exists a possibility of tutoring. The Court is required to ascertain whether the testimony inspires confidence and whether the substratum of the prosecution case remains intact. Even though, PW-1 stated that her parents asked her to tell the Court that the accused touched her vagina and scratched her chest, but that does not by itself mean that no such incident had taken place. We must appreciate that the victim was only a four years old girl at the time of incident and would not know as to what was to be done in the Court, and obviously, the parents would have guided her as to what she was to do in the Court,

and may be in that context, such a statement was made by PW-1. There is nothing in the cross examination of PW-1 which may indicate that the parents of PW-1 had tutored her to make false allegation against the accused. Rather, the denial of the suggestions re-confirmed the allegations made by the victim. Moreover, her version finds substantial corroboration from the testimony of her mother, who she promptly reported immediately after the occurrence.

43. It is also noteworthy that the complaint was lodged without

undue delay. The testimony of PW-4 Mrs. S assumes considerable significance since she was the first person before whom the child disclosed the occurrence after returning from school. PW-4 deposed that when the prosecutrix returned home, she appeared uncomfortable. Upon taking her to the bathroom, PW-4 noticed reddish marks and

scratches on the chest and thighs of the child. On enquiry, the prosecutrix disclosed that the van driver Yogesh had touched her chest and thighs and had inserted his finger into her vagina. PW-4 further stated that the child disclosed that the acts were committed while she was returning from school. The conduct of PW-4 in promptly informing her husband and approaching the police, also lends assurance to the prosecution case. The evidence of PW-8 Constable Jasbir Kaur and PW-9 Constable Matu Ram further establishes that immediately after the complaint, the prosecutrix was taken to AIIMS Hospital for medical examination and the written complaint Ex. PW 4/A was made without undue delay. The promptness in reporting the matter considerably reduces the possibility of fabrication or false implication.

44. PW-3 Dr. Richa Vatsa, who medically examined the prosecutrix

at AIIMS Hospital, prepared the MLC Ex. PW 3/A. The MLC Ex. PW-3/A records sexual assault history given by the victim and her mother. As per such history of assault, the driver of the cab had touched the breast, scratched the breast and thigh and touched her perianal area with his fingers and inserted his finger into the vagina of the victim. In her cross examination, PW-3 categorically stated that the child herself had narrated the medical history to her and not her parents. As per MLC Ex. PW-3/A, there were bruise marks on the chest of the child and congestion around the ruptured hymen. In cross examination, she clarified that since the medical history of fingering was narrated, therefore, it was possible that the hymen ruptured due to such fingering of vagina.

45. PW-3 denied the suggestion that hymen rupture was an old one.

Although, PW-3 admitted in cross examination that hymen rupture may occur due to other causes as well, but there is no material on record to show that hymen was ruptured due to any other cause.

46. In her deposition before the Court, the victim merely stated

that accused had touched her vaginal part and did not depose about insertion of the finger. The rupture of hymen is not possible just by touching. The learned Trial Court rightly observed that MLC report of the victim coupled with the testimony of the doctor shows that it was a case of fingering and the fact that the hymen was found ruptured and congestion was found around the genital area shows that the accused had inserted his finger into the vagina of the victim.

47. According to the learned Trial Court, the victim was a four year

old girl and is therefore possible that she would not have clearly understood the difference between touching and fingering (broadly fingering is also touching) and therefore, she could not give further details, nor further details were sought from her. Thus, the medical evidence duly support the allegations of the victim and proves that accused had inserted his finger into the vagina of the victim and such insertion was a reason for the rupturing of the hymen.

48. Emphasis was laid by the learned counsel for the appellant

regarding the absence of extensive injuries on the private parts of the victim, but such argument is devoid of merit. Under Section 3 of the POCSO Act, penetration to any extent is sufficient to constitute penetrative sexual assault. Penetration, however little, is sufficient to attract the offence. Therefore, the absence of extensive injuries cannot

be treated as decisive, particularly when the ocular testimony of the victim inspires confidence. In the present case, the ocular testimony of the prosecutrix, prompt disclosure made to PW-4 and the medical findings regarding hymen congestion and rupture sufficiently establish the ingredients of penetrative sexual assault.

49. The defence plea that appellant has been falsely implicated

owing to a dispute regarding the payment of cab charges, does not inspire confidence. Admittedly, the appellant was merely the driver of the vehicle and not its owner. The cab charges were to be paid to PW- 6 Navneet Masih, owner of the cab. Significantly, PW-6 did not support the defence version regarding the non-payment of the cab charges. No question was put to him during cross examination on this account. If there was any such dispute regarding the payment of cab charges

between the accused and PW-6 on the one hand and PW-4 on the other hand, these facts ought to have been elucidated in the testimony of PW-6, but no such question was put to PW-6 in this regard. Thus, the defence plea of false implication, appears to be a bald assertion, unsupported by any cogent material.

50. In our view, the learned Trial Court has meticulously analysed

the evidence on record and has rightly concluded that the testimony of the prosecutrix inspires confidence notwithstanding her inability to identify the accused in Court. The learned Trial Court correctly appreciated that the identity of the appellant stood independently established from the testimonies of PW-4 and PW-6 and prosecution was able to establish the foundational facts of the case and presumption of Section 29 of the POCSO Act also operates against the

accused, but accused miserably failed to rebut the said presumption.

51. Considering the overall facts and circumstances of the case, we

find ourselves in agreement with the conclusions arrived at by the learned Trial Court that the prosecution has successfully established its case beyond reasonable doubt that the appellant committed aggravated penetrative sexual assault punishable under Section 6 read with Section 5/3 of the POCSO Act and aggravated sexual assault punishable under Section 10 read with Section 9/7 of the POCSO Act. Thus, we find no infirmity in the impugned judgment of conviction dated 28th November, 2019 passed by the learned trial court.

52. Coming now to the question of sentence, the State has sought

enhancement of punishment contending that the learned Trial Court vide order on sentence dated 29th November, 2019 awarded only the minimum sentence despite existence of aggravating circumstances. On the other hand, the appellant argued that the learned Trial Court has already awarded adequate punishment and that no case for enhancement is made out.

53. Sentencing in cases involving sexual offences against children

demands a cautious balance between the rights of the convict and the societal interest in ensuring protection of children from sexual offenders. The punishment imposed by the Court in such cases should be just, fair, proportionate and reasoned, reflecting both seriousness of the offence and the possibility of reform of the offender. The Courts are therefore expected to exercise sentencing discretion judiciously.

54. Undoubtedly, the offence committed by the appellant is grave

and serious in nature. The victim was a child of approximately four

years and the appellant a school van driver, occupied a position of trust and confidence. The betrayal of such trust by committing sexual assault upon a child of tender age, constitutes a serious aggravating circumstance. The trauma suffered by a child victim in cases of sexual assault, cannot be measured merely in physical terms, as such incidents leave deep emotional and psychological scars upon the child.

55. However, on an overall appreciation of the impugned order on

sentence and also considering the prayer for enhancement of sentence, we find that the learned Trial Court, considering his age and socio-

economic background and dependency of his family members on him, sentenced the appellant to the minimum prescribed sentence under Section 6 and 10 of the POCSO Act. The learned Trial Court also directed payment of compensation to the victim in addition to the fine imposed upon the appellant. The nominal roll of the appellant does indicate any other previous criminal involvements. We find that the

order on sentence dated 29th November, 2019 reflects due application

of mind by the learned Trial Court to the mitigating circumstances. We do not find that the sentence imposed by the learned Trial Court to be suffering from any such infirmity, warranting enhancement.

56. We now proceed to deal with another issue, that is, whether the

sentences awarded to the appellant shall run concurrently or consecutively.

57. We note that both the offences for which the appellant has been

convicted and sentenced, arise from a single transaction. Where an accused is convicted and sentenced for several offences at one trial, the Court may direct that the sentences shall run concurrently. In the

absence of such direction by the Court, sentences would run consecutively. It is not obligatory for the learned Trial Court to direct in all cases that the sentences shall run concurrently. The discretion must be used in a judicially sound manner and not casually.

58. A perusal of Section 31 Cr.P.C. reveals that it refers to the

jurisdiction of the Court to impose punishment when the accused is found guilty of two or more offences during a single trial. Section 31 Cr.PC. is reproduced below for ready reference:- 31. Sentence in cases of conviction of several offences at one trial

(1) When a person is convicted at one trial of two

or more offences, the Court may subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not

be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

Provided that -

(a) in no case shall such person be sentenced to

imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed

twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted

person, the aggregate of the consecutive sentences passed against him under this section shall be

deemed to be a single sentence.

59. Section 31 Cr.PC. empowers the trial court with discretionary

powers to direct whether sentences shall run consecutively or concurrently, depending upon the nature and gravity of offences and presence of any aggravating or mitigating factors, if any. A two-Judge bench of the Honble Supreme Court in Nagaraja Rao (supra) stated that legal obligation is upon the Court of first instance to specify whether the sentences are to run consecutively or concurrently. The relevant para is reproduced hereinunder:- 11. The expressions concurrently and consecutively mentioned in the Code are of immense significance while awarding punishment to the accused once he is found guilty of any offence punishable under IPC or/and of an offence punishable under any other Special Act arising out of one trial or more. It is for the reason that award of former enure to the benefit of accused whereas award of latter is detrimental to the accuseds interest. It is, therefore, legally obligatory upon the Court of first instance while awarding sentence to specify in clear terms in the order of conviction as to whether sentence awarded to the accused would run concurrently or they would run consecutively.

60. The Honble Supreme Court in Mohd. Akhtar Hussain @

Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs, (1988) 4 SCC 183 held that the basic rule of thumb is that where offences form part of the same transaction, concurrent running of sentences shall apply. It was

further observed that this rule wont have application in cases where offences do not pertain to the same transaction and have different facts. Similar view was taken by A two-Judge bench of the Honble Supreme Court in Sunil Kumar @ Sudhir Kumar & Anr. Vs. The State of Uttar Pradesh, CRL.A. 526/2021, while holding that

consecutive running of sentences is not the normal rule, also held that there also cannot be any straitjacket approach in the matter of exercise of discretion by Courts under Section 31 of Cr.PC and the same has to be done judiciously.

61. A landmark three-Judge bench of Honble Supreme Court in

O.M. Cherian @ Thankachan Versus State of Kerala & Ors., (2015) 2 SCC 501 ruled that sentences imposed for multiple offences in a single trial arising out of the same transaction should generally run concurrently, not consecutively. 11. The words unless the court directs that such punishments shall run concurrently occurring in sub-section (1) of Section 31, make it clear that Section 31 Cr.P.C. vests a discretion in the Court to direct that the punishment shall run concurrently, when the accused is convicted at one trial for two or more offences. It is manifest from Section 31 Cr.P.C. that the Court has the power and discretion to issue a direction for concurrent running of the sentences when the accused is convicted at one trial for two or more offences. Section 31 Cr.P.C. authorizes the passing of concurrent sentences in cases of substantive sentences of imprisonment. Any sentence of imprisonment in default of fine has to be in excess of, and not concurrent with, any other sentence of imprisonment to which the convict may have been sentenced.

X

X

X

X

16. When the prosecution is based on single

transaction where it constitutes two or more offences, sentences are to run concurrently. Imposing separate sentences, when the acts constituting different offences form part of the single transaction is not justified. So far as the benefit available to the accused to have the sentences to run concurrently of several offences based on single transaction, in V.K. Bansal vs.

State of Haryana & Anr. (2013) 7 SCC 211, in which one of us (Justice T.S. Thakur) was a member, this Court held as under:- we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.

X

X

X

X

21. Accordingly, we answer the Reference by

holding that Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences

concurrent. Of course, if the Court does not order

the sentence to be concurrent, one sentence may run after the other, in such order as the Court may direct.

62. While dealing with the interpretation and application of Section

31 Cr.PC. in cases where the accused has been punished for multiple sentences arising out of same transaction, the Honble Supreme Court in Chattar Singh (supra) held that in no case the aggregate of consecutive sentences passed against an accused shall exceed 14 years. The relevant para of the judgment reads as under:- 10. The question, however, came up for consideration in Zulfiwar Ali v. State of U.P. [1986 All LJ 1177 : (1986) 3 Crimes 199] wherein it was held: (All LJ p. 1181, para 25)

25. The opening words In the case of consecutive sentences in sub-section (2) of Section 31 make it

clear that this sub-section refers to a case in which consecutive sentences are ordered. After providing that in such a case if an aggregate of punishment for several offences is found to be in excess of punishment which the court is competent to inflict on a conviction of

single offence, it shall not be necessary for the court to send the offender for trial before a higher court. After making such a provision, proviso (a) is added to this sub-section to limit the aggregate of sentences which such a court pass while making the sentences consecutive. That is this proviso has provided that in no case the aggregate of consecutive sentences passed against an accused shall exceed 14 years. In the instant case the aggregate of the two sentences passed against the appellant being 28 years clearly infringes the above proviso. It is accordingly not liable to be sustained.

63. In the present case, the offences under Sections 6 and 10 of the

POCSO Act emanate from the same incident involving the same victim and constitute part of one continuous single transaction. The learned Trial Court vide order on sentence dated 29.11.2019 sentenced the appellant Yogesh to undergo RI for 10 years for offence under Section 6 read with Section 5/3 of the POCSO Act and RI for 5 years for offence under Section 10 read with Section 9/7 of the POCSO Act.

64. In the present case, the mandate under Section 31 Cr.P.C. was

not duly followed, inasmuch as, the learned Trial Court did not even mention in the order the manner in which the substantive sentences would be served by the appellant. Even, there is no classification as to which sentence shall be served first and which after completion of first, thus, leaving the same to the sole discretion of the jail authorities, which may not be appropriate. No such discretion can be given to the jail authorities, this being the sole prerogative of the

Court. The said omission on the part of the learned Trial Court has resulted into the appellant suffering total aggregate imprisonment of 15 years, in case the sentence awarded to the appellant were to run

consecutively, which is in violation of Proviso to Section 31 Cr.PC., and therefore, cannot be sustained.

65. Hence, on an overall conspectus of the facts of the case and the settled legal principles and in the interest of justice, we hereby affirm the judgment of conviction and order of sentence of appellant/convict Yogesh Tanwar passed by the learned Trial Court and further direct that the separate sentences awarded under Section 6 read with Section POCSO Act shall run concurrently. The order on sentence dated 29th November, 2019 thus stands modified to the aforesaid extent.

66. The appeals are disposed of in the aforesaid terms. Pending applications are also disposed of.

67. Copy of this order be sent to the Jail Superintendent and learned Trial Court for necessary information and compliance.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

JUNE 18, 2026/AK