

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

+ CRL.A. No.862/2019

Judgment reserved on :14.11.2019

Date of decision :24.12.2019

PURAN LAL @ BHASKAR

..... Appellant

**Through: Mr. Aseem Bhardwaj & Mr.
K.K. Vijay, Advocates.**

versus

STATE

..... Respondent

**Through: Ms. Meenakshi Dahiya, APP
for State with SI Sanjay Kumar,
PS Prasad Nagar.**

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant Puran Lal @ Bhaskar son of Sh. Bhupender Lal vide the present appeal assails the impugned judgment dated 27.03.2019 of the learned ASJ-01 (POCSO)-04, Central Tis Hazari Court, New Delhi whereby he was convicted for the commission of the offence punishable under Section 376(1) of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act, 2012) and the appellant has also assailed the impugned order on sentence dated 02.04.2019 of the learned Trial Court whereby he was sentenced to

undergo Rigorous Imprisonment for a period of seven (7) years and to pay a fine of Rs.5,000/- and in default of the payment of the same, to further undergo Simple Imprisonment for a period of three months qua the offence punishable under Section 4 of the POCSO Act, 2012, though, no separate sentence was passed qua the offence punishable under Section 376(1) of the Indian Penal Code, 1860, as the same act is held to have been covered within the ambit of aggravated penetrative sexual assault under Section 4 of the POCSO Act, 2012.

2. The delay of 43 days in institution of the appeal was condoned vide order dated 26.07.2019.

3. The appeal was admitted for hearing and directed to be listed in the category of '*Regulars*' in due course vide order dated 26.07.2019.

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4. This is an application filed on behalf of the appellant seeking suspension of sentence during the pendency of the appeal. In terms of the practice directions of this Court dated 24.09.2019 in Rule No.67/Rules/DHC, the Investigation Officer was directed to communicate to the complainant/ informant or any person authorized by her that her presence was obligatory for the next date of hearing and further, Court notice was also directed to be issued to the prosecutrix by the Registry. It was also considered appropriate vide order dated 30.09.2019 to hear the appeal on merits.

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5. Production warrants were thus, issued to the Superintendent Jail, Delhi for production of the appellant.

6. The Trial Court Record was requisitioned, which has been received and perused.

7. The status report was submitted on behalf of the State in view of a notice execution report dated 14.11.2019 to the effect that the prosecutrix could not be traced out in as much as she has left the rented accommodation at Delhi in 2017 and the prosecutrix was also not available at the stated permanent address where enquiries revealed that she and her family do not reside there and on local enquiries also the whereabouts of the prosecutrix and her family could not be traced despite best efforts.

8. Arguments were allowed to be addressed on the appeal on behalf of either side, which have been heard.

9. The charge of allegations framed against the appellant herein on 20.05.2017 was to the effect that on 17.04.2017 at about 11:00 AM at House No.16/636E, Third Floor, Tank Road, Bapa Nagar, Karol Bagh, New Delhi, the accused/ appellant herein committed penetrative sexual assault on the victim 'C'/ minor girl aged 13 years of age and committed the offences punishable under Section 376 of the Indian Penal Code, 1860 and Section 4 of the POCSO Act, 2012.

10. As per the prosecution version set forth through the impugned judgment and brought forth also through the Trial Court Record information was received at PS Prasad Nagar on 24.02.2017 that at about 12:10 a.m. at night, the operators C-62 vide a wireless set informed that near the water tank at the Tank Road, a boy had committed a wrong act with his son and given his phone number as being 9599432728, as a consequence of which SI Baljinder Singh was

informed about the information which was recorded in the *rojnamcha*. The copy of the said DD Entry No.2A dated 22.04.2017, PS Prasad Nagar is on the Trial Court Record as Ex.PW8/A. As per the *ruqqa* Ex.PW8/B on the record, W/SIPrabha under the instructions of the SHO, PS Prasad Nagar along with Constable Sushma No.2260 reached the spot at H.No.16/636E, Bapa Nagar, New Delhi where SI Baljinder Singh along with Constable Vinod No.1806C were present from before and they met the victim 'C' along with her mother and they informed about their neighbour having done a wrong act and thus, W/SI Prabha along with the mother of the victim 'AS', the victim 'C' and Constable Sushma went to the LHMC, Hospital where the victim child 'C' was examined as it was reported by the doctor vide MLC No.4216/17 *inter alia* to the effect:-

“that ‘C’, 13 years presented here as a case sexual assault done on 17.04.2017 by Mr.Bhaskar who is neighbor. Bhaskar entered ‘C’s house, where she was alone at home on 17/04/2017. He tried to forcefully caught the girl’s hand and put her against the wall, after which he kissed her on lips and forcefully touched and grasped her breasts. There he forcefully pull the girl’s pajama and undergarment upto knee and tried to put his male organ into girl extranal genital. ‘C’ is not sure of any deep penetration of male organ. Whole episode lasted for 10-15 minutes after which he left the house threatening her that he will repeat the activity again if she informs any of his family about the act.”

whereby SI Prabha along with the victim 'C', her mother 'AS' and Constable Sushma reached the police station where the victim 'C' gave her statement to the effect that she along with her mother, one

sister and one brother resides on rent at H.No.16/636E, Tank Road, Bapa Nagar, Karol Bagh, New Delhi and that she studied in Baba Ramdev School in Standard VII and her sister studied in the Khalsa School and that they all went to school at 7.00 AM and that her mother went to work in the factory at 10:30 AM and that on 17.04.2017, as usual she, her sister and her brother went to their respective schools and as in her school the XII Standard Board Examinations were going on, her school closed earlier and she returned home at 10:30 AM and after she returned home, her mother went for her work at the Tank Road and she, the victim 'C' was alone at home and she, the victim 'C' further stated through her statement which forms the basis of the FIR that at about 11:00 AM, Bhaskar i.e. her neighbour who lived on rent, entered her room on seeing her alone and she asked him as to what he wanted then he said that he searched his pant and thereafter, shut the door from inside and caught hold of both her hands tightly and put her against the wall and started kissing her on her lips and face and started pressing her chest and thereafter, the accused i.e. the appellant Bhaskar *bhaiya* pulled down her salwar till her knees and touched her private parts with his private parts and she scolded him and pushed him and then he told her that she should not tell anyone about the same or else he would do such an act and he went away from the room.

11. As per the FIR, the victim 'C' stated that she was very frightened at that time and very upset and it was only on that night that she picked up courage and told her mother about the accused and his act and thus, her mother 'AS' at that time itself telephoned the police

and called the police, as a consequence of which the police had reached the spot and had taken her i.e. the victim 'C' and her mother 'AS' to the police station where the FIR was registered. The FIR is then indicated to have been registered under Sections 376/511/354A of the Indian Penal Code, 1860 and Section 8 of the POCSO Act, 2012.

12. The charge sheet states that the victim 'C' declined to get herself internally examined. A local inquiry was conducted by SI Prabha and at the pointing out of the victim 'C', she prepared the site plan and thereafter arrested the accused i.e. the appellant herein and got him medically examined at the MAMC in the forensic department for a potency test and produced the accused i.e. the appellant herein before the Court whereafter he was remanded to the judicial custody. The Investigating Officer is indicated to have collected the proof of age of the victim 'C' and produced her for the recording of the statement under Section 164 of the Cr.P.C., 1973, wherein the prosecutrix through her statement dated 24.04.2017 stated that on 17.04.2017, she had come home early from the school i.e. by 10:30 AM and was cleaning her house when the accused i.e. the appellant herein, her neighbour was sitting outside and told her that he was not able to find his pant and was searching for the same and in order to search his pant, he also entered into the house of the victim 'C' and she was cleaning the floor when the accused i.e. the appellant herein shut the gate and she asked him as to what he was doing so he came soon and caught hold of her hand and made her touch the wall and thereafter, he did the wrong act with her and kissed her on her face

and that she started shouting and he told her that if she shouted, then he would repeat the act and would beat her and thereafter, he made an attempt to put his main thing with which he urinates into the place from where she urinated but that he was not able to do so as his private parts did not enter her private parts and then the accused i.e. the appellant herein caught hold of her breasts, which pained her a lot and bit her beneath her left cheek and then she pushed him and her stomach started aching and she was also bleeding a little from the place where she urinated and the accused i.e. the appellant herein told her that if she told anyone about the same, he would repeat his act with her and went away and he also told her that if she told her mother then her mother would beat her and if the landlord came to know of the same, the landlord would turn them out of the house and then she, the victim child 'C' got frightened.

13. As per the charge sheet in view of the statement under Section 164 of the Cr.P.C., 1973 of the victim child 'C', the provisions of Section 511 of the Indian Penal Code, 1860 were removed and Section 4 of the POCSO Act, 2012 was added qua the investigation and the charge sheet was then filed qua the commission of the offences punishable under Sections 376/354A of the Indian Penal Code, 1860 and Sections 4 & 8 of the POCSO Act, 2012.

14. The prosecution examined eight witnesses, named as under:-

“PW-1 Head of School of the Prosecutrix at Prasad Nagar, Delhi.

PW-2 ASI Suresh Kumar, Duty Officer.

PW-3 Smt. "AS" (Mother of the Prosecutrix).

PW-4 Dr. Nidhi, Senior Resident, Lady Harding Medical College, to prove the MLC of the Prosecutrix.

PW-5 Prosecutrix "C".

PW-6 Dr. Rohit Goel, to prove the MLC of the accused.

PW-7 Ct. Vinod, part of investigation.

PW-8 W SI Prabha, IO of the case."

15. The accused i.e. the appellant herein pleaded not guilty both through the charges put to him and through his statement recorded under Section 313 of the Cr.P.C., 1973 and denied all the incriminating evidence and pleaded that he was innocent and that he used to take care of the family of the prosecutrix 'C' and gave a sum of Rs.50,000/- to the mother of the prosecutrix 'AS' and when he asked her to return the money, she fought with him and when he had come back from the office, he learnt about the complaint. He has also stated that when he came from office, he got to know about the complaint and before that he was not aware about the same and has further stated that he went to the PS along with the prosecutrix 'C', her mother 'AS' and another person known to the family of the prosecutrix and while they were going to the PS, the mother of the prosecutrix 'AS' fought with him and got a false case registered against him.

16. The accused i.e. the appellant produced two witnesses i.e. DW-1 namely Umesh Singh and DW-2 Rahul Kumar in his defence.

17. DW-1 namely Sh.Umed Singh was put forth by the appellant in his defence as being a neighbor residing on the second floor of the same building where the appellant lived i.e. E16/636, Tank Road,

Bapa Nagar, Karol Bagh, New Delhi and he stated that the appellant and the family of the prosecutrix 'C' used to have meals together and also used to fight with each other on the issue of money and that Ms. 'AS' i.e. the mother of the prosecutrix had also threatened the accused i.e. the appellant herein that she would get him implicated and that he had made them understand and asked them to settle their matter but did not know what happened thereafter. This witness however, could produce no documentary proof to show that he resided in the said building and denied that the mother of the prosecutrix Ms. 'AS' had never extended any threat to the accused i.e. the appellant herein to get him implicated in any case. He however stated that he never went to the police to inform the police that there was a quarrel that took place between the parties nor of any threats meted out by the mother of the prosecutrix Ms. 'AS'.

18. DW-2 Sh. Rahul Kumar, another neighbour of the accused i.e. the appellant herein also was produced by the accused i.e. the appellant herein in relation to threats meted out by Ms. 'AS' i.e. the mother of the victim to get the accused i.e. the appellant herein implicated if he demanded money from Ms. 'AS', though, he stated that he was not present in the building on the date 22.04.2017, the date when the police had arrested the accused i.e. the appellant herein.

19. The contentions raised through the present appeal on behalf of the appellant were to the effect that there was an inordinate delay on the part of the complainant and the prosecutrix to get the FIR registered and that no cogent explanation had been given by the prosecuting agency to explain the said delay; that the PCR official on

whose information DD Entry no.2A dated 22.04.2017 was recorded, had not been cited as a witness nor produced in the Court and that the Investigating Agency had not even placed on record the PCR form in the present case; that the police official who had been assigned DD entry No.2A for investigation had not been cited as a witness in the case and that he was the first person to reach the spot as per the version of the Investigating Agency; that despite the admission on behalf of the victim 'C' and her family that they were living in a densely populated area, no neighbor or any other independent witness had been cited or produced by the Investigating Agency; that the Investigating Agency had neither produced nor cited Constable Sushma who had gone to the spot along with the Investigation Officer W/SI Prabha and as per the MLC of the victim 'C', it was Constable Sushma whose name appeared as the official accompanying the victim 'C'; that the Trial Court had failed to appreciate that as per the MLC of the prosecutrix 'C', she refused to get her internal medical examination done and no article or cloth which was blood stained of the victim 'C' nor of the accused i.e. the appellant herein had been taken into possession by the police nor produced before the Trial Court; that the Trial Court had failed to appreciate that there were a number of contradictions between the statements of the witnesses when they were cross-examined by the defence counsel; that no public witness had been cited by the Investigating Officer despite the statement of the Investigation Officer that enquiries were made from tenants and persons in the neighborhood; that even the landlord/ owner of the building had not been cited as a witness to depose that the

parties were residing in the building on rent and as to who paid the rent of both the places i.e. the house of the prosecutrix 'C' and the house of the accused i.e. the appellant herein; that the appellant is not a previous convict and there is no case of any kind against him; that the Trial Court had committed a grave error in the appreciation of the evidence as the entire prosecution version was contradictory; that the site plan alleged to have been prepared by the Investigation Officer of the case, did not corroborate the description given by him in his statements nor that of the statement of the complainant/ victim 'C'; that even the elder sister of the prosecutrix 'C' to whom the prosecutrix 'C' had informed when she queried from the prosecutrix 'C' as to how there was blood on her clothes, she had falsely told her sister on being frightened that she was menstruated, had not been examined as a witness; that the MLC of the prosecutrix 'C' Ex.PW4/A did not show any tooth bite on her cheek and that the prosecutrix 'C' had also not got her internal examination done.

20. On behalf of the State, the learned APP for the State has submitted that the charge of allegations of commission of penetrative sexual assault on the minor child 'C' aged 13 years had been established beyond a reasonable doubt through the consistent and corroborative testimony of the victim 'C', which was consistent in relation to all material particulars and that there was no denial whatsoever brought forth on behalf of the appellant by way of any cross-examination of the victim 'C' qua the incident specifically.

21. It was contended on behalf of the State that the delay in lodging of the FIR stood explained through the testimony of Ms. 'AS' i.e. the

mother of the prosecutrix who testified to the effect that she immediately called the police on learning of the incident on 22.04.2017, in as much as, she was then informed by the prosecutrix 'C' herself who had stated that she has told her mother about the incident on 22.04.2017 at 9:00 PM because she herself had got frightened and she stated that thereafter, her mother had made inquiries from her about everything and had then telephoned the police at number 100 and she also made inquiries from the appellant who stated that he did nothing wrong with her and then in the meantime, the police had come to their house and had taken them to the police station and had also apprehended the accused i.e. the appellant herein.

22. It was also contended on behalf of the State that despite the non citation or non examination of the persons mentioned on behalf of the appellant as witnesses in corroboration of the prosecution version, nevertheless, the testimony of the prosecutrix 'C', her mother 'AS', W/SI Prabha and Dr. Nidhi, Senior Resident, Lady Harding Medical College, Delhi who proved the MLC Ex.PW4/A and had also recorded the incident as informed to the doctor by the prosecutrix 'C', established the prosecution version in toto.

23. It is essential to observe that the learned Trial Court has taken into account the minor discrepancies in the testimonies of the prosecution witnesses in relation to the factum that the mother of the prosecutrix 'AS' had denied that the accused i.e. the appellant herein had food with them whereas the prosecutrix 'C' whereas the mother of the prosecutrix had stated that he sometimes had food with them and that whereas the mother of the prosecutrix 'AS' denied that her

husband had started living separately from February 2017 due to a big quarrel, the prosecutrix 'C' on the other hand had stated that her father had a quarrel with her mother on Diwali and since then has not been living with them and that though the mother of the prosecutrix 'AS' had a weekly off on Monday, 17.04.2017, she had come back home as per the prosecution version on a Monday, which was not consistent with her testimony that on a holiday she remained at home qua which the mother of the prosecutrix 'AS' had stated that if there was a requirement, sometimes even on Monday she used to be working and it has thus been rightly observed by the learned Trial Court that these discrepancies in the testimonies of the prosecution witnesses did not go to the root of the matter and were not material omissions in the testimonies of the prosecution witnesses.

24. The learned Trial Court has taken into account that the testimonies of DW-1 and DW-2 indicated that they were not aware of the nature of the dispute between the mother of the prosecutrix and the appellant. It is essential to observe that these witnesses have also nowhere put forth that the appellant has been falsely implicated by the mother of the prosecutrix Ms. 'AS'. As regards the contention raised on behalf of the appellant that the FIR did not make any mention of any penetrative assault and through the FIR Ex.PW3/A, the prosecutrix 'C' had merely stated that the accused i.e. the appellant herein had only touched his private parts with that of the prosecutrix 'C' and that thus, the conviction of the appellant for the commission of the penetrative assault on the minor child could not be upheld.

25. It is essential to observe that the minor child Ms. 'C' through her testimony on oath (**in as much as the learned Trial Court administered her oath observing that she was 13 years of age, confident, comfortable and intelligent**) has testified to the commission of penetrative assault on her by the accused i.e. the appellant herein when she stated that:-

“Fir Bhaskar bhaiya ne meri kiss li aur mere gaalon par bhi kata tha aur meri chhati dabaayi thi aur meri jo school ki pajami thi usko neeche kar diya aur fir jahan se peshab karti hain usko mere peshab mein dala tha aur mere dard bhi hua tha fir vo mujhe dhakka dene lage the aur mera muh bhi band kar diya tha aur mujhe keh rahe the ki ye baat kisi ko mat batana. Fir mein bahot ghabra gayi thi aur vo fir kaam par chale gaye. Meri peshab wali jagah se blood bh inikla tha.”

26. The MLC of the prosecutrix 'C' Ex.PW4/A also shows that the hymen was not intact and there were no fresh lacerations nor any discharge seen locally and that the sampling had not been done as the act had occurred on 17.04.2017 and had been reported on 22.04.2017, the examining doctor had very clearly written in the history the incident as informed by the victim 'C' where she stated that the prosecutrix 'C' had informed her that the accused i.e. the appellant herein had tried to forcibly catch her hand and put her against the wall and thereafter kissed the prosecutrix 'C' on her lips and forcefully touched her breasts and then forcibly pulled down the girl's pajami and undergarment upto the knee and tried to put his male organ into the external genitalia and that the child i.e. the prosecutrix 'C' was

not sure of any deep penetration of the male organ and that the whole incident lasted 10-15 minutes.

27. Dr. Nidhi, Senior Resident, Lady Harding Medical College, Delhi examined as PW-4 has categorically stated that the victim 'C' and her mother 'AS' had refused for the internal medical examination but she found that the hymen of the girl/ victim 'C' was not intact and that though she stated that the girl was not able to tell about deep penetration, she stated that possibly the girl did not understand the meaning of deep penetration of the male organ. The prosecutrix 'C' was 13 years of age at the time of her deposition on 17.04.2018 with the incident having taken place on 17.04.2017 with the date of birth of the prosecutrix 'C' as being a minor not having been challenged by the accused i.e. the appellant herein and as per the school records produced by Ms. Anju Jain, Head of the School, Nigam Pratibha Vidyalay, Prasad Nagar, Delhi, her date of birth was shown to be 01.05.2005, which indicates that the prosecutrix 'C' was just about 11 years, 11 months and 17 days of age and thus, admittedly a minor which aspect has not been refuted by the accused i.e. the appellant herein.

28. The learned Trial Court has categorically observed that though, the factum of insertion of the penis was missing in the complaint Ex.PW3/A of the prosecutrix 'C', it had also to be considered from the perspective of social circumstances of the prosecutrix 'C' and her family that it was not easy to come out and give details of the sexual act i.e. *galat kaam* and she being a child, who was not able to describe the facts accurately at the outset and that the omissions in the earlier

statements of the prosecutrix ‘C’ can reasonably be explained considering her tender age and social circumstances.

29. Qua this aspect, it is essential to observe as laid down by the Hon’ble Division Bench of this Court in **“COURT ON ITS OWN MOTION VS. STATE”** in **Crl.Ref. No.2/2016** vide verdict dated 04.08.2018 to the effect that where children are concerned, the disclosure normally tends to be a process rather in a single incident or episode and it would take multiple interviews for an investigator or an interviewer to even establish the trust in the mind of the child. The observations made in paragraphs 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90 in the said verdict, read to the effect:-

“77. The second part of the reference is concerned with the issue of multiple statements of a victim being recorded by the police during investigation and the problems caused thereby.

78. The dynamics of child sexual abuse are the same internationally. First and foremost, it is essential to understand the manner in which the children recount. Children do not disclose in one go but do so in piece meal. To accord the same treatment to a child as one would to an adult would result in grave injustice.

79. It needs no elaboration that the children would be reluctant and unlikely to disclose an entire adverse experience in proper detail in their first statement to the police, let alone the necessary details. The fear for themselves or their family; an apprehension that they would be disbelieved; inability to identify themselves as victims; pressure or threats from the perpetrator; relationship to the perpetrator; fear of embarrassment, shame or self-blame; fear of stigmatization; lack of trust with the investigating agency amongst other would be some of the reasons which would act as barriers to a

child making a disclosure of a complete incident in a single meeting.

80. There is great variation in how disclosure is defined and studied. Disclosure is rarely a spontaneous event and it is more likely to occur:-

- slowly over time as part of a process. For some it is a process that reoccurs and is never finished. Children and young people disclose abuse in many different ways*
- ranging from direct verbal statements to more subtle indirect methods. Some children will tell purposefully yet others will do so indirectly or only after being encouraged by others to talk Nonverbal disclosures are more common among young children and*
- can come about through letter writing, role playing or drawing Bodily or physical signs of abuse can include stomach aches, encopresis;*
- enuresis, adverse reactions to yoghurt or milk, or soreness in the genitals Emotional signs of abuse include fear, anxiety, sadness, acting out;*
- without immediate cause, mood swings and reluctance to visit the perpetrator Behavioural signs can include sexualised playing with dolls, sexual;*
- experimentation, excessive masturbation, or drawing sexual acts. However, such behaviours need to be considered in the context of individual, family and wider societal dynamics in which they occur Various models or stages of disclosure have been proposed including;*
- staged, social exchange and social cognitive models. The models agree that disclosure is an interactive and dynamic process that is influenced by the way children conceptualise and make decisions about whom to tell and the reactions they might receive.*

81. Children may disclose spontaneously (disclosure as an event) or indirectly and slowly (disclosure as a process). The child's type of disclosure may be influenced by their developmental features, such as their age at the onset of abuse and/or their age at time of disclosure. For instance, younger children are more likely to

spontaneously disclose than older children (Lippert, Cross, & Jones, 2009; London et al., 2005; Shackel, 2009). Understanding disclosure of abuse as a process may help adults to be patient and allow the child or young person to speak in their own way and their own time (Sorensen & Snow, 1991). It also helps adults maintain an awareness of any changes in behaviour or emotions that may indicate abuse is occurring or increasing. If you have suspicions that abuse is occurring, even if you are unsure, it is better to report your suspicions than to do nothing.

82. Some children and young people may disclose when asked or after participating in an intervention or education program (Shackel, 2009). Others may initially deny that they have been abused if asked directly, or say that they forget, only to disclose later. Children and young people may disclose, only to retract what they have said later; however, this is relatively uncommon. The child or young person might say he or she made a mistake, lied, or that the abuse actually happened to another child. In cases with a higher likelihood of actual abuse, recantations are low (4-9%; London et al., 2005). However, the stress of disclosing and receiving potentially negative responses from caregivers may lead some children to recant in an attempt to alleviate the stress (Hershkowitz, Lanes, & Lamb, 2007).³

*3 Responding to children and young people's disclosures of abuse CFCA Practitioner Resource— March 2015
Australian Government- Australian Institute of Family Studies*

83. A recent qualitative study of disclosure among 60 young men and women in the United Kingdom observed eight forms of disclosure: direct, indirect verbal, partial verbal, accidental direct/verbal, prompted, non-verbal/behavioural, retracted and assisted. Partial disclosures were characterised by minimisation of the abuse, disclosing abuse of another person or disclosing

other forms of abuse such as physical assault. Prompted disclosures were made in response to a direct inquiry about abuse while assisted disclosures involved a young person disclosing to another young person with the help of a friend. The authors note that children use a variety of techniques to disclose including direct or ambiguous verbal statements and non-verbal disclosure in the form of writing letters, reenacting abuse type situations or drawing pictures for adults. Physical or bodily signs of child sexual abuse can include stomach aches, encopresis, enuresis, adverse reactions to yoghurt or milk (due to resemblance to semen), or soreness in the genitals (Jensen, 2005). Emotional signs can encompass fear, anxiety, and sadness, acting out without immediate cause, mood swings and reluctance to visit the perpetrator. Behavioural signs include sexualised playing with dolls, sexual experimentation, excessive masturbation, or drawing sexual acts (Finkelhor, 1994; Jensen, 2005)⁴

4 Child Sexual Abuse and Disclosure- NSW Government – Family and Community Service - Dr Catherine Esposito, Practice Research Office of the Senior Practitioner Programs and Service Design – Chapter 2: Definitions, typologies and models of disclosure. (Allnock& Miller, 2013).

84. Where children are concerned, the disclosure normally would tend to be a process, rather than a single incident or episode. It would take multiple interviews for an investigator or an interviewer to even establish trust in the mind of the child. Unfortunately, we have been unable to evolve any guidelines with regard to investigation and prosecution of cases of child sexual abuse which are the subject matter of POCSO Act, 2012, though the Central Government has suggested the following in the POCSO Model Guidelines :

“The dynamics of child sexual abuse are such that often, children rarely disclose sexual abuse immediately after the event. Moreover, disclosure tends to be a process

rather than a single episode and is often initiated following a physical complaint or a change in behaviour. In such a situation, when the child finally discloses abuse, and a report is filed under the POCSO Act, 2012 more information will have to be gathered so that the child's statement may be recorded.

Information so obtained will become part of the evidence. However, given the experience that the child has gone through, he is likely to be mentally traumatised and possibly physically affected by the abuse. Very often, law enforcement officers interview children with adult interrogation techniques and without an understanding of child language or child development. This compromises the quality of evidence gathered from the child, and consequently, the quality of the investigation and trial that are based on this evidence. The interviewing of such a child to gather evidence thus demands an understanding of a range of topics, such as the process of disclosure and child-centred developmentally-sensitive interviewing methods, including language and concept formation. A child development expert may therefore have to be involved in the management of this process. The need for a professional with specialized training is identified because interviewing young children in the scope of an investigation is a skill that requires knowledge of child development, an understanding of the psychological impact sexual abuse has on children, and an understanding of police investigative procedures. Such a person must have knowledge of the dynamics and the consequences of child sexual abuse, an ability to establish rapport with children and adolescents, and a capacity to maintain objectivity in the assessment process. In the case of a child who was disabled/ physically handicapped prior to the abuse, the expert would also need to have specialised knowledge of working with children with that particular type of disability, e.g. visual impairment, etc.”

85. Mr. Dayan Krishnan, Id. Senior Counsel and amicus curiae has also placed the “Guidelines on Prosecuting Cases of Child Sexual Abuse” issued by the Director of Public Prosecutions,

Crown Prosecution Services, in October, 2013 which contains the following guidelines : “The statement taking stage 35. Particular care should be given when deciding how to take the victim's statement. A video recorded interview (and subsequent use of the live link in court) is often the most appropriate means but may not always be so. For example, if the abuse of the victim has been filmed and the victim does not want to be videoed as a consequence. xxx xxxxxx 38. A victim of child sexual abuse may not give their best and fullest account during their first recorded (ABE) interview or statement. This may be for a variety of reasons: they could have been threatened; they might be fearful for themselves or their family; the offending may have been reported by others and they may be reluctant to cooperate at that stage. They might not have identified themselves as a victim or they could be fearful that the police will not believe their allegations. They may initially distrust the police and could well use the interview to test the credibility of the police. 39. The account given may take a number of interviews, with the child or young person giving their account piecemeal, sometimes saving the 'worst' till last, having satisfied themselves that they can trust the person to whom they are giving their account.”

86. There is no reason why the same practice cannot be followed in India. This leaves the question of how to interpret the multiple statements made by the witness/victim.

87. In para 40 of the above guidelines, the Crown Prosecution Services (CPS), has taken the following view : “40. Carefully thought out patient intervention by the police and other agencies can ultimately disrupt and break the link to the offender(s). A seemingly

contradictory initial account is therefore not a reason in itself to disbelieve subsequent accounts given by the victim and these contradictory accounts should instead be seen as at least potentially symptomatic of the abuse.”

88. The law allows the investigating agencies to record multiple statements of the victims. There is no prohibition on recording multiple statements by the police.

89. We may at this stage also advert to the provisions of Section 164 (5)(A) of the Cr.P.C. which mandates that the statement of a victim under Section 354, 354A-D, 376(1) and (2) as well as Section 376A-E or Section 509 of the IPC shall be recorded as soon as the commission of the offence is brought to the notice of the police.

90. A seemingly contradictory initial account is not a reason in itself to disbelieve the subsequent accounts by the victims. The multiple statements placed by the investigating agency should be carefully scrutinized by the Trial Courts in order to ensure that complete justice is done. The second question is accordingly answered.”

30. Taking the said aspect into account, the tender age of the prosecutrix, the factum that the hymen of the prosecutrix was not intact, coupled with the factum that the prosecutrix has categorically testified on oath that the penetrative sexual assault had been committed on her by the accused i.e. the appellant herein, as a consequence of which, she felt pain in her vagina and that the appellant had also pushed her and shut her mouth and told her not to tell anyone about the same and that she had also bled from her vagina, which was also reflected through her clothes in relation to which there was an inquiry made from her elder sister to her, the same suffices as rightly held by the learned Trial Court to bring forth the charge of allegations against the accused i.e. the appellant herein of commission

of the penetrative sexual assault on the minor child aged 11 years, 11 months and 17 days of age on the date of the incident. It is significant that the minor child victim 'C' had also informed her mother that the accused i.e. the appellant herein had committed *galat kaam* with her, though, she had not given the details of the same to her mother.

31. The contention raised on behalf of the appellant that the clothes of the prosecutrix 'C' and the appellant had not been seized by the Investigating Agency, it is essential to observe that the date of the incident being 17.04.2017 and the date of registration of the FIR and the apprehension of the appellant being 22.04.2017 and thus, apparently, no useful purpose would have been served by seizure of the clothes of the prosecutrix 'C' and the accused i.e. the appellant herein which would have been washed and had been washed at least as regards the undergarments of the prosecutrix 'C' as brought forth through her testimony.

32. As regards the contention raised on behalf of the appellant that the appellant had been falsely implicated in the instant case because he used to take care of the family of the prosecutrix and had given Rs.50,000/- to her mother and that the mother of the prosecutrix 'C' had fought with the appellant when he asked her to return the money and had also threatened that she would implicate him as testified by DW-1 & DW-2, it is essential to observe that even through his statement under Section 313 of the Cr.P.C., 1973 dated 04.10.2018, though the appellant seeks to state that he has been falsely implicated in the instant case, he has nowhere stated that the mother of the prosecutrix 'C' had ever threatened him that she would falsely

implicate him if he ever demanded the money back and has only testified that the mother of the victim 'AS' had fought with him when he asked her to return Rs.50,000/- which he had given to her. Though, the appellant produced two witnesses to contend that the appellant had been falsely implicated, none of the said two witnesses were witnesses to his having lent Rs.50,000/- to the mother of the prosecutrix 'AS' and thus, the defence plea raised by the appellant of false implication is not substantiated through the record.

33. In the circumstances, it is held that the testimony of the prosecutrix 'C' examined as PW-5 and the corroborative testimonies of the mother of the prosecutrix 'AS' examined as PW-3 and the testimony of the doctor examined as PW-4 as well as the consistent testimonies of PW-8 W/SI Prabha, PW-7 Constable Vinod in relation to the investigation conducted, coupled with the factum that the appellant has been unable to dislodge the presumption of the commission of the offence punishable under Section 3 of the POCSO Act, 2012 i.e. the commission of the offence of penetrative sexual assault in terms of Section 3(a) of the POCSO Act, 2012 r/w Section 29 of the said enactment, it is held that there is no infirmity in the impugned judgment dated 27.03.2019 of the learned Trial Court in relation to FIR No.101/2017, PS Prasad Nagar, whereby the appellant has rightly been convicted for the commission of the offences punishable under Section 4 of the POCSO Act, 2012 and Section 376 of the Indian Penal Code, 1860.

34. Vide the impugned order on sentence dated 02.04.2019, the appellant has been sentenced to minimum imprisonment, then

imposable at the time of the commission of the offence on 17.04.2017 for a period of seven (7) years and to pay a fine of Rs.5,000/- and in default of which, he was directed to further undergo Simple Imprisonment for a period of three months for the offence punishable under Section 4 of the POCSO Act, 2012, in as much as, the said sentence imposed of Rigorous Imprisonment for a period of seven (7) years is the minimum sentence imposable at the time of the commission of the offence. The sentence imposing Rigorous Imprisonment for a period of seven years and the payment of fine is thus, upheld with the benefit of Section 428 of the Cr.P.C., 1973 being given to the appellant.

35. The appeal is thus, dismissed.

36. The concerned Superintendent at the Tihar Jail, New Delhi where the appellant shall be incarcerated for the remainder of the term of imprisonment as hereinabove directed shall consider an appropriate programme for the appellant ensuring, if feasible:

- *appropriate correctional courses through meditational therapy;*
- *educational opportunity, vocational training and skill development programme to enable a livelihood option and an occupational status;*
- *shaping of post release rehabilitation programme for the appellant well in advance before the date of his release to make him self-dependent, ensuring in terms of Chapter 22 clause 22.22 (II) Model Prison Manual 2016, protection of the appellant from getting associated with anti - social groups, agencies of moral hazards (like gambling dens, drinking places and brothels) and with demoralised and deprived persons;*

- *adequate counselling being provided to the appellant to be sensitized to understand why he is in prison;*
- *conducting of Psychometric tests to measure the reformation taking place and;*
- *that the appellant may be allowed to keep contact with his family members as per the Jail rules and in accordance with the Model Prison Manual.*

37. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent, Tihar Jail, New Delhi to this Court till the date of release, of the measures being adopted for reformation and rehabilitation of the appellant.

38. The Trial Court Record be returned with the certified copy of this judgment.

39. Copy of this order be sent to the Superintendent Jail, Delhi and be supplied to the appellant.

ANU MALHOTRA, J.

DECEMBER 24, 2019/NC