

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

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Judgment delivered on:10.12.2019

+ **CRL.A. 580/2016**

**AMARJEET**

**..... Appellant**

versus

**STATE**

**..... Respondent**

**Advocates who appeared in this case:**

For the Appellant: Mr S. B. Dandapani, Advocate (DHCLSC).

For the Respondent: Ms Meenakshi Chauhan, APP for State with  
SI Manisha Sharma, PS Aman Vihar.

**CORAM**

**HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. The appellant has filed the present appeal impugning a judgment dated 08.04.2016 passed by the Additional Sessions Judge, North West 01, Rohini District Courts, Delhi, whereby the appellant was convicted for an offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO). The appellant also impugns the order on sentence dated 18.04.2016, whereby he was sentenced to ten years of rigorous imprisonment and a fine of ₹10,000/- for committing an offence under Section 6 of the POCSO. The appellant was also directed to serve simple imprisonment for a further period of six months, if he defaulted in the payment of the said fine.

2. The impugned judgment was rendered in connection with a case arising from FIR No. 478/14, under Section 6 of the POCSO and

Section 376(2)(f) of the IPC, registered with P.S. Aman Vihar, on 13.05.2014. The said FIR was registered at the instance of the mother of the child victim. She stated that after the death of her first husband Kamal, she had married the appellant Amarjeet (accused). The victim was born from her earlier wedlock. She alleged that the accused had sexually assaulted the victim.

3. She alleged that on 13.05.2013, she had been working at Panni Godown and on that day, at about 3.30 pm, one neighboring lady, whom the people used to call '*nani*', came there and informed her that she had saved the child victim from appellant, who was about to commit sexual assault upon her. Thereafter, she along with *nani* returned home, where the child victim narrated the entire incident to her. By that time, the appellant had run away from there. Thereafter, she took the child victim to the concerned PS and requested that legal action be taken against the appellant.

4. In order to establish its case, the prosecution examined thirteen witnesses. The Trial Court had evaluated the evidence available and had found the appellant guilty of the offence for which he was charged.

5. The appellant has challenged the impugned judgment, *inter alia*, on the ground that the medical examination of the victim had revealed that the hymen of the victim was intact and also there was no external injury. There were contradictions in the testimonies of the child victim (PW-6) and the witness, Majida (*nani*) who deposed as PW-9. The appellant further contends that there is a contradiction in the statement of the victim recorded under Section 164 of the CrPC and the deposition made before the court. The appellant states that the Trial court erred in

placing reliance on the testimony of the child victim since the victim is a minor and could be easily tutored. The appellant further contends that non-examination of the mother of the victim (the complainant) also raises doubts as to the allegations made by her. There was also no proof that witness Majida was on leave on the day of the incident. It is also contended that PW-9 (Majida) had also confirmed that the mother of the victim and the appellant did not have a cordial relationship; and, this according to the appellant, raises doubts as to the case set up by the prosecution.

***Evidence.***

6. Before proceeding further, it is relevant to briefly examine the evidence led by various witnesses.

7. Dr. Rachita, Sr Gyne, SGM Hospital Mangalpuri Delhi, who deposed as PW-5, had conducted the medical examination of the child victim. In her examination in chief, she deposed that the hymen of the victim was found intact and that no external injury was seen on the exposed part of the body.

8. The child victim in her statement, under Section 164 of the CrPC, stated that on 13.05.2014, her father removed her underwear and also removed his underwear. He was about to insert his fingers inside her private parts, when *nani* saw them and threatened her father. Her father on an earlier occasion had done the same – inserted his fingers inside her private part. She further stated that when *nani* threatened her father, he ran away.

9. The child prosecutrix – examined as PW-6 – stated that her father removed her underwear and also removed his underwear and then her father started inserting his finger in the place from which she urinates (*'mere papa apni ungli gusane lag gaye, meri susu vali jagah mein'*). She also pointed towards her private parts. She stated that her father threatened her that if she informed her mother, he would do the same again. Thereafter, she started crying and on hearing her cries, one aunty came and knocked on the door. She stated that she then pulled up her underwear and then her father ran away. She told everything to the aunty and in the meanwhile, her mother and police came. She stated that her father had done the same to her, twice.

10. In her cross examination, she stated that her biological father had died in a car accident and thereafter, her mother entered into a wedlock with her step father who is currently in jail. She was asked that when small children urinate in their underwear, then do their parents clean the same, to which she answered in affirmative. She stated that whenever her underwear used to get wet, her mother and father used to change the same after taking a clean one out of the trunk. When she was asked if her parents used to quarrel, she answered in the affirmative. She also stated that her mother used to tell her father that she would leave him and go to her own place. She also gestured in the affirmative by nodding her head that her mother used to tell her father that she would report him to the police and that her mother would leave her father after a fight.

11. Majida, eyewitness of the incident was examined as PW-9, and she deposed that, she worked in the same godown in which the mother of the child victim worked. On the day of the incident, she was at home

and had not gone for work. Out of the two rooms, she lived in one of the rooms with her family, while the other room was occupied by the accused, Urmila (mother of the child victim) and their children. She stated that she used to be called '*nani*' by the neighbors. She stated that on the date of the incident, the mother of the victim has asked her to take care of her children and to keep an eye on them. She stated that she gave lunch to the children and after that made them sleep. Thereafter, she also went to sleep and at that time, the accused was not present at home. She stated that she heard the cries of the child victim (*papa mar gai, papa mar gai, chhod do*) and on hearing the same, she went out of her room and started knocking on the door of Urmila's room. She further deposed that there was some open space along the side of *chokhat*, from where she peeped inside and saw that the victim was lying naked on floor and the undergarments of the victim were removed by the accused and he was forcefully putting his fingers inside the private part of the victim, while holding her forcibly. She stated that she started to raise an alarm "*ladki mar jayegi*" and also stuck her foot against the door. She stated that the accused ran away and the victim started crying. She stated that she helped the victim wear her clothes and at about 3:30 pm, she along with the victim, reached the godown where the mother of the victim was working and informed her about the whole incident. Thereafter, she along with them reached home, where they saw that the accused has already fled. The mother of the victim, along with the victim, had gone to the PS to lodge a complaint, but she could not accompany them as she was not feeling well.

12. In her cross examination, she stated that both the rooms had a separate door and when she made the children sleep, the said door was open. The said door could be bolted from inside and outside. She also stated that she had no relation with the mother of the victim and that the accused was the step father of the victim and that the first husband of the victim's mother had already expired. The mother of the victim and the accused did not have cordial relations and they used to quarrel occasionally but she did not know whether the mother of the victim used to threaten the accused that she would send him to jail. She deposed that she had no documentary proof to validate that on the day of the incident, she was on leave or that she was present in her room. She stated that when the accused ran out of room, he was wearing his pants. She stated that she did not know whether Urmila (mother of the victim) wanted to get rid of the accused so that she could marry someone else.

13. W/SI Manisha No. 5272D, was examined as PW-11, and she stated that she was entrusted with further investigation of DD no. 33A. Pursuant to the same, she called an NGO member for counseling of the victim and her mother and thereafter, she recorded the statement of Urmila (mother of child victim). She also got the medical examination of the victim conducted at SGM hospital. After registration of the FIR, she also recorded the statement of other witnesses and also got the statement of the child victim recorded under Section 164 of the CrPC. She further deposed that the accused made a disclosure statement (Ex. PW11/F), which bears her signature. She further deposed that she got the child victim counseled before CWC.

14. In her cross examination, she deposed that the disclosure statement of the accused (Ex. PW11/F) was in her writing and that no public witnesses were invited at that time. She further deposed that the relations between the accused and his wife were found to be normal and no abnormality was pointed out to her during the investigation. She stated that it was not true that the relation between the complainant (mother of the victim) and the accused were not cordial on the date of incident or that the complainant wanted to get rid of the accused. She further denied the suggestion that the complainant had concocted the false story to implicate the accused so that she could stay with another man.

***Reasoning and Conclusion***

15. Mr Dandapani, the learned counsel appearing for the appellant had contended that there was sufficient evident to indicate that the relationship between the appellant and his wife (the mother of the victim) was not cordial. He submitted that the victim had also, in her cross-examination, confirmed that her mother and the appellant sometimes quarreled with each other. He pointed out that she had also confirmed that her mother used to threaten the appellant that she would leave him and return to her mother's house. She would also threaten that she would report the appellant to the police. He also drew the attention of this Court to the cross-examination of the child victim, where she had accepted the suggestion to the following question put to her and her response thereto:

“Q. Beta, kya aaj aapke court aane se pehle kisi aunty ya uncle ne appko kuch samjhaya tha ya aaapke saath asli mein aisa kuch hua tha?

A. Aisa hua tha.”

16. He submitted that the above response clearly indicated that the child victim has been tutored.

17. Next, he submitted that there was material inconsistency in the statement of the victim as recorded under Section 164 of the CrPC and her testimony. He submitted that the statement under Section 164 of the CrPC did not allege any penetrative sexual assault warranting a punishment under Section 6 of the POCSO. In her statement, the victim had alleged that the appellant was going to insert his finger (*woh ungli daalne wale they*) in her vagina. However, in her testimony, she had stated that “*mere papa apni ungli gusane lag gaye meri susu wali jagah mein* (child pointed towards her private parts).” He submitted that whereas, the initial statement does not contain any allegations of penetrative sexual assault, her testimony enhances the description of the offence.

18. This Court has examined the testimony of the victim (PW-6). The learned ASJ had also interacted with the victim and was satisfied that the witness understood the importance of speaking the truth. She was capable of understanding the questions and answering them truthfully. The questions put to her and the answers provided are set out below:-

“Q. Beta kya hua tha?

A. Ek din mere papa ne mera kacha utara aur apna bhi utara aur mujhse gandi baat karne lag gaye.

Q. Beta kya gandi baat karne lag gaye?

A. Mera papa apni ungli gusane lag gaye meri susu walie jagah mein (child pointed towards her private parts).

Q. Beta phir kya hua?

A. Phir papa ne mujhe dhamkaya tha ki apni mummy ko kuch nahi batana, phir ek baar aur aisa karunga.

Q. Beta phir kya hua?

A. Phir main rone lagi, to meri awaz sunkar ek auntry aa gayi.

Q. Beta phir kya hua?

A. Aunty ne darwaza khat khatya, to meine apna kacha upar kiya aur aur wo (mere papa) bhag gaye. Meine auntry ko sab bata diya. Itne mein meri mummy bhi aa gayi aur police bhi aa gayi.

Q. Beta kya pehle bhi papa ne kabhi appke saath aisa kiya tha?

A. Haan, aise hi kiya tha jaise ab kiya hai. Bas do baar kiya tha.

Q. Beta, phir kya hua?

A. Police ne papa ko ek chanta maara tha aur phir jail mein le gaye.

Q. Beta, kya police auntry aapko hospital le kar gaye thy?

A. Mukhe auntry doctor ke paas le gayi thi.

Q. Beta, kya aap aaj se phele bhi kya kabhi court mein aaye the?

A. Ek bahut achi didi ne pehle mujhse sab kuch pucha tha, ek kamre mein bulakar aur biscuit bhi diya tha (The witness referred to her statement recorded by Ld. MM U/s 164 Cr.P.C.) Vol. Meine police wali didi ko bhi sab kuch bataya tha.”

19. It is, at once, clear from the above that there is no ambiguity in her description of the incident. It is important to note that she had also confirmed that a similar incident had happened to her on two prior occasions. Her statement recorded under Section 164 of the CrPC is very brief and she states that the appellant was about to insert his finger when *nani* (Majida – PW-9) had seen them. However, she had also stated that the appellant had done the same to her on previous occasions as well. She also unambiguously stated that he (the accused) had inserted his finger (*unho ne ungli daal ithi*)” in her private part.

20. It is clear from the testimony of PW-6 (child victim) that the appellant had assaulted her and he had done so in the past as well. It is also relevant to note that at the time of the incident, the victim was only six years old and it is necessary to bear that in mind while examining whether there is any contradiction in her testimony and her statement under Section 164 of the Cr.P.C.

21. The testimony of PW-9 (Majida) also leaves no room for doubt in this regard. She had deposed that she was resting in her room at about 12.30 in the afternoon, and had also made her children sleep after lunch, when she had heard the alarm raised by the victim. The victim was

shouting (*papa mar gai, papa mar gai chod do*). On hearing her alarm, PW-9 came out of her room and started knocking on the door of the adjoining room – the room where the victim along with her parents resided. She stated that there was an open space on the side of the door and *chokhat* and she peeped inside and saw that the victim was lying naked on the floor and the appellant had removed her garments and was inserting his finger in her private part while forcibly holding her down. She deposed that the appellant was in a naked condition at that time. This Court finds no reason to doubt the testimony of PW-9. It is also obvious that she is well respected in the neighborhood as the evidence obtaining in this case also established that the persons in the neighborhood used to refer to her as “*nani*.” (maternal grandmother)

22. This Court is unable to accept the contention that the child victim was tutored or that the appellant has been falsely implicated on account of quarrels between him and his wife. The fact that the appellant and his wife used to quarrel does not mean that she would tutor her minor child to make such a serious allegation, which apart from resulting in her child suffering the ignominy of being violated by her step father, would also result in her husband being sentenced to imprisonment.

23. It is also relevant to note that at the time of the incident, the victim was only six years old. Her statements have been unambiguous and there is no reason to disbelieve the same.

24. The trial court has believed the testimony of the victim as well as PW-9 and in view of this Court, rightly so.

25. In view of the above, this Court finds no reason to interfere with the impugned judgment convicting the appellant for aggravated sexual assault of the victim. The appeal is dismissed.

**VIBHU BAKHRU, J**

**DECEMBER 10, 2019**

**MK**

