

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

% Reserved on: 15<sup>th</sup> February, 2023  
Decided on: 22<sup>nd</sup> May, 2023

+ **CRL.A. 182/2019**

SHEKHAWAT

..... Appellant

Represented by: Mr.Mohd. Shamikh, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Prithu Garg, APP for the  
State.

**CORAM:**

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

**HON'BLE MS. JUSTICE POONAM A. BAMBA**

**MUKTA GUPTA, J.**

1. By the present appeal, the appellant challenges the judgment dated 11<sup>th</sup> December, 2018 whereby he was convicted for offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and 363 & 323 of the Indian Penal Code ('IPC'). The appellant also challenges the impugned order on sentence dated 17<sup>th</sup> December, 2018, whereby he was directed to undergo imprisonment for life along with fine of ₹20,000/- for offence punishable under Section 6 of the POCSO Act, rigorous imprisonment for a period of seven years and fine of ₹10,000/- for offence punishable under Section 363 IPC and rigorous imprisonment for a period of one year and to pay fine of ₹1,000/- for offence punishable under Section 323 IPC, in default whereof, to undergo simple imprisonment for three months.

2. As per the prosecution, brief facts of the case are that in the evening of 8<sup>th</sup> April, 2015, the victim went to play in the street outside her house,

with her friend ('B') and at about 9.00-9.30 PM, victim's mother 'K' (PW-12) realized that the victim had not returned back home and was also not present in the street outside. The parents of the victim along with other family members and neighbours started searching for the victim, however, could not find her. At about 12.30 AM, just when the parents of the victim were about to go to the police station, the appellant came with the victim and handed the victim to 'K' and left. The appellant was the uncle (*chacha*) of victim's friend 'B'. 'K' (PW-12) found that the victim was unconscious and on examining, she found injuries and bite marks on the body of the victim as also bloodstains on victim's underwear and that the victim was unable to properly stand on her own legs. Accordingly, the victim was rushed to the JPC Hospital and from the hospital, victim's father Akhtar Ali (PW-8) made a call to the police at number 100 and the information was recorded vide DD No.7B (Ex.PW-3/A). The victim was medically examined and her MLC (Ex.PW-25/1) was prepared and the appellant's name was recorded as the perpetrator of the crime. Further, the victim narrated the incident to her mother and categorically named the appellant. The statement of the mother was recorded by the police and *rukka* (Ex.PW-12/A) was prepared and FIR No.265/2015 dated 9<sup>th</sup> April, 2015 under Sections 363/323/376 IPC and Section 6 POCSO Act, at PS Seelampur was got registered (Ex.PW-4/C). The appellant was got arrested on 10<sup>th</sup> April, 2015 at about 9.00 PM from Coat Market, Shashtri Park.

3. Dr.Gurmeet Kaur Bhusari conducted the physical examination of the victim and prepared the MLC (Ex.PW-25/1), which was proved by Dr.Monika Bairathi (PW-25). As per the MLC it was observed:

**Physical Examination**

*“clothing, legs and hands smeared with blood,*

*(1) circular ring like bruised area on (3cm diameter) on left cheek? bite,*

*(2) multiple bruised area present on B/L breast in an area of 5x5 cm*

*(3) Laceration of 3x0.5 cm on back.*

**Local Examination**

- Bloodstained vulva
- Hymen fresh torn
- fourchette B/L tear of 45<sup>0</sup> angle
- Internal examination refused by victim due to pain”

**Discharge summary (Ex.PW-6/A):**

*(1) Vaginal tear on left side extending from fourchette to left fornix about 5 cm*

*(2) Rectal mucosa tear 3cm*

*(3) Anal spincter (external and internal) tear present.*

4. Thereafter, the victim was shifted to GTB Hospital. Thereafter, a secret information was received by SI Sarita (PW-20) which was shared with the SHO, upon which, the appellant was apprehended from Coat Market, GT Road, arrested vide arrest memo (Ex.PW-10/A) and got medically examined. After completion of investigation, charge-sheet was filed and the appellant was charged for offences punishable under Sections 363 IPC, 323/324 IPC and 376 IPC and alternatively, Section 6 POCSO Act. To prove its case the prosecution examined 25 witnesses; and to rebut the case of the prosecution, one defence witness was examined by the appellant.

5. Learned counsel appearing for the appellant assails the impugned judgment on the ground that the appellant has clean antecedents and has not

committed the crime and thus, be acquitted. To substantiate its case, it was contended that name of the appellant neither finds any mention in the information given to the police vide DD No.7B nor in the PCR record. It was further contended that there is no evidence on record to suggest that the victim was conscious at the time when she made the statement to her mother, nor there is any fitness certificate on record to suggest the same. It was also contended that nothing incriminating has been mentioned in the MLC of the victim and no role whatsoever had been assigned to the appellant in the said MLC. It was further pointed out that during the examination-in-chief, 'B' stated that the victim was taken away by one 'Baawla' on which the learned Trial Court observed that 'B' was not able to answer the questions coherently and, therefore, she was discharged from further examination. Thus, it is clear that the victim was taken away by the said 'Baawla' and not by the appellant. It was the case of the appellant that the appellant found the victim at the redlight from where he took the victim in his lap and went to victim's house to hand her over to the mother of the victim. It was also pointed out that the place of incident was also not got identified by the IO from the appellant and the same shows that because the appellant did not commit any offence, he was unaware about the place of incident. It was further pointed out by the learned counsel for the appellant that as per the arrest memo (Ex.PW-10/A), the appellant was arrested at 9.00 AM on 10<sup>th</sup> April, 2015, however, as per the conviction slip (Ex.PW-20/D1), the date of arrest of appellant is mentioned as 9<sup>th</sup> April, 2014. And, therefore, it was contended that the police had illegally detained the appellant on mere suspicion and when the police could not find the actual culprit, the appellant was falsely implicated to solve a blind case. It was

the case of the prosecution that the appellant had bitten the victim on her cheeks and other body parts, and it was contended by learned counsel for the appellant that no efforts were made to take swabs from the cheeks of the victim as the same could have been sent for DNA analysis which could have proved the innocence of the appellant and the benefit of not collecting of such swabs would go to the appellant. In alternative, it was prayed that the sentence of imprisonment for life awarded to the appellant may be reduced to the minimum punishment under Section 6 of POCSO i.e. to 10 years, keeping in view that the appellant was 20 years old at the time of alleged incident and that he has clean antecedents.

6. On the other hand, learned APP for the State submitted that the present appeal is devoid of any merit and therefore, the impugned judgment and order on sentence passed by the learned Trial Court be upheld and the present appeal be dismissed. Learned APP for the State relied upon the following facts:

- i. As per the birth certificate of the victim (Ex.PW-13/A), the date of birth of the victim is 17<sup>th</sup> July, 2008 and accordingly, on the day of incident, the age of the victim is around six years and nine months.
- ii. The victim categorically stated that while she was playing with her friend 'B', the appellant asked them to come and have some eatables, after which the appellant sent 'B' away and asked the victim to play '*bhoot bhoot*'. Thereafter, the appellant took her to a jungle, removed his mask and bit the victim on her cheeks, breasts and below her abdomen. Thereafter, the appellant gagged her and injected her in her right forearm after which the

victim does not remember as to what happened. Thereafter, she only remembered that the appellant brought her in a TSR where she was lying on a back seat and after stopping the TSR on a redlight, the appellant took her in his lap and took her to her mother. She further stated that the appellant pricked her at the place of urination and that the appellant stated “*main tujhe khaa jaunga*”.

- iii. As per the victim MLC (Ex.PW-25/1), the victim was taken to the hospital at 2.00 AM on 9<sup>th</sup> April, 2015 by her mother and at that time, the victim was unconscious. As per the MLC, the clothes, legs and hands were found smeared with blood; circular ring like bruised area 3 cm in diameter on left cheek; multiple bruises present on breast of 5 x 5 cm and laceration of 3 x 0.5 cm on back. Further, on local examination, bloodstains were found on vulva; fresh tear on hymen, fourchette tore at about 45 degree angle and anus of the victim was found to be tender.
- iv. As per the MLC of the appellant (Ex.PW-9/A), nothing was found to suggest that the appellant was incapable of performing sexual intercourse.

7. Learned APP for the State submitted that the case against the appellant rests solely on the testimony of the victim, being the eye-witness of the case. Despite being a child witness, her testimony before the Court was consistent with her previous statements i.e. under Section 161 Cr.P.C. (Ex.PW-11/DA) and also statement under Section 164 Cr.P.C. (Ex.PW-14/1). Further, her testimony finds corroboration from her MLC. Reliance

was placed on the decisions in 1951 SCC 1213 Rameshwar vs. State of Rajasthan, (1997) 5 SCC 341 Dattu Ramrao Sakhare vs. State of Maharashtra and (2018) 251 DLT 383 (DB) Court on its Own Motion vs. State. Furthermore, the defence put forth by the appellant that he was falsely implicated as there was a pre-existing dispute between him and the victim's mother regarding parking of TSR was falsified by his own suggestion put to Akhtar Ali (PW-8) during his cross-examination, and even otherwise, parking dispute is too trivial reason for victim's parents to falsely implicate the appellant and let the actual culprit go scot-free. Even otherwise, the sequence of event was such that there was no scope with the parents of the victim to fabricate a story against the appellant. Further, it was submitted by learned APP that the contentions of the appellant were inadequate to discharge the reverse burden placed on him in terms of Sections 29 and 30 of POCSO Act. And in this regard reliance was placed on the decision in (2019) 256 DLT 593 Chand Bibi vs. State & Anr.

8. Having heard both the parties at length and perusing the record, the following evidence emerges.

9. Victim (PW-11) identified the appellant present in the Court during her deposition through weblink. She stated that 'B' was niece of the appellant. She stated that on the day of incident, she was watching TV, when suddenly, the light went off and 'B' came to her, asked to accompany her to her house and watch TV there. She went to her house and after sometime, her uncle came and asked them to come out to have some eatables on which both of them went with him. After taking the eatables, he sent 'B' to her house and told her that they would play 'bhoot bhoot'. He was wearing a mask and then took her to jungle where he removed his

mask, bit her on her cheeks, both breasts and below her abdomen. He then injected her on her right forearm and when she cried, he gagged her mouth with a cloth piece. She stated that she did not remember as to what happened thereafter. On regaining consciousness, she found herself on the back seat of a TSR and after stopping it on a redlight, Shekhawat took her in his lap and on seeing her mother, he handed her over to her mother. Thereafter, she stated that the appellant took her to the jungle in an auto. Thereafter, permission to ask leading question was denied, however, learned Additional P.P. was permitted to cross-examine the witness. The victim then stated that the appellant took off his clothes, pricked at her place of urination and that he stated “*main tujhe khaa jaunga*”.

10. ‘K’ (PW-12) who is the mother of the victim deposed that on 8<sup>th</sup> April, 2015 at about 9.00 PM, the victim was playing in the *gali* with ‘B’, who is the niece of the appellant. On searching for the victim, she went to the house of ‘B’, where mother of ‘B’ informed her that ‘B’ was at the house and that the victim had gone away. Thereafter, she searched for the victim in the *gali* but could not find her and at about 10.00 PM she informed her husband that the victim was missing. In the meanwhile, the appellant came there with victim in his lap and handed over the victim to her and told her that the victim was found at the redlight. She put the victim on the ground but the victim could not stand on her legs and fell down. On checking the victim, she found teeth bite marks on her cheeks and scratches on her body. She also found that the victim’s underwear and her frock were stained with blood. Thereafter, she along with her husband and Wahid Ali took the victim to JPC Hospital, where the doctor informed her that it was police case, on which her husband made a call at number 100. After the

medical examination, she was informed that the victim was raped. Insp. Sarita recorded her statement (Ex.PW-12/A). Thereafter, the victim was taken to GTB Hospital and was medically examined again. At the GTB Hospital, the victim told her that she was taken away by the appellant in an Auto to a jungle at a far of place and pricked a needle on her right hand, bit her with his teeth on her cheeks, chest and near her urinating place. When she started crying, the appellant forced a cloth into her mouth. After the injection, she became unconscious and when she regained her unconsciousness, she found herself in an auto. In her cross-examination, she stated that the FIR was lodged by her husband in her name and that the police asked most questions from the victim and only a few questions from her. She further stated that she met the appellant for the first time with the victim at the corner of the street leading to the main road while she along with her neighbours was proceeding to the police station, at which instance, the victim was handed over to her.

11. Vijay Pal Singh (PW-13) brought the birth certificate of the victim (Ex.PW-13/A), as per which the victim was born on 17<sup>th</sup> July, 2008 and her birth was registered in their record on 13<sup>th</sup> August, 2008.

12. IO/SI Sarita (PW-20) deposed that on 9<sup>th</sup> April, 2015 at about 3.00 AM she received the information regarding rape of a six year old girl from the Duty Officer. She along with Ct. Giri Raj, reached JPC Hospital, where she met the mother of the victim. She informed Ms.Sunita who was the NGO counsellor and recorded the statement of the mother of the victim (Ex.PW-12/A). She prepared the *rukka* and sent the same for registration of FIR. Doctors referred the victim to GTB Hospital and accordingly, the victim and her mother were sent to GTB Hospital. The victim was not in a

position to make any statement. Thereafter, she received an information that the appellant was present at the Coat Market at GT Road and this information was passed to the SHO who reached the spot and after identification by the informer, the appellant was apprehended and arrested (Ex.PW-10/A). The appellant was got medically examined. On 13<sup>th</sup> April, 2015, statement under Section 164 Cr.P.C. of the victim was got recorded.

13. In his statement under Section 313 Cr.P.C. the appellant stated that 'B' was his niece and that he knew the victim (PW-11) as he used to reside near her house. He stated that he and his family used to have regular disputes with the family of the victim on the issue of parking the TSR in the *gali* and because of which, he has been falsely implicated in the present case.

14. Mohd. Shamim (DW-1) stated that on 9<sup>th</sup> April, 2015 at about 9.30-10.00 PM he saw a lot of people gathered in the street near his in-laws' house and he came to know that a girl was missing. When he returned from his in-laws' house and took a turn towards Gandhi Nagar from Shastri Park Traffic Signal, he saw public gathered around the tea shop of Gudiya and a small girl crying. In the meanwhile, appellant came in his auto, dropped the passengers and as he knew the girl, he took the girl with him and thereafter, he handed the girl to her sister Muskan. He also stated that mother of victim and the appellant used to quarrel regularly on account of parking dispute.

15. Case of the prosecution is based on the testimony of the victim. It is well settled that the conviction for offence punishable under Section 6 of the POCSO Act can be based on the sole testimony of the victim if the said victim is found to be a reliable witness. (See 1951 SCC 1213 Rameshwar vs. State of Rajasthan and (1997) 5 SCC 341 Dattu Ramrao Sakhare vs. State

*of Maharashtra*). In the present case, the testimony of the victim is not only reliable and convincing but also finds corroboration from her MLC.

16. As noted above, the prosecution has proved the birth certificate of the victim (Ex.PW-13/A) and her date of birth has been proved as 17<sup>th</sup> July 2008. Thus at the time of offence the victim was 6 years and 9 months old. The version of the victim is further corroborated by the testimony of her mother 'K' who appeared in the witness box as PW-12 and stated that on 8<sup>th</sup> April 2015 at about 9 p.m., the victim went out to play and when she did not return home, she made a search for her. At about 10 p.m., she informed her husband about the missing of the victim. She stated that some known persons searched for the victim but the victim was found missing. It was revealed that victim was with one 'B' who was the niece of the appellant herein. While PW-12 was going towards police station Seelampur on the main road, she found the appellant with the victim in his lap. The appellant handed over the victim to her and told her that the victim was found at the red light. It is thus evident that the appellant was last seen with the victim. The appellant has been duly identified by the victim in the witness box. Further, as per the MLC of the victim (Ex.PW-25/1), the victim was taken to the hospital at 2 a.m. on 9<sup>th</sup> April 2015 by her mother and at that time, the victim was unconscious. As per the MLC, the clothes, legs and hands of the victim were found smeared with blood; with injuries i.e. circular ring like bruised area 3 cm in diameter on left cheek; multiple bruises present on breast of 5 x 5 cm and laceration of 3 x 0.5 cm on back. Further, on local examination, bloodstains were found on vulva; fresh tear on hymen, fourchette torn at about 45 degree angle and anus of the victim was found to be tender.

17. Though the defense of the appellant was that he was falsely implicated owing to a parking dispute between him and victim's family, but there is no proof of the same. Even a suggestion in this regard was put to mother of victim (PW-12) but it was denied by her. Furthermore, there appears to be no cogent reason for the family to falsely implicate the appellant and letting the actual culprit go scot free.

18. In view of the cogent and convincing evidence of the victim which is duly corroborated by her medical evidence and the statement of the mother of the victim, we find no error in the impugned judgment of conviction and order on sentence.

19. Appeal is accordingly dismissed.

20. Judgment be uploaded on the website of this Court and a copy of the same be also sent to the Superintendent, Jail for intimation to the appellant and updation of the record.

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

**(POONAM A. BAMBA)**  
**JUDGE**

**MAY 22, 2023/akb**