

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

+ Crl. A.1127/2019

Judgment reserved on : 24.10.2019

Date of decision :10.12.2019

ASHOK JAISWAL

..... Appellant

Through: Mr. Sumeet Verma, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

**Through: Mr. Meenakshi Dahiya, APP
for State with W/SI Vijeta
Gautam, PS New Ashok Nagar.**

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant Ashok Jaiswal son of Sh. Ramadhar Jaiswal vide the present appeal assails the judgment dated 22.05.2018 of the Court of the learned ASJ-01-cum- Presiding Officer of Special POCSO Court, East, KKD Courts, New Delhi in relation to FIR No.664/2015, vide which the appellant was convicted for the commission of an offence punishable under Section 6 of the POCSO Act, 2012 for having committed aggravated penetrative sexual assault falling within the ambit of Section 5(m) of the said enactment in relation to a child aged 4 years at the time when the incident took place. The appellant has also assailed the impugned order on sentence dated 25.05.2018,

whereby, he was sentenced to undergo Rigorous Imprisonment for a period of 10 years and was directed to pay a fine of Rs.5,000/- qua the offence punishable under Section 6 of the POCSO Act, 2012 and in default of the payment of the said fine to further undergo Simple Imprisonment for a period of one month.

2. The fine on recovery was directed to be paid to the victim child as compensation under Section 357(1) Cr.P.C., 1973 and the benefit of Section 428 of the Cr.P.C., 1973 was also given to the appellant. Directions were also issued by the learned Trial Court to the DLSA, East for payment of appropriate compensation to the victim child as per rules.

3. CRL.M.A.37137/2019 seeking condonation of delay of 430 days in the institution of the appeal. In view of the factum that the appellant was in custody with the appeal having been prepared after the visit of the jail visiting advocate after getting the Trial Court Record from the Delhi High Court Legal Services Committee was allowed vide order dated 27.09.2019 and the said delay in the institution of the appeal was condoned.

4. Notice of the appeal was issued to the State. The nominal roll has been received from the Superintendent Jail, Delhi which indicates that as on 10.10.2019, the appellant herein had undergone four (4) years, four (4) months and seventeen (17) days of incarceration and had earned remission of four (4) months and fifteen (15) days with the unexpired portion of the sentence being five (5) years, two (2) months and twenty eight (28) days. The jail conduct of the appellant

has been reported by the Superintendent of the present Central Jail-12, Mandoli, Delhi as being satisfactory.

5. The Trial Court Record has been requisitioned and perused.
6. Submissions were made on behalf of either side.
7. On behalf of the appellant, it was contended that there was a delay of 20 days in reporting of the alleged incident and it was submitted that the mother (Y) of the victim (X) reported the matter to a lady 'W' working in the NGO at New Ashok Nagar instead of reporting the matter to the police and that the mother (Y) of the victim (X) had also bathed the child with warm water and washed her clothes immediately before taking her for a medical check-up. It has also been submitted on behalf of the appellant that there are variations and contradictions in the testimony of PW-2 i.e. the mother (Y) of the victim (X) in as to when she reported the incident to the NGO.
8. Inter alia it was submitted whilst placing reliance also on the verdict of the Hon'ble Supreme Court in "***Takdir Samsuddin Vs. State***" 2012 (1) SCC (Crl) 218 to contend that judicial decisions go to show that the Court favours a prompt FIR but looks with suspicion at a delayed FIR unless a reasonable cause for delay can be advanced.
9. Reliance was placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in "***Atma Ram Vs. State***" 2012 (2) SCC (Crl) 752 to contend that it has been expressly laid down by the Hon'ble Supreme Court that a prompt FIR inspires confidence, which was not so done in the instant case.
10. The appellant has also submitted that the factum that the mother (Y) of the victim (X) did not take her daughter (X) to the doctor when

she was complaining of a swelling and reddishness in her vagina detracts from the veracity of the prosecution version. The appellant has further submitted that the learned Trial Court had failed to appreciate that the testimony of PW-4, the doctor who examined the victim, which brought forth categorically that the hymen of the minor child was intact though there was mild redness and inflammation. It has also been submitted on behalf of the appellant that there are variations in the testimony of the prosecutrix 'X' i.e. the minor child victim also, which cast a doubt on the veracity of the prosecution version. Inter alia the appellant has submitted that there was no independent corroboration of the testimonies of the prosecutrix 'X' and her mother 'Y' and that the testimonies of the police witnesses in the absence of corroboration could not be believed.

11. The appellant has further submitted that the arrest memo Ex.PW3/A did not bear the signatures of his family members or any other members from the locality from where the arrest was made, mandated in term of Section 41B of the Cr.P.C., 1973. It has also been submitted on behalf of the appellant that the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix also does not inspire any confidence and that the impugned judgment of the learned Trial Court was based on conjectures and surmises. Inter alia the appellant has submitted that the Trial Court had not taken into account the factum that the prosecution had failed to produce any independent witnesses nor were neighbors who collected at the spot produced and it has also been submitted on behalf of the appellant that the conviction of the appellant has rested on the testimony of PW-1 i.e.

the prosecutrix 'X' which suffers from several discrepancies and variations from her statement under Section 164 of the Cr.P.C., 1973. Inter alia it has been submitted on behalf of the appellant that the learned Trial Court had not taken into account the factum that a shoddy investigation had taken place and that there was not an iota of proof of evidence against the appellant herein. It has been submitted on behalf of the appellant that there are variant testimonies made by the prosecution witnesses in contrast to the contents of their statements recorded during the course of investigation.

12. The prosecution version that has been put forth through the trial Court judgment indicates that at 11.21 am on 22.05.2015, a call was received by the E-66 Operator informing that a lady from an NGO situated at E-77, New Ashok Nagar, Delhi had informed the Control Room, East of apprehension of a rapist who had committed rape on a minor girl and thus the Duty officer HC Suraj Mal immediately transmitted this information to S.I. Vipin Kumar vide DD No.22A for further action as per law and also informed Constable Yogender, Ct. Sovender and Ct. Prashant to reach the spot. This information was also given by the Duty Officer to Inspector Sarabjeet Kaur as instructed by the Senior Officer. The said DD entry No.22A was exhibited as Ex.PW6/A during the trial through the testimony of ASI Suraj Mal, the Investigation Officer of the case.

13. Inspector Sarabjeet Kaur, D-172, PS Ghazipur on receipt of DD No.22A from PS New Ashok Nagar on directions of the Senior Officer reached at House No. E-7, 2nd Floor, New Ashok Nagar, Delhi where SI. Vipin Kumar alongwith other staff personnel were

present and the complainant (Y) i.e. the mother of victim (X), her husband Mr.Z along with the minor child victim i.e. the prosecutrix 'X' aged 4 years were also along with the appellant herein aged 32 years who was produced by them and the complainant informed that on 02.05.2015, the appellant herein had sexually assaulted the minor child and produced a written complaint, as a consequence of which she, Insp. Sarabjeet Kaur left the accused i.e. the appellant herein in the custody of SI Vipin Kumar and other police personnel and along with Constable Prashant and the minor victim and her parents took the child to the Lal Bahadur Shastri Hospital where the MLC bearing no. 'A' of the minor child was prepared on which the doctor reported an alleged history of sexual assault by a boy named Ashok Jaiswal on 02.05.2015 at his room and that the said Ashok had called her to his room to give her a biscuit and had committed the sexual assault and at the time of her examination there was a swelling and that the child was not able to pass urine, though, there was no history of bleeding, the hymen was reported to be intact, though there was a mild redness and a mild inflammation without any bleeding or discharge.

14. It is also reported through the MLC Ex.PW4/A that all samples were not taken as the incident was old and the victim had taken a wash and had defecated/ urinated several times and moreover, the hymen was also intact on local examination. However, it was also reported through the MLC that there was a mild inflammation in the labia majora and that the clinical examination conducted on the child was consistent with recent sexual assault and the treatment given was Betadine application.

15. It was reported by Inspector Sarabjeet Kaur through DD No.26A recorded at 14.30 hours on 22.05.2015 that on inquiries conducted from the minor child and the contents of the MLC, a case under Section 376 of the Indian Penal Code, 1860 read with Section 6 of the POCSO Act, 2012 was made out and thus, the ruqqa was sent by Inspector Sarabjeet Kaur through Constable Prashant, PS New Ashok Nagar for registration of the FIR and the victim 'X' was sent for counseling to the NGO. Inspector Mashroof was reported to be conducting the investigation and further investigation was entrusted to ASI Santosh.

16. PW-6, ASI Suraj Mal, the Duty Officer testified to having recorded DD No.22A dated 22.05.2015, copy of which is Ex.PW6/A and testified to having recorded DD No.26A as well, copy of which is Ex.PW6/B and testified to the registration of the FIR No.664/2015, PS New Ashok Nagar, copy of which is Ex.PW6/C and further testified to having made an endorsement on the ruqqa on receipt of the same from Inspector Sarabjeet Kaur as being Ex.PW6/D, which he stated that he had signed and after registration of the FIR entrusted the investigation to W/SI Santosh Sharma and testified to having issued the requisite certificate under Section 65B of the Indian Evidence Act, 1872, copy of which is Ex.PW6/E, which PW-6 testified to having signed the same.

17. PW-5, Constable Prashant, No.11369 testified to having joined the investigation of the case on 22.05.2015, when he was posted as a Constable at PS New Ashok Nagar and stated that he along with Constable Sovender and ASI Santosh Sharma reached at House No. E-

7, 2nd Floor, New Ashok Nagar, Delhi where Inspector Sarabjeet Kaur along with other staff was present and he handed over the copy of the FIR and the original ruqqa to her. He further corroborated the prosecution version of having met the victim child along with her parents and an NGO Official in that house where the accused i.e. the appellant herein namely Ashok Jaiswal was present and was immediately apprehended by the NGO Official and then the accused was arrested by the Investigation Officer and on the directions of Inspector Sarabjeet Kaur, he PW-5 along with Constable Sovender had taken the accused to the Lal Bahadur Shastri Hospital for his medical examination and before that, he from the NGO Office along with Inspector Sarabjeet Kaur, the victim child and other staff had gone to the spot in front of Sundram Cable Village, Dallupura, Delhi where the spot was pointed out by the accused i.e. the appellant herein, by the victim and by the complainant/ victim's mother 'Y' and thus, the Investigating Officer had prepared the site plan and after the medical examination of the accused i.e. the appellant herein, he was taken to PS Kalyanpuri and was sent to the lock up. This witness denied that the site plan of the incident had not been prepared in his presence and denied that he had testified falsely.

18. PW-10 Inspector Vijay Kumar in his deposition on 27.03.2018 testified to the effect that he had come to testify on behalf of Inspector Sarabjeet Kaur who was suffering from a medical illness and not in a position to testify before the Court. The Trial Court record indicates that during the course of the proceedings dated 02.02.2018, Inspector Sarabjeet Kaur had informed the Trial Court that she had undergone a

brain operation and was not in a position to depose before the Court and had thus sought time and was thus summoned again for 13.03.2018, on which date Inspector Sarabjeet Kaur had to be discharged again as she was not in a position to be examined because of her medical condition.

19. Vide order dated 13.03.2018, the learned Trial Court directed that Inspector Vipin Kumar, no.1040 who was then posted as the SHO, Defence Colony who was earlier posted as the SHO, PS New Ashok Nagar in May 2015 be summoned to prove the ruqqa on behalf of Inspector Sarabjeet Kaur. PW-10 in his testimony on oath testified to the effect that on 22.05.2015, he was posted as Inspector ATO PS New Ashok Nagar and a complaint had been received from (Y) i.e. the complainant/ mother of the victim regarding a sexual assault with her child and thus, he had instructed Inspector Sarabjeet Kaur from PS Ghazipur, which falls within the same sub-division to reach the spot in view of the nature of the offence mentioned in the complaint as there was no woman police officer available at PS New Ashok Nagar at that time and that Inspector Sarabjeet Kaur was directed to reach the spot i.e. Jagat Ka Makaan, Village Dallupura and he had also directed SI Vipin and Constable Prashant to reach the spot. Inter alia PW-10 testified to the ruqqa having been prepared by Inspector Sarabjeet Kaur bearing her signatures on Ex.PW10/A and he stated that he recognized his signatures as he had seen his writing and signing during the course of his official duty.

20. PW-2, Ms.Y in her testimony on 07.12.2015 stated that she had five children i.e. four sons and one daughter and that the prosecutrix

‘X’ i.e. the victim minor child was her youngest daughter. She stated further that she was living in a room situated on the second floor on rent and that the accused i.e. the appellant herein lived in the adjacent room as a tenant and further stated that on 02.05.2015 (i.e. the date of incident) at about 1.00 pm she went to pick up her son from his school leaving the victim aged 4 years at home and within 10 minutes, she had come back home and she saw her daughter i.e. the victim ‘X’ come out of the room of the accused i.e. appellant herein namely Ashok Jaiswal and she saw her weeping at that time and so she asked the accused i.e. the appellant herein as to why the child ‘X’ was weeping on which he said, ‘kuch nahi aise hi ro rahi hai’ and she thus asked the victim ‘X’, on which the victim told her that the accused i.e. the appellant herein had taken her inside his room on the pretext of giving her a biscuit and after removing her panty, he had inserted his finger into her vagina.

21. PW-2 i.e. the mother of the child ‘X’ testified to the effect that she checked the victim ‘X’ and found swelling and redness on her private parts and that she gave a bath to the victim, so that she could get some relief and that the accused fled away from his house after that incident. She has further stated that she was illiterate and was taking care of the victim ‘X’ and her other children and has further stated that she took no action at that time but stated that after 20 days, she had gone to the office of an NGO situated at New Ashok Nagar and narrated the incident to one lady i.e. didi ‘W’ in that NGO and that didi ‘W’ had called the police at number 100 and that on the search for the accused i.e. the appellant herein could not be traced out and then

as per the guidance given by the NGO official, her husband called on the mobile phone of the accused i.e. the appellant herein and told him that he will get him a job and that the accused came to New Ashok Nagar from where he was apprehended and thereafter, she, PW-2 lodged a complaint with the SHO, PS New Ashok Nagar which she testified bore her signatures at point A on Ex.PW2/A. Inter alia PW-2 testified to the effect that the accused i.e. the appellant herein was arrested and her daughter 'X' was taken to the Lal Bahadur Shastri Hospital for her medical examination and that she accompanied the child. She has also testified to the effect that the statement of the minor child 'X' was also recorded under Section 164 of the Cr.P.C., 1973.

22. On being cross examined, PW-2 stated that her husband was a rickshaw puller and worked from 8.00 am to 9.00 pm and did not take an off from the work. She has further stated that her four children go to school and that her two sons studied in Government school and start from home at about 12.30 pm returned back home at about 6.00 pm and that one of her sons and the child 'X' studied in a private school and start from home at about 8.00 am and the victim child returned back home at about 11.30 am, but her son returned back home at about 1.00 pm. She has also stated that she picks her daughter from the school when the school is over. Inter alia she has stated that she knew the accused i.e. the appellant herein for the last 5-6 years and that he is a labourer.

23. The proceedings dated 07.12.2015 indicates that the complainant started weeping during her testimony, which was thus

deferred at 1.20 PM to be continued after the lunch session and she was thereafter cross-examined further on behalf of the accused i.e. the appellant herein, in which she categorically denied that she had taken any loan from the appellant herein, as a consequence of which she had falsely implicated the accused i.e. the appellant herein. She has also denied that she wanted to marry the accused i.e. the appellant herein and thus, when she offered that he married her and the accused refused, she had falsely implicated him in this case with the connivance of the lady 'W' running the NGO.

24. Inter alia she stated that she does not get any salary for the work done in the office of the NGO where she works as a volunteer and stated that several ladies worked there and further stated that she had spoken about the incident to the Head of the NGO and that her statement was recorded by the police in the office of the NGO. Inter alia, this witness stated that she had not taken her daughter to the doctor after the incident as she is poor and cannot afford the fees of the doctor and stated that the victim was not taken to a doctor after her husband returned from work and that they had given her treatment by pouring hot/warm water on the affected part. She further testified to the effect that the distance between her room and the NGO office was about half an hour. She further stated that at that time, she had not taken the victim to the hospital as her husband had advised her to treat her at home and that it would take about an hour to reach the LBS Hospital on foot from their house. She stated that the police station was situated at a distance of about 1 km from her house. She categorically denied that no such incident as testified by her had taken

place and that is why she had not shown the prosecutrix 'X' / victim at any Government Hospital also. This witness during her cross-examination on behalf of the accused i.e. appellant herein has stated that the accused i.e. the appellant herein was apprehended from the area of New Ashok Nagar near Hanuman Mandir but that she was not present at that time. She denied that she had not given any statement to the police or to the didi 'W' of the NGO and denied that she had written the complaint with the help of the police officials. She also denied that the prosecutrix had been tutored before her statement under Section 164 of the Cr.P.C., 1973 was recorded.

25. PW-2 inter alia denied that the accused i.e. the appellant herein had not run away from his room and denied that he was arrested from his room. The mother of the victim 'X' further denied that she in connivance with her husband 'Z' and the 'W' didi of the NGO, she had falsely implicated the accused i.e. the appellant herein because he has stopped paying money to her and because he had also refused to marry her and had also given a loan of Rs.30,000/- to her.

26. The father of the victim was examined as PW-3 who stated that he had three children i.e. two sons and one daughter and that on 02.05.2015, he had gone for his job in the morning and in the noon hours, his wife picked the victim aged about 4 years from her school and after leaving her at the house, his wife had gone to pick her son from the school at about 3.00 pm she returned back home and told him that the accused i.e. the appellant herein namely Ashok Jaiswal whom she identified, had taken the victim 'X' to his room and had done fingering with her daughter 'X' and thereafter the incident was also

narrated by the child 'X' to him. He further stated that by that time, the accused i.e. the appellant fled away from his house and though they tried to search the accused, they could not do so and after about 10-15 days of the incident, his wife told him that there was Ms.W who was running an NGO, and she had told her about the incident and then that didi 'W' called the police, the police came there and arrested the accused vide a memo Ex.PW3/A, which she signed and also conducted the personal search of the accused and thereafter sent the ruqqa to the police station for the registration of the FIR and that she accompanied her daughter to the Lal Bahadur Shastri, Hospital.

27. The child 'X' examined as PW-1 was aged about 4 years on the date of her testimony i.e. 21.11.2015 with the date of the incident being 02.05.2015 and her statement was recorded by the learned Trial Court through Video Conferencing in the VWDC and the learned Trial Court had ascertained the competency of the witness i.e. of the victim 'X' to be examined in general as also to ascertain that she would speak the truth, though, no oath was administered to the minor child. The Trial Court has observed that when the learned APP put a question as to what had happened with the child, on this, the witness kept mum and thus, the Trial Court considered it appropriate to first confront the victim i.e. 'X' with the accused i.e. the appellant herein, so that she could understand as to in what context the questions were being put to her as she was merely aged 4 years at that time. The accused i.e. the appellant herein was thus, taken out from the screened room and shown to the witness through the video camera and she identified him and she stated that she knew him and identified the name of the

accused as being Ashok Jaiswal. The victim 'X' has further stated that she knew the accused i.e. the appellant herein as he used to reside in her neighborhood and he put his finger into her private part i.e. the vagina and that the victim 'X' clearly explained it by pointing out towards her vagina and by expressly stating the same. She has further stated that at that time she was at the house/ room of the said uncle and stated that at that time her mother 'Y' was at her house. She has further stated that she had not gone to the room of the said uncle and stated that her mother had made a telephonic call to the police. She stated further that the accused had taken her to his room and had told her not to go from there. She further stated that she had narrated the incident to her mother and that she had started crying when the accused i.e. the appellant herein had inserted his finger into her private part.

28. On being cross examined by the learned counsel for the accused i.e. the appellant herein, the 'X' i.e. the minor child stated that her parents had accompanied her that day. She has stated further that her parents had told her as to what was to be deposed. She further stated that it was night time when the incident took place and stated that her father was a rickshaw puller and at the time of the incident, her father was not there. She stated further that she also told to her father what the accused i.e. the appellant herein had done with her and she stated that her father had apprised her of the fact that that uncle i.e. the appellant herein had been taken into custody and sent to jail. She further stated that she was taken to the hospital by her parents and her

brother namely Chicut was also with them. She has also stated that there was no one else accompanying them at that time.

29. The victim 'X' examined as PW-1 denied the suggestion that the accused i.e. the appellant herein had not put his finger into her private part. The Court observation is categorical to the effect:-

“Court observation: the witness has specifically asserted “dala thaa”

30. **This witness has further stated that she did not tell about the incident to anyone else except her parents. She further denied categorically that nothing as such as that was testified by her had happened with her and denied that she was deposing falsely at the behest of her parents.**

31. **This witness was called for further examination on 17.11.2017 but despite repeated calls, there was no counsel who put in appearance on behalf of the accused to cross examine the witness i.e. the victim 'X' and thus, the opportunity to cross examine the witness was closed on 17.11.2017.**

32. The statement of the minor child 'X' under Section 164 of the Cr.P.C., 1973 recorded on 23.05.2015 indicates that the minor child 'X' whose mental state was ascertained by the learned Metropolitan Magistrate who recorded the observation that she was satisfied that the child 'X' was not under any coercion or force and would make her statement voluntarily. The minor child 'X' through her statement under Section 164 of the Cr.P.C., 1973 stated that on 04.05.2015, it was a Monday and Ashok uncle i.e. the appellant herein had taken off her panty and this happened at his house and after he took off her panty, put his finger and the child had pointed out towards her private part to

show where the finger was inserted. This child further pointed out the index finger of her left hand to show that the accused i.e. the appellant herein had inserted that big finger into her private part. She further stated that she had then started crying and then Ashok uncle had let her go. She further stated that when her mother came, she told her mother about the incident and that her mother told her father of the same.

33. Though, it is sought to be contended on behalf of the appellant that there are several variations in the testimonies of the prosecution witnesses, it is essential to observe that the testimony of the child 'X' and her statement under Section 164 of the Cr.P.C. 1973 are both categorical to the effect that the child 'X' was lured into his room by the accused i.e. the appellant herein, whereafter he had sexually assaulted the minor child 'X'. There is nothing in the testimony of the child to bring forth any variation in relation to all material particulars qua the incident about which her testimony is consisted.

34. The contention that has been raised on behalf of the accused i.e. the appellant herein that there was a delay of 20 days in the registration of the FIR has clearly been explained by 'Y' the mother of the child 'X' through her testimony on oath when she states that she had seen the minor child 'X' weeping when she was coming out of the room of the accused i.e. the appellant herein and when she had asked the accused i.e. the appellant herein as to why the child was weeping then he replied "kuch nahi aise hi ro rahi h" and thereafter the child had then informed that the accused i.e. the appellant herein had taken her inside his room on the pretext of giving her a biscuit and

thereafter removed her panty and inserted his finger into her vagina and that she, PW-2 had checked the victim and found swelling and redness on her private parts and that she gave her a bath so that she may get some relief. She further stated that the accused i.e. the appellant herein had fled away from his house after the incident and PW-2 stated further that she was illiterate and was taking care of the victim and other children and that she did not take any action at that time.

35. The testimony of PW-4, Dr.Astha who examined the child on 22.05.2015 stated that though the hymen of the minor child was found intact, there was mild redness and inflammation even after 20 days of the incident, which indicates the gravity of the offence and the force with which the offence had been committed on the minor child.

36. Furthermore, it cannot be overlooked that PW-2 and her family members, belong to an illiterate family and thus it cannot be presumed that the FIR was delayed deliberately for false implication of the accused i.e. the appellant herein.

37. As regards the contention raised on behalf of the accused i.e. the appellant herein that there are variations in the testimony of the child 'X' herself, it has been 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 piecemeal. 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.”

it is thus apparent that the minor variations in the testimony of the child at different stages of the investigation and at trial does not in any manner detract from the veracity of the allegations levelled against the accused i.e. the appellant herein in view of the corroborative testimony of PW-2, ‘Y’ i.e. the mother of the victim, which is corroborative in relation to all material particulars and in view of the testimony of PW-1 ‘X’, the child, which is consistent in relation to all material particulars at all stages, both during investigation and during trial.

38. The contention raised on behalf of the appellant that he had been falsely implicated in the instant case because the mother of the prosecutrix ‘Y’ wanted to marry him, has been categorically refuted by the mother of the prosecutrix ‘Y’ in her deposition on oath as PW-2 and there is no reason to disbelieve ‘Y’ qua the same. The other contention raised on behalf of the accused i.e. the appellant herein was to the effect that the testimony of the child ‘X’ was not corroborated by the testimony of any other witness and thus, the sole testimony of the victim ‘X’ is not sufficient to bring forth the allegations levelled against the accused i.e. the appellant herein.

39. Another contention sought to be raised on behalf of the accused i.e. the appellant herein was to the effect that the hymen of the child was found intact and it is thus, sought to be contended on behalf of the

appellant that the commission of the offence punishable under Section 5(m) of the POCSO Act, 2012 r/w Section 6 of the POCSO Act, 2012 has not even been remotely established against the appellant.

40. It is essential to observe that the offence for which the accused i.e. the appellant herein has been convicted is of his having put his index finger into the vagina of the minor child and in terms of Section 3(b) of the POCSO Act, 2012, a person is said to have committed “penetrative sexual assault” if he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person.

41. The said penetrative assault when committed with a minor child below the age of 12 years as is the case in the instant case in terms of Section 5(m) of the POCSO Act, 2012, falls within the ambit of aggravate penetrative sexual assault, which is punishable in terms of Section 6 of the POCSO Act, 2012.

42. In the circumstances, where the aggravated penetrative sexual assault has been committed by putting the finger into the vagina of the prosecutrix ‘X’ by the accused i.e. the appellant herein, the act of the accused i.e. the appellant herein in the commission of an offence punishable under Section 5(m) of the POCSO Act, 2012 r/w Section 6 of the POCSO Act, 2012 has been conclusively established.

43. As regards the contention raised on behalf of the accused i.e. the appellant herein that in as much as the prosecutrix’s mother ‘Y’ examined as PW-2 was herself working with an NGO and that she did not inform the police and then informed the NGO only on 20.05.2015,

also does not suffice to detract from the veracity of the prosecution version through the testimonies of the prosecution witnesses which conclusively establish that the accused i.e. the appellant herein had committed aggravated penetrative sexual assault on the minor victim 'X' aged 4 years. There is thus, no infirmity in the impugned judgment dated 22.5.2018 nor is there any infirmity in the impugned sentence imposed. The CrI.A. No.1127/2019 is thus dismissed.

44. However, in terms of the verdict of Supreme Court in ***"Phul Singh Vs. State of Haryana"*** in Criminal Appeal No. 506/1979 decided on 10.09.1979 and directions laid down by us in ***"Sanjay vs. State"*** 2017 III AD (Delhi) 24 dated 20.02.2017 so that the ***"carceral period reforms the convict"*** as also reiterated by this Court in ***"Randhir @ Malang vs. State"*** in CrI. A. No.456/2017, ***"Chattu Lal vs. State"*** in CrI.A. No.524/2017, ***"Afzal vs. State (Govt. of NCT of Delhi)"*** in CrI.A. No.996/2016, ***"Billo Vs. State NCT of Delhi"*** in CrI. A.378/2017, ***"Dinesh Chand Vs. State (Govt. of NCT of Delhi)"*** in CrI.A. No.330/2018, ***"Rinku @ Ram Prasad Vs. State"*** in CrI.A.865/2019 and ***"Sanjeev Kumar vs. State (NCT of Delhi)"*** in CrI.A. No.643/2019, it is essential that the following directives detailed hereunder are given so that the sentence acts as a deterrent and is simultaneously reformatory with a prospect of rehabilitation.

45. The concerned Superintendent of the 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.*

46. 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.

47. The Trial Court Record be returned.

48. Copy of this judgment be supplied to the appellant and be sent to the Superintendent Jail, Delhi for compliance.

ANU MALHOTRA, J.

DECEMBER 10, 2019/NC