

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

+ **Crl. A. No. 54/2019**

Judgment reserved on : 19.11.2019

% **Judgment pronounced on : 17.02.2020**

PASHUPATI MUKHIYA Appellant

Through Mr. Simon Benjamin, Adv.

versus

STATE Respondent

Through Mr. M.S. Oberoi, APP for State with
SI Manoj Kumar.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J.

1. The appellant has challenged the impugned judgment of conviction dated 31.08.2018 and order on sentence dated 10.09.2018 whereby the appellant has been convicted in FIR No. 536/2014, under Section 363/342/354 IPC and Under Section 8/12 POCSO Act. For having committed an offence under Section 10 of POCSO Act, the appellant has been sentenced to undergo RI for a period of five years along with fine of Rs.2,500/- and in default of payment of fine SI for two months. The appellant has been further convicted for an offence punishable under Section 342 IPC and sentenced to RI for one year, and for the offence punishable under Section 363 IPC appellant has been sentenced to undergo RI for five years along with fine of Rs.2000/-, and in default of payment SI for two months. All the sentences of the convict to run concurrently.

2. In brief, the facts of the prosecution case are that on 15.08.2014 at about 8.35 pm, parents of the victim came to the Police Station Timarpur along with their 09 year old daughter and produced the accused at police station and alleged that the accused had sexually assaulted their daughter and legal action be taken against him. DD No. 39A was recorded and assigned to W SI Sushma and the victim along with her parents were taken for medical examination to Aruna Asaf Ali Government Hospital, Delhi. The victim was got counselled by the counsellor. The police recorded the statement of the Victim.

3. In her statement recorded by the police, the victim alleged that on 15.08.2014, at about 4.00 PM, she was flying kite near Deepak Dairy. At that time, an uncle came to her and said that he will give her a kite and then he forcibly took her to a Gali where he pressed her breast and also caressed above her underwear. When she tried to run away, the accused took her to a room, locked her and ran away. When she raised an alarm from the room no one opened the door. After about two hours, the same uncle opened the door and the victim ran away to her house and told the entire incident to her parents. Her parents went in search of the accused along with the victim and saw the accused in the Gali. When the victim saw the accused she told her parents that he was the same uncle who had done wrong act with her and had locked her in the room.

4. On the basis of the above said statement of the victim, a *rukka* was prepared and on the basis of which FIR No. 536/2014 under Section 363/342/354 IPC and Section 8/10 of POCSO Act was registered. Thereafter, the site plan was prepared at the instance of the victim and her

parents and the Victim showed the place of incident at the pump house situated near the *gali*. The disclosure statement of the accused was recorded and the accused was arrested. Thereafter, the accused led the police to the place of incident and pointed out the same to the police. The accused was medically examined. Mobile Crime Team was informed which reached the place of incident and inspected the spot and took photographs. On 16.08.2014, the statement of the victim was got recorded under Section 164 Cr. P.C before the Ld. MM. The documents relating to the age of the victim were also collected.

5. After completion of investigation, charge-sheet was filed against the accused for the offences punishable under Section 363/342/354 IPC and Section 8/10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

6. After completion of provision of Section 207 Cr. P.C and on the basis of material available on record, *prima facie* charges under Section 363/342/354 IPC and Section 10/12 of the POCSO Act were framed. The accused pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution has examined 18 witnesses, which are as follows:-

PW-1	Smt. 'A' (Mother of the Victim)
PW-2.	Victim 'S'.
PW-3	ASI Raj Kumar, Duty Officer.
PW-4	SH. "HC @ K". Father of the Victim.
PW-5	Inspector Surya Prakash, Part IO of the case, who has filed the charge-sheet.
PW-6	Ms. Rama, neighbour of the victim's family.
PW-7	Dr. Surnedra Kumar, CMO, who prove the MLC of the accused.

PW-8	Mohd. Ayub, Pump Operator at CPWD, Timarpur.
PW-9	SI Nagendra Giri, In-charge, Mobile Crime Team.
PW-10	Ct. Rahul, Part of Investigation alongwith IO.
PW-11	Sh. Sanjay Singh, Landlord of the accused.
PW-12	Smt. Rajesh Yadav, Teacher to prove the age of victim.
PW-13	Sh. S.K.Swami, Junior Engineer, Electrical, CPWD, Timarpur, Delhi.
PW-14	Ct. Inderjeet, Photographer with the Mobile Crime Team.
PW-15	W Ct. Meenakshi, took the victim to the Hospital for her medical examination.
PW-16	Dr. Deepshikha, to prove the MLC of the victim.
PW-17	Ld. MM
PW-18	W/SI Sushma, IO of the case.

8. The mother of the victim was examined as PW-1 and she deposed that she usually returns to her house at 7.00 pm and on the date of incident i.e 15.08.2014, she came back to her house at about the same time i.e around 7.00 pm when she saw that the victim was weeping and on asking as to what had happened, she told her that when she was flying kite at around 4.00 pm near Deepak Dairy one uncle came and told her that he would get a kite for her for which she refused. Then that Uncle forcibly caught her and took her to a narrow street (*gali*) and pressed her breast and caressed (*hath fera*) on the underwear of the victim and bolted her inside a small room and went away. She also told her that when she raised an alarm no one opened the door and after about 1-2 hours that Uncle came and then she pushed the uncle and ran away from there and came to her house. When her daughter, the victim along with her was going to the place of incident, her daughter saw the accused on the way and identified him as the uncle who assaulted her in the above-said manner. She also deposed that at the

time when they went to the place of occurrence, her husband and her neighbours were also with her and the accused was identified and apprehended.

9. The victim was examined as PW-2. She deposed that on 15.08.2014, when she was flying kite (*patang khel rahi thi, patang loot rahi thi*) and was present near Deepak Dairy, at that time around 05.00 p.m an unknown person came and dragged her to the pump house. In a narrow passage, he touched her private parts i.e her chest and vagina and thereafter, locked her in the pump house and went away. The said person came back after 2-2 ½ hours and at that time he was under the influence of liquor. The victim pushed him and ran away to her house and narrated the entire incident to her father who was searching for her. On being asked by her father, she took him to the said pump house where the incident had taken place and saw that person coming and pointed out towards him and told her father that he was the person who misbehaved with her. The said person was caught by the residents of the *gali* and was assaulted by them and the police arrived thereafter.

10. Statement of PW-3 ASI Ajay Kumar deposed that on that day he was working as a Duty Officer from 4.00 pm to 12 midnight. At about 8.35 pm, the parents of the victim visited the police station Timarpur and produced the victim 'S' aged about 9 years, along with accused Pashupati Mukhiya who was present in court (correctly identified) and told that the accused had physically assaulted her and they requested to take legal action against the accused.

11. Father of the victim was examined as PW-4. In his statement, he deposed that when he came back home at about 6.00 pm on 15.8.2014, his daughter, the victim was not present and when he asked his son about the victim, his son told her that he was playing with the victim and after some time, he left the park and when he returned, he did not find the victim there. Thereafter, they started searching for the victim but could not find her. Later the victim returned to the house and on inquiry as to where she was, the victim told that one uncle had forcibly taken her to a pump house at Budh Bazar to a narrow street and he physically assaulted her in the said street and pressed her breast and caressed over her underwear and also physically assaulted her in the pump house and confined her there after locking the main door from outside. She also told his father that she raised an alarm and after about 1-2 hours, the said person returned to the Pump House and when he opened the door of the pump house, she hid herself behind the door and as soon as the door was opened she ran away after pushing him and reached home. Thereafter, the victim took him, his wife and other neighbours to the said pump house to the same route and on the way they saw the accused coming from the opposite side and as soon as the victim saw the accused she became afraid and told her mother and hid behind her and pointed out and identified the accused as the person who had assaulted her. Thereafter, the accused was apprehended and taken to the police.

12. PW-5 Inspector Surya Prakash deposed that the present case was assigned to him. He also deposed that he prepared the final charge-sheet and filed the same in court for judicial verdict.

13. PW-6 is the neighbour of the victim. She deposed that on 15.8.2014, at about 07.00/07:15 pm, she received a call from the father of victim and he asked me whether victim has come to my house. Father of the victim further told that the victim is missing. On receiving the aforesaid call, she along with her husband immediately left her house and reached at the house of father of the victim.

14. Statement of Dr. Surnedra Kumar, CMO Aruna Asaf Ali Road Hospital has been recorded as PW-7, in which he has deposed that accused was brought by Ct.Rahul and W/SI Sushma for medical examination.

15. PW-8 has deposed that he is a pump operator. He deposed that due to mistake he could not locked pump house no.1 and at the same time of leaving the same for pump no.2. Thereafter, he switched off pump no. 1 and locked the same from outside.

16. PW-9 has deposed that on 16.8.2014, on receipt of an information from Control Room, North District, through wireless set, he along with HC Rajbir (Fingerprint Proficient), Ct. Inderjeet (Photographer) reached at the spot i.e the pump house and inspected the scene of crime.

17. Statement of Ct. Rahul has been recorded as PW-10. He deposed that on 15.8.2014, at about 8.00 pm. The victim along with her Uncle, her mother and one-two neighbours came to P.S. Timarpur and produced the accused.

18. PW-11 deposed that accused was a rag-picker and was a habitual consumer of liquor.

19. PW-12, who was an Assistant Primary Teacher, Sarvodaya Kanya Vidhyalaya, Timarpur, Delhi, brought the original register pertaining

to the admissions/withdrawal of the students. In the register, it was mentioned that Km. 'S' d/o 'H C R' (father) and 'A D' (mother) was admitted in their school on 22.4.2014 in 4th Class vide Admission No. 329. As per register, the date of birth of 'S' was 22.8.2005.

20. Statement of Sh. S.K.Swamy was recorded as PW-13. He deposed that on 6.9.2014, he received an application for providing the photocopy of the attendance register of the official who was on duty at Pump House No.1 Timarpur, Delhi on 15.8.2014 from 2.00 PM to 10.00 PM.

21. PW-14 in his examination deposed that on 16.8.2014, on receiving the information from Control Room, he along with Sub-Inspector, Incharge and Head Constable reached at the spot and took photographs of the scene of the crime on the directions of the investigating officer.

22. PW-15 W/Constable deposed that on that day, she along with W/Sub-Inspector Sushma and Sub-Inspector took the victim along with her mother to Aruna Asaf Ali Hospital and got the victim medically examined.

23. Statement of Dr. Deepshikha, Specialist, Department of Gynae and Obs. Aruna Asaf Ali Government Hospital, recorded as PW-16, wherein she deposed that as per the MLC the victim was brought by lady Constable Meenakshi and mother of the victim.

24. Statement of PW-17 Ms. Ruchi Aggarwal, Ld. MM, Tis Hazari Courts is also recorded. In that examination, she deposed that victim was produced by IO and she identified the victim through her separate statement.

25. PW-18 W/SI Sushma, No. 4733/D deposed that on 15.8.2014, DD 39 A was assigned to her telephonically and thereafter, she reached at

PS Timarpur and found the victim along with her parents and accused in the police station.

26. Statement of the accused was recorded under Section 313 Cr.P.C and he stated that he is innocent and has been falsely implicated in this case. He stated that he was picked up by police from Timarpur Market and booked in this case. The appellant has not led any evidence in his defence.

27. It is urged by Legal Aid Counsel appearing for appellant that there are discrepancies in the testimony of the witnesses and the victim is not a trustworthy witness. He has further urged that prosecution has not been able to establish the scene of crime and there are major contradictions in the testimony of PW-4 and PW-6 which goes to the root of the case. He further submits that the investigation in this case is faulty as in DD No. 40A there is no mention of the accused and even the identity of the accused is disputed. He has further argued that the learned trial court has not appreciated the evidence of the victim in its right perspective. He further urged that the appellant has been falsely implicated.

28. On the other hand, it is submitted by the learned APP for the State that there is no infirmity in the impugned judgment. He further submitted that the appellant was apprehended at the instance of the victim and even the site plan was prepared at her instance. He further urged that there was no enmity of the victim or her parents with the appellant so there was no question of false implication. He further urged that the inconsistencies are bound to appear in the evidence of the witnesses and only those inconsistencies which go to the root of the matter are material and every

inconsistency cannot be taken into account to discredit the case of the prosecution. Ld. APP for the State further argued that the victim in this case is a 9 year old girl and one cannot lose sight of the trauma suffered by her and her statement should be appreciated keeping this in mind.

29. As far as the contention of the counsel for the appellant that investigation in this case is faulty, counsel for the appellant could not enumerate the faults in investigation. It is a settled principle of law that defective investigation cannot be made base of acquitting the accused and in this regard, reliance can be placed on a judgement of the Supreme Court in ***State of West Bengal Vs. Meer Mohd. Omar and Ors JT 2000(9) SC 467***, and therefore, this ground as raised in the appeal has no force, in the absence of any defects having been pointed out in the investigation.

30. It was then argued by the counsel for the appellant that the testimony of the child victim is not trustworthy.

31. As regards the testimony of child witness Supreme Court has elaborated upon the credibility of Child witnesses in State of ***M.P. v. Ramesh (2011) 4 SCC 786*** and took note of its earlier decisions to explain the law relating to evidentiary value of the statements of child witnesses. It has been observed in the following judgments as follows:

“7. In ***Rameshwar v. State of Rajasthan [AIR 1952 SC 1952 Crl. LJ 547]*** this Court examined the provisions of Section 5 of the Oaths Act, 1873 and Section 118 of the Evidence Act, 1872 and held that (AIR p. 55, para 7) every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. There is always competency in fact

unless the court considers otherwise. The Court further held as under: (AIR p. 56, para 11)” 11. it is desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. But whether the Magistrate or Judge really was of that opinion can, I think, be gathered from the circumstances when there is no formal certificate.”

8. In *Mangoo v. State of M.P.* [AIR 1995 SC 959: 1995 CrL. LJ 1461] this Court while dealing with the evidence of a child witness observed that there was always scope to tutor the child, however, it cannot alone be a ground to come to the conclusion that the child witness must have been tutored. The court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring.

9. In *Panchhi v. State of U.P.* [(1998) 7 SCC 177: 1998 SCC(CrL.) 1561: AIR 1998 SC 2726] this Court while placing reliance upon a large number of its earlier judgments observed that the testimony of a child witness must find adequate corroboration before it is relied on. However, it is more a rule of practical wisdom than of law. It cannot be held that “The evidence of a child witness would always stand irretrievably stigmatised. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring” (SCC p. 181, para 11).

10. *In Nivrutti Pandurang Kokate v. State of Maharashtra [(2008) 12 SC 565 : (2009) 1 SCC (Crl) 454 : AIR 2008 SC 1460]* this Court dealing with the child witness has observed as under: (SCC pp. 567-68, para 10) “10. ...” 7. ... The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witness are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.” (Ed.: As observed in *Ratansinh Dalsukhbhai Nayak v. State of Gujarat*, (2004) 1 SCC 64 : 2004 SCC (Cri) 7, at SCC pp. 67-68, para 7.]

11. The evidence of a child must reveal that he was liable to discern between right and wrong and the court may find out from the cross-examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness

must be able to understand that sanctity of giving evidence on oath and the import of the questions that were being put to him. (Vide Himmat Sukhadeo Wahurqagh v. State of Maharashtra [(2009) 6 SCC 712 : (2009) 3 SCC (Cri) 1 : AIR 2009 SC 2292].)

12. *In State of U.P. v. Krishna Master [(2010) 12 SCC 324 : (2011) 1 SCC (Cri) 381 : AIR 2010 SC 3071] this Court held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts of his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature.*

13. *Part of the statement of a child witness, even if tutored can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. (Vide Gagan Kanojia v. State of Punjab [(2006) 13 SCC 516 : (2008) 1 SCC (Cri) 109].)*
(emphasis supplied)

20. *In Dattu Ramrao Sakhare v. State of Maharashtra*, (1997) 5 SCC 341, Hon'ble Supreme Court observed as under:

“ – A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and liable to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored”

(emphasis supplied)

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22. As regards any omissions/discrepancies in the testimony of the witness, the Hon'ble Supreme Court had observed in judgment of *Mritunjoy Bishwas Vs. Pranab* 2013(12)SCC 796 as follows:

“It is well settled in law that the discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of trustworthiness. The test is whether the same inspired confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and therefore minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a

ground to reject the prosecution evidence. The omission should create a seditious doubt about the truthfulness or creditworthiness of a witness.”

(emphasis supplied)

In State of U.P.V. Bhagwan, AIR 1997 SC 3292, it was held that;

“But minor discrepancies in the evidence of the eye-witnesses are immaterial unless they demolish the basic case of the prosecution.”

32. During the course of trial, child witness was cross-examined and she stated that she was flying kite near Deepak Dairy and at that time she was alone. She has further stated that Deepak Dairy is not situated in the market, however, there was one shop near it. It was closed at the time of incident. She further stated in the cross-examination that when the appellant was forcibly taking her, she raised an alarm, but no one came. Victim also testified that pump house had water pump and pipes installed therein and it was surrounded by many buildings. The statement of the victim was also recorded under Section 164 Cr.P.C wherein she had stated that while she was catching kites, one uncle came and told her that he will give her a kite but she refused. She has further stated that thereafter he took her with him and she raised an alarm, but no one heard her alarm. She has further stated in her statement under Section 164 Cr. P.C that the uncle held her by hand and took her to a room where a lot of machines of water were functioning. He locked the door from outside but nobody heard her voice. She further stated that later on uncle came back drunk, and he opened the door and started touching on her upper and lower parts. She further stated that since he was drunk so she ran away and told everything to her mother. Thereafter,

the victim and her mother went back to the place of occurrence and caught the appellant and brought him to the police station. From the judgment *Mritunjoy Bishwas(supra)*, it is clear that if an omission or discrepancy goes to the root of the matter then the same needs to be taken into account, however, every omission cannot take place of a material omission and therefore, minor contradictions and inconsistencies in the testimony of the witnesses should not be a ground to plead the case of the prosecution.

33. As far as the law regarding appreciation of evidence of the victim of sexual offence is concerned, it has been set at rest by catena of judgments. In the matter of *State of Punjab Vs. Gurmit Singh reported in 1996 SC 1393*, wherein it is held that in the matters of sexual assault on a female, the court should examine the broader probabilities of a case and should not get swayed by minor contradictions or insignificant discrepancies in the in the statement of the prosecutrix.

34. In the matter of *State of Himachal Pradesh Vs. Mangoram reported in (2005) 5 SCC 30*, the Honourable Apex Court has held that in cases of sexual offences, the Court should display a greater sense of responsibility and more sensitive while dealing with a charge of sexual assault on a woman. It is well settled that the victim of a sexual assault is not an accomplice to the crime, but her evidence carries more weight than that of an injured as a part from physical injury, she suffers mental trauma in such incident. Because of sexual violence on a minor female child, she deserves more importance at the hands of the Court by taking sensitive approach in the matter.

35. In the instant case, the statement made by the victim before the police on 15.8.2014 and the statement made in court are consistent. Though the victim was cross-examined, but nothing has come out in the cross-examination to shake her testimony or to make her testimony unbelievable. It was argued by the counsel for the appellant that there are inconsistencies in the statement of the victim recorded under Section 164 Cr.P.C as regards the place of incident. In her statement recorded under Section 164 Cr.P.C, the victim has stated that she was sexually assaulted in pump house whereas in her testimony recorded in court, she has stated that she was sexually assaulted in a narrow passage near pump house. However, the crux of the matter is that the victim has throughout maintained that she was sexually assaulted. In the instant case, the victim at the time of incident was about 9 years old and some discrepancies naturally creep in the statement of the witnesses when they are recorded at different point of time and days rather years after the incident. In the instant case, one cannot lose sight of the fact that the victim was just 9 year old girl and much traumatized by the conduct of the appellant in taking her from the place where she was playing and despite her raising alarm nobody coming to rescue and also the fact that she was kept locked inside the pump house and gathering enough courage, somehow managed to escape. So all this which has been faced by the little girl has to be taken into account while considering and appreciating her testimony. The witness may not narrate the incident in greater detail at one stage and in brevity at some other stage and may give more emphasis to some part of her testimony on different occasions when her statements are recorded. But the court has to see whether the statement is believable or not.

Minor discrepancies or inconsistencies in the statement of the victim which do not go to the root of the prosecution case are immaterial. The testimony of the victim is also corroborated by the testimony of her mother and father who have testified that the victim returned to her house at about 7.00 PM and narrated the incident to them. Therefore, inconsistencies or discrepancies in the statement of the victim are not such which makes her unbelievable.

36. It has also been argued by the learned counsel for the appellant that the accused has been falsely implicated in this case and his identity has not been established by the prosecution on record with positivity. As far as this contention of the learned counsel for the appellant is concerned, the same has no force. The victim has deposed that when she was taken by her parents and neighbours to the pump house, she saw accused coming from the opposite direction and told her parents that he was the person who had done wrong act with her. The appellant was then apprehended by the parents and neighbours of the victim and taken to police station Timar Pur and produced before the police. Therefore, in these circumstances, the contention of the counsel for the accused that the accused was not identified by the victim is misconceived. Appellant in this case has been arrested on pointing out of the victim. In this regard, the testimony of not only the victim but her parents and PW-6 is consistent and they had deposed before the court that the victim pointed out towards appellant as the same person who had sexually assaulted her, when they saw him coming from the opposite at the time when the victim was taking by them to show the place of incident. It was then that he was apprehended at her instance and

produced before the police. Therefore, in such circumstances, there was no further need for the police to get the identification of the appellant conducted. Looking into the facts and circumstances and the manner in which the appellant was apprehended, identification of the appellant therefore cannot be disputed.

37. It has also been argued by the counsel for the appellant that the father of the victim has falsely implicated him as he was in drunken state. In this regard, it is relevant to note that the appellant in the statement recorded under Section 313 Cr.P.C has stated that he is innocent and has been falsely implicated in the present case and he was picked up by police from Timarpur Market and booked in this case. However, he has not stated in the statement under Section 313 Cr.P.C that the father of the victim was having any malice towards him, however, during the course of cross-examination of PW-4 father of victim a suggestion was put to him that he was deposing falsely due to some malice, the suggestion which was denied by the father of the victim PW-4. The appellant has also not produced any defence evidence in support of his defence.

38. Therefore, in view of the discussion hereinabove, I do not find any infirmity in the impugned judgment dated 31.8.2018. The appeal is therefore dismissed.

39. A copy of this judgment shall be transmitted to the Jail Authorities.

RAJNISH BHATNAGAR, J

FEBRUARY 17, 2020/ib