

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

**CRL.A. 735/2019**

Reserved on : 14.07.2020

Delivered on : 10.08.2020

**IN THE MATTER OF:**

**V. MURLI**

**..... APPELLANT**

Through: Mr. Siddharth Yadav, Advocate.

Versus

**STATE OF NCT OF DELHI**

**..... RESPONDENT**

Through: Ms. Radhika Kolluru, APP for State.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

**MANOJ KUMAR OHRI, J.**

1. By way of the present appeal, the appellant has challenged his conviction recorded by the trial court vide judgment dated 27.04.2019 in FIR No. 104/14 registered under Section 354 IPC and Section 10 of the POCSO Act at P.S. Lodhi Colony whereby the appellant was convicted for the offence punishable under Section 354 IPC and Section 10 of the POCSO Act.

Signature Not Verified

Digitally Signed By: ANGEETA ANAND  
Signing Date: 14.08.2020 14:44  
This file is digitally signed by PS to HMJ Manoj Kumar Ohri.

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2. Subsequently, vide order dated 13.05.2019, the appellant was sentenced to undergo RI for a period of five years and a fine of Rs.20,000/- for the offence punishable Section 10 of the POCSO Act and in default thereof, to undergo SI for a period of six months. In view of Section 42 of the POSCO Act, the appellant was not sentenced for the offence punishable under Section 354 IPC as the sentence in POSCO Act is higher.

3. While passing the impugned judgment, the trial court noted the brief facts as follows:-

*“2. The FIR came to be registered on a written complaint dated 30.03.2014 (Ex.PW-3/B) lodged by the mother of victim 'E'. The mother stated in her complaint that on 12.03.2014, accused molested her daughter E (age around 11 years) and her friend 'A' (age around 8 years) while they were playing in the common area near the lift on the 3<sup>rd</sup> Floor of their apartment. It is the case of the prosecution that both the victims were residing along with their family at the apartments in Pragati Vihar Hostel, Lodhi Road, New Delhi. On 12.03.2014, at around 07.30 PM, while these girls were playing with water-balloons, accused kept staring them from the 4<sup>th</sup> Floor of the apartment. He approached the girls and made physical contact & advances involving unwelcome and explicit sexual overtures. The accused molested both the victims. He caught Baby 'E' and put his hand inside her slacks and touched her private parts. The girl kept pleading that he should let her go but could not manage to free herself as he was holding her tightly. She somehow managed to free herself and ran towards her house. The accused also touched the girl 'A' in inappropriate manner. The child felt uneasy and ran towards the house of her friend 'E'. It is the prosecution's case that the complainant consoled the crying girls and thereafter, they narrated the entire episode to her. The parents of the girls made efforts to identify the man who*

*misbehaved with their daughters but could not succeed. It was only on 30.03.2014 that the girls saw the accused in the locality and identified him as the person who molested them. It was found that accused was a Constable in CRPF and he was working in the same apartment as an Orderly at the House of Deputy Commandant, CRPF. The parents apprehended the accused and informed the police.*

*3. The prosecution's case proceeds further that the information about the incident was received and recorded at Police Station Lodhi Colony as DD N0.22A (Ex.PW-5/A). On receiving this information, SI Manoj Kumar (PW-6), Ct. Rajender (PW-7) and W/Ct. Nutan (PW-5) reached the spot where the complainant met them and handed over the written complaint. The police officials requested an NGO named Butterfly to send its representative for counseling the minor girls. Accused was arrested and medically examined. Statements of witnesses were recorded and the site plan was prepared. The statements of the victims were recorded under Section 164 Cr.P.C and the necessary documentation was done. On completion of the investigation, charge-sheet was put to the court."*

4. After completing the investigation, the charge-sheet was filed and the trial court framed charges to which the appellant pleaded not guilty and claimed trial.

### **CONTENTIONS**

5. Mr. Siddharth Yadav, learned counsel for the appellant has challenged the impugned judgment by contending that there has been a delay of 18 days in giving the complaint; that there is no eye witness to the incident; that no TIP was conducted; that the appellant was apprehended on false implication and wrong identification; that it was

dark and no light source was shown in the site plan; that no MLC was conducted to substantiate the allegations made by the witnesses; that the material witnesses being the fathers of the child victims, the President of RWA and the employer/Commanding Officer of the appellant were not examined. Lastly, it was submitted that there are contradictions in the statements of the witnesses with respect to the mode, manner and place of the apprehending as well as arrest of the appellant; that the child witnesses were tutored. Learned counsel has relied upon the decisions in State of Madhya Pradesh v. Chamru @ Bhagwandas & Ors. reported as **(2007) 12 SCC 423**, judgment in *Crl.A. 4/1993* titled Sanjay Singh Sandhu v. State dated 28.08.2009, Arif v. State Govt. of NCT of Delhi reported as **2015 SCC OnLine Del 6903** and Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan reported as **(2013) 5 SCC 722**.

6. Ms. Radhika Kolluru, learned APP for the State, on the other hand, has supported the impugned judgment. She submitted that the testimonies of the two child witnesses are consistent, coherent and credible. She further submits that the delay in registration of the FIR occurred as the appellant was not known to the child victims and they could only identify him later on when they saw him in the complex, on which date the appellant was apprehended and the present FIR was registered. She further submitted that all the material witnesses were examined and non-examination of the other persons or the fathers of the victims is not fatal to the prosecution case. She refers to the decision of the Coordinate Bench of this Court in Pramod Kumar v. State reported as **2016 Cri LJ 2997** wherein it was held that delay of 10 days in lodging the FIR was not considered as fatal.

## **AGE OF THE CHILD VICTIMS**

7. The present case involves child victims hereinafter, referred as Baby 'E' and Baby 'A'. In the initial complaint made to the SHO by the mother of Baby 'E', the age of the Baby 'E' was mentioned as 7 years and Baby 'A' as 8 years. During the trial, the prosecution examined SI *Jag Roshni* who had collected the age proof of both the child victims from the respective schools. As per the record, the date of birth of Baby 'E' is 03.05.2006 and that of Baby 'A' is 15.12.2005. The appellant did not contest the age of the child victims. Accordingly, in view of the documents collected and the undisputed case of the prosecution, both the child victims were below the age of 12 years as on 12.03.2014 i.e. the day of the incident.

## **MATERIAL WITNESSES**

8. Child victim Baby 'E' was examined as PW-1 on 30.01.2016. She stated that on the day of the incident she was a student of 2<sup>nd</sup> class. She along with her friend Baby 'A' were playing in front of her flat on the 3<sup>rd</sup> floor. They were playing with water balloons on account of which their clothes got wet. She noticed that the appellant was standing at the 4<sup>th</sup> floor and staring both of them. After sometime, the appellant came down towards them and started touching legs of Baby 'A' and then starting touching her and said "*you are so wet*" and then he touched her underpants. He also touched her legs and her buttocks. He caught hold of her tightly and when she asked him to leave her, he did not. She somehow managed to escape and both of them ran to the flat of Baby 'A'.

which was nearby. She also informed her mother. They tried to look for the appellant on that day but he could not be found. After few days when they were cycling, they found the appellant in front of F-Block. He was sitting on a scooter and playing with a small boy. They went close to him and identified him as the same person who did wrong acts with them earlier. They went back to their homes and informed their parents. When they came back, they could not find the appellant however, on enquiry from their friends residing in F-Block, they came to know the residence of the appellant. When they reached the flat, they came to know that the appellant was an employee of a CRPF Officer and working as a servant in a flat of the said CRPF Officer. She also identified the appellant through the video link.

9. On being asked by the learned Addl. PP, she clarified that the appellant had touched her buttocks from inside her underpants and not from above the clothes. During the cross examination, the witness clarified that she and her friend Baby 'A' resided on the same floor. She denied the suggestion that the appellant was not present at the fourth floor on the date of the incident. She also denied the suggestion that the appellant had not touched her or her friend on the day of the incident. She denied the suggestion that no such incident took place.

10. Baby 'A' was examined as PW-2 on 30.01.2016. She deposed that on day of the incident she was playing with her friend Baby 'E' with water balloons in the area in front of their flat. The appellant was standing on the 4<sup>th</sup> floor and was staring at them. After sometime, he came downstairs and caught hold of Baby 'E' and did something with her. The witness was wearing a skirt and the appellant touched her legs. The witness informed her mother as well as the mother of her friend. One

day while cycling in their colony, they went to F-Block where they found the appellant playing with the children. Thereafter, the appellant was apprehended. Baby 'A' after seeing the appellant stated that perhaps he was the accused but she was not sure. In cross-examination by the learned Addl. P.P., she stated that the appellant had not caught hold of her. He only touched her legs but had caught hold of Baby 'E' and also touched her legs as well as buttocks. She stated that it was correct that the appellant had touched the buttocks of Baby 'E' after inserting his hand into her underpants. During the cross examination on behalf of the appellant, the witness denied the suggestion that she ran away from the spot which is why she had not seen the appellant inappropriately touching her friend Baby 'E'. She voluntarily clarified that she had seen that appellant catching hold of her friend Baby 'E' and touching her. She denied the suggestion that the appellant had not touched her legs. She also denied the suggestion that the appellant was not staring from the fourth floor.

11. Ms. 'R.R.', mother of Baby 'E' was examined as PW-3. She stated that on the date of the incident she was present at her house while her daughter was playing with her friend i.e., Baby 'A' in the area outside their flat at the 3<sup>rd</sup> floor. At about 7:30/8:00 p.m., both the girls came to her. They were weeping at that time. On being enquired, they told her that they were playing with water balloons when somebody from 4<sup>th</sup> floor came and caught hold of her friend Baby 'A' and then he caught hold of her daughter Baby 'E'. She was told that the appellant had put his hand inside the slacks of Baby 'E' and touched her back portion. She along with the mother of Baby 'A' looked around but did not find anyone. She also called her husband and searched for accused but could not find him.

A complaint was made to the President of RWA. On 30.03.2014 when the children were cycling, they saw the appellant in the campus. Later on, they came to know that the appellant was working in a flat in F-Block. Her husband along with father of Baby 'A' went to the aforesaid flat and on identification of the children, apprehended the appellant. In her cross-examination on behalf of the appellant, she admitted that on 30.03.2014, her husband had gone and she personally had no knowledge what happened thereafter. She herself did not inform the Police.

12. Ms. 'M.T.', mother of Baby 'A' was examined as PW-4. She stated that on the date of the incident, her daughter aged 8 years was playing with her friend Baby 'E'. She was called by the mother of Baby 'E' at her house where her daughter Baby 'A' told her that while she was playing on the 3<sup>rd</sup> floor with Baby 'E', one person i.e. the appellant who was staring them from the 4<sup>th</sup> floor came down and touched the legs of her daughter and said "*wearing pyjama is wet*". She was also told that the appellant also misbehaved with Baby 'E'. It was dark at that time but they went to look for the appellant but could not find him. On 30.03.2014, both the child victims saw the appellant in F-Block of the campus and informed her as well as the parents of Baby 'E'. The appellant was apprehended on identification by the children. She denied the suggestion that no such incident had taken place. She stated that she along with the mother of Baby 'E' went to F-Block where the appellant was working and handed him over the Police. She further denied the suggestion that they apprehended the wrong person due to wrong identification by the children.

13. The prosecution examined SI *Manoj Kumar* as PW-6 and W/Ct. *Nutan* as PW-5 who had visited the spot on 30.03.2014. SI *Manoj*, PW-6

deposed that when they reached A-313, *Pragati Vihar Hostel, Lodhi Colony*, they met the complainant Ms. 'R.R.' who handed over the appellant to them. The appellant in his statement recorded under Section 313 Cr.P.C. denied the prosecution case. While answering Question Nos. 3 & 4, he stated that on the date of the incident, he was not present in *Pragati Vihar, Lodhi Colony*. While answering Question Nos. 6 & 11, he stated that he was wrongly identified and detained by Ms. 'R.R.' on 30.03.2014. Lastly, he stated he was falsely implicated on account of wrong identification by the child victims.

14. I have heard learned counsels for the parties and gone through the case record as well as the written submissions.

### **ANALYSIS**

15. The prosecution, to prove its case, has relied on the statements of the two child victims. The competence of a child witness and its evaluation by the Court has been the subject matter of many decisions. The Supreme Court in Dattu Ramrao Sakhare v. State of Maharashtra, reported as (1997) 5 SCC 341 observed as under:

*"5. ...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 able 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."*

16. Again, in Ratansinh Dalsukhbhai Nayak v. State of Gujarat reported as (2004) 1 SCC 64, the Supreme Court made the following observations:

*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 witnesses 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:"*

17. In the present case, although both the child victims were aged about 9/10 years but before examining them, the trial court after asking the requisite questions recorded its satisfaction as to their competence to stand as witnesses.

18. The evidence of a child witness for being credible needs to be reliable. In Ranjeet Kumar Ram v. State of Bihar, reported as 2015 SCC OnLine SC 500, the Supreme court held that:

*"14. ...Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one."*

19. The evidence of a child witness has to be evaluated more carefully and with 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 [Refer: Panchhi v. State of U.P. reported as (1998) 7 SCC 177]. Further, the testimony of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. [Refer: Nivrutti Pandurang Kokate reported as (2008) 12 SCC 565]. Also, the evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one. [Refer: Ranjeet Kumar Ram (Supra)].

20. The evidence of the two child victims in the present case has to be evaluated in view of the above-mentioned principles and needs to be tested in light of the contentions raised.

21. To prove the fact that an incident of sexual harassment occurred with the two child victims on 12.03.2014 at about 7:30/8:00 pm in the area outside the 3<sup>rd</sup> floor of A-Block, Pragati Vihar Hostel, Lodhi Road, the prosecution examined the two child victims as well as their mothers. The testimonies of both the child victims are consistent on the above issue. They have narrated in detail about the incident as to how first Baby 'A' was sexually harassed and then Baby 'E'. Thereafter, they

immediately informed their respective mothers. The mothers have stated that the child victims came and told them about the incident. In light of the consistent testimonies of the child victims as well as their mothers, the fact that the incident of sexual harassment took place on the aforementioned time, date and place stands proved.

22. The next question is whether it was the appellant who committed the aforesaid incident on the abovementioned time, date and place.

23. Learned counsel for the appellant has argued at length to contend that the appellant was falsely implicated on the basis of wrong identification of the child victims and that dock identification for the first time in Court, in absence of any TIP, has no legal sanctity and is fatal to the prosecution case.

24. The law on identification of the accused in absence of any TIP has been summarized by the Supreme Court in Raja v. State by the Inspector of Police reported as **2019 SCC OnLine SC 1591**, where it was held that if there is material on record which sufficiently indicates that reasons for “gaining an enduring impression of the identity on the mind and memory of the witnesses” are available on record, then even non holding of TIP is not fatal. The Court went on to reject the contention that identification for the first time in Court ought to be discarded and rather believed the eye witnesses as they had suffered injuries in the transaction by observing that they had sufficient opportunity to observe the accused to have an enduring impression of the identity of the assailants.

25. Earlier, in Raju Manjhi v. State of Bihar reported as **(2019) 12 SCC 784**, it was held by the Supreme Court as under:

*“16. The identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration (see Kanta Prashad v. Delhi Admn. [Kanta Prashad v. Delhi Admn., AIR 1958 SC 350 : 1958 Cri LJ 698] and Vaikuntam Chandrappa v. State of A.P. [Vaikuntam Chandrappa v. State of A.P., AIR 1960 SC 1340 : 1960 Cri LJ 1681] ).”*

26. In Kunjumon v. State of Kerala reported as (2012) 13 SCC 750, the Supreme Court held as under:

*“12. Before the High Court also the contention urged by the appellant was that since a TIP was not conducted, it would not be safe to rely upon the testimony of Lidiya. However, the High Court rejected this contention by holding that there was clear evidence against the appellant, who had been identified by Lidiya and the witnesses in Court, and in view of the decisions of this Court in Sk. Hasib v. State of Bihar [(1972) 4 SCC 773 : AIR 1972 SC 283] , Bikau Pandey v. State of Bihar [(2003) 12 SCC 616 : 2004 SCC (Cri) Supp 535 : AIR 2004 SC 997] and State of Rajasthan v. Kishore [(1996) 8 SCC 217 : 1996 SCC (Cri) 646 : AIR 1996 SC 3035] , there was no reason to interfere with the conviction and sentence. Accordingly, Criminal Appeal No. 835 of 2004 was dismissed.”*

27. The Supreme Court in Kunjumon (Supra) relied on the identification of the accused by the children in absence of the TIP as her

statement was found to be clear and unambiguous as nothing adverse could be elicited during her cross-examination.

28. In the present case, on the date of the incident, both the child victims i.e. Baby 'E' and Baby 'A' were aged about 7 and 8 years. As per their statements made before the Court, they first saw the appellant on the date of the incident while he was standing at the 4<sup>th</sup> floor after which he came down to the place where they were playing and then sexually harassed them. Although, a search was made on the date of the incident by the parents of the child victims but the appellant could not be found.

29. As borne out from the records of the case, the appellant could be identified and arrested only after 18 days of the incident. It has come in the evidence of both the child victims that they were residents of 'A' Block. After few days of the incident, while they were cycling in their campus, they saw the appellant sitting in F-Block and playing with some children. They identified him as the same person who had sexually harassed them few days back. Baby 'E' specifically stated that when they saw the appellant in F-Block, they went closer & identified him as the same person who had done wrong acts with them. Thereafter, the child victims informed their parents.

30. Ms. 'R.R.' and Ms. 'M.T.' have also consistently stated that they were told by the child victims that they had seen the same person in the park of F-Block, who had earlier sexually harassed them.

31. It has further been consistently stated by the child victims as well as their respective mothers that when they reached the park, the said person was not there. On enquiry from the local children, they came to

know the number of the flat in F-Block where the said person was living whereafter all of them went to the aforesaid flat.

32. Baby 'E' specifically stated that when they reached the said flat, they saw the appellant and identified him as the same person who had sexually harassed them. The appellant was apprehended. The testimony of Ms. 'M.T.' corroborates the fact that on identification by the children, the appellant was apprehended by them from his flat. To the similar effect is the testimony of Ms. 'R.R.'.

33. Learned counsel for the appellant contended that the statement of Baby 'A' made before the court does not inspire confidence on the aspect of identification and the appellant must get the benefit of doubt. It is noted that during her examination, when Baby 'A' saw the appellant through the video link, she stated that perhaps he was the person but she was not sure. To appreciate this contention, the entire statement of Baby 'A' needs to be examined carefully.

34. It is worthwhile to note that Baby 'A' was examined in Court after about two years from the date of the incident. She narrated the entire incident correctly. She deposed that the man who was standing at the 4<sup>th</sup> floor and sexually harassed them was the same man whom they saw later in the park of F-Block on 30.03.2014. She also deposed that on that day, the said person was apprehended and she came to know the name of the said person as *Murli*.

35. In the trial, the appellant did not deny that he was apprehended by the parents of the child victims on 30.03.2014 at his flat in F-Block. The apprehension of appellant on the said date and place is consistently stated not only by the child victims but also by their respective mothers.

Further, Baby 'E' unambiguously identified the appellant as the person who had sexually harassed them while they were playing on the date of the incident. It has come in the statement of Baby 'E' that the appellant had spoken the words "*you are so wet*" and touched her underpants and buttocks. She even asked the appellant to let go her, but he did not. As such, the appellant had harassed Baby 'E' more than Baby 'A' and her memory of the incident was clearer.

36. From a combined reading of the testimonies of the two child victims, it is seen that on the day of the incident, both the child victims first saw the appellant on the 4<sup>th</sup> floor and later, when he came down to 3<sup>rd</sup> floor, he sexually harassed both of them one by one. That day, they had sufficient opportunity and time to see the appellant. Both the child victims again had sufficient opportunity to see and identify the appellant on the day when they were cycling and saw him sitting in F-Block park. Later, on that day, they again identified the appellant in presence of their parents, when he was apprehended. As such, the appellant's identification in the court does not suffer from any infirmity and as such the contention raised on behalf of the appellant challenging his identification in the Court, is meritless and rejected.

37. The reliance placed by learned counsel for the appellant on the decision in Chamru (Supra) is misplaced as in the captioned case, although the accused was identified by the child victim in the TIP however, it was admitted by the child victim that the accused was shown to the child victim before the TIP. Further, the accused was known to the child victim prior to the incident still there was no mention about his identification in the statements recorded during investigation. In these

circumstances, it was stated that since the child victim knew the accused, there was no question of TIP.

38. The reliance placed on Arif (Supra) is again of no help to the appellant as in the captioned case, the accused had refused the TIP and was identified in Court after 1 year and 8 months. The witness in his testimony admitted that prior to the TIP, the accused was shown to him in the police station. The Court noted that at the time of the incident there was no light and the TIP refusal was on account of the fact that the accused was already shown to the victim.

39. Similarly, the reliance placed on the decisions Sanjay Singh Sandhu (Supra) and Raj Kumar Singh @ Raju @ Batya (Supra) is also misplaced.

40. The present is not a case where any motive is attributed to the witnesses to falsely implicate the appellant. It is an admitted case that the appellant was a complete stranger and not known to either the child victims or their family members. As there was no prior enmity between them, the question of the child victims being tutored does not arise. Even the appellant neither gave any suggestion of tutoring during cross examination nor took any such defence in the trial. Resultantly, the contention of child victims being tutored, has no merit.

41. So far as the contention raised that neither any light source nor the place where the appellant was stated to be standing on the 4<sup>th</sup> floor was shown in the site plan, is concerned, it is noted that the site plan (Ex. PW-3/B) was prepared by SI *Manoj Kumar* (PW-6) at the instance of complainant and the child victims. The area where the incident took

place was the corridor outside the flats on the 3<sup>rd</sup> floor. The child victims could very well see the appellant on the 4<sup>th</sup> floor. In absence of any cross examination on the above aspect, no presumption can be drawn that there was no light. Rather, both the child victims have categorically and in unequivocal terms identified the appellant. The incident for which the appellant was charged took place on the 3<sup>rd</sup> floor and as such not showing the place at the 4<sup>th</sup> floor where the appellant was stated to be standing prior to the incident, is of no significance.

42. So far as delay of 18 days in lodging the complaint is concerned, it has no bearing on the case. As noted earlier, the child victims were residents of 'A'-Block whereas the appellant, a stranger, was working in F-Block. Immediately after the incident, a search was made to look for the appellant however, he could not be found. Only when the child victims were cycling and went to F-Block, they saw the appellant and he was apprehended.

43. It was also contended that if the appellant had tightly held the hand of Baby 'E', as deposed, then her MLC ought to have been conducted to corroborate the incident. This contention has no merit. In this regard, it is noted that it has not come in the statement of any witness that either of the child victims suffered any injury. Further, since the incident was not reported to police, no MLC could have been conducted.

44. The next contention raised by the learned counsel for the appellant regarding non-examination of the President of RWA or the employer of the appellant is concerned, it is noted that it has not come in the statement of any witness that any written complaint was given to RWA. Similarly, non-examination of the employer of the appellant is of no

consequence as the appellant has not denied his apprehension and arrest on the aforesaid date. It is further noted that as per the arrest memo, the information of appellant's arrest was given to the Commanding Officer of the appellant on the date of his arrest. So far as the contention regarding non-examination of the father of the child victims is concerned, it is noted that the testimonies of Baby 'E' and Baby 'A' are well corroborated by their respective mothers i.e. Ms. 'R.R.' and Ms. 'M.T.'. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the Court to place credence on the statement. [Refer: Harbeer Singh and Ors. v. Sheeshpal and Ors. reported as (2016) 16 SCC 418 and Shanker & Ors. v. State of Madhya Pradesh reported as (2018) 15 SCC 725].

45. Lastly, learned counsel for the appellant contended that there is inconsistency as to the place of appellant's arrest. Again, this contention has no merits as the appellant has not denied that he was arrested on 30.03.2014 from the campus of *Pragati Vihar Hostel, Lodhi Road*.

## **CONCLUSION**

46. The testimonies of both the child victims are consistent on every detail of the incident not only with each other but also with their previous statements recorded during investigation. The testimonies of both the child victims are cumulative and find support from the testimonies of their mothers. Both the child victims had sufficient opportunity to see the appellant from close proximity on as many as three occasions before he was apprehended. Further, there was no ambiguity in appellant's identification in the Court. In the facts and circumstances of the case, I

find the testimonies of both the child victims to be consistent, credible and reliable.

47. In view of the above discussions, this Court is of the opinion that the factum of appellant being the same person who had sexually harassed the child victims, stood proved by the evidence brought on the record.

48. Consequently, the appeal is dismissed. The appellant shall surrender, if not already done, within a period of eight weeks from the date of passing of this judgment to undergo the remaining sentence.

49. A copy of this judgment be sent to the Trial Court as well as Jail Superintendent.

(MANOJ KUMAR OHRI)

**AUGUST 10, 2020**

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