

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl.A.No.621/2020 AND Crl.M.A. No. 17106/2020**

Judgment reserved on : 22.01.2021
Date of decision : 4.2.2021

CHAND Appellant
Through: Mr.Sulaiman Mohd. Khan, Advocate.

Versus

THE STATE (GOVT. OF NCT) OF DELHI Respondent
Through: Mr. Ashok Kr. Garg, APP for State.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant vide the present appeal assails the impugned judgment dated 19.2.2020 and the impugned order on sentence dated 20.2.2020 of the learned Trial Court of the Additional Sessions Judge (Special Court)-04, POCSO in relation to FIR No. 113/2016, Police Station Aman Vihar whereby the appellant herein along with the co-convict Mohd. Sajid @ Benam was convicted for the offence punishable under Section 6 of the POCSO Act, 2012 and under Section 506/34 of the Indian Penal Code, 1860, for having subjected the minor child 'A' aged 13 years to gang penetrative sexual assault in terms of Section 5 (g) of the POCSO Act, 2012 which amounts to aggravated penetrative sexual assault as also qua the offence of

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commission of criminal intimidation to the victim 'A' and were sentenced as under:

1.	For the offence U/s 6 of the POCSO Act	Rigorous Imprisonment for ten years each, alongwith a fine of Rs.5,000/- each. In default of payment of fine, the convicts were directed to undergo Simple Imprisonment for 30 days, each.
2.	For the offence U/S 506/ 34 IPC	Simple Imprisonment for three years each, alongwith a fine of Rs.3,000/ -each. In default of payment of fine, the convicts were directed to undergo Simple Imprisonment for 30 days, each .

with both the sentences having been directed to run concurrently, the fine in the instant case having observed to have not been paid with the benefit of Section 428 of the Cr.P.C., 1973, having also been given to the appellant and the co-convict.

2. Along with the appeal was CrI.M.A. No.17079/2020 filed on behalf of the appellant herein, namely, Chand, for condonation of 206 days' delay in institution of the appeal which was allowed vide order dated 9.12.2020. Vide order dated 9.12.2020 the CrI.M.(Bail) No. 8424/2020 filed on behalf of the appellant seeking suspension of sentence during the pendency of the appeal was declined.

3. The report was called for from the Registry as to whether any appeal had been filed by the co-convict Mohd. Sajid @ Benam qua which the report has been received dated 19.1.2021 from the Registry

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to the effect that there is no appeal filed by the co-convict Mohd. Sajid @ Benam, in relation to FIR No. 113/16, Police Station Aman Vihar.

4. The Trial Court Record was requisitioned and has been received and perused.

5. JCL(A1) was also found involved in the matter and the charge sheet qua him was filed before the JJB with the charge sheet having been filed under Section 377/506/34 of the Indian Penal Code, 1860 and under Section 6 of the POCSO Act, 2012 against the appellant herein as well as against the co-convict Mohd. Sajid @ Benam before the POCSO Court.

6. Charges were framed against the appellant herein and the co-convict on 25.7.2019 qua the offence punishable under Section 5(g) read with Section (6) of the POCSO Act, 2012 and under Section 506/34 of the Indian Penal Code, 1860, with an alternative charge qua the offence punishable under Section 377/34 of the Indian Penal Code, 1860 to which the appellant and the co-convict had pleaded not guilty and claimed trial.

7. Written submissions were submitted on behalf of the appellant as well as oral submissions have also been made on behalf of either side.

8. Charges were framed against the appellant and the co-convict on 25.7.2016 in relation to the allegations levelled in the charge sheet against the appellant herein and the co-convict to the effect that on 25.1.2016 at about 3 a.m. in the cabin of a truck bearing Registration No. HR-55T-2966, parked behind the Haridas Vatika, Aman Vihar, Delhi, within the jurisdiction of PS Aman Vihar, both the appellant

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herein and the co-convict along with their accomplice JCL(A1) in furtherance of their common intention had committed gang penetrative sexual assault on the child victim 'A', a minor boy, aged 13 years and voluntarily had carnal intercourse with him against the order of nature apart from having criminally intimidated the said minor child 'A' with view to cause alarm in his mind in case he raised an alarm.

9. 18 prosecution witnesses were examined by the State:

10. The minor child 'A', as per the Trial Court Record, was examined on 7.12.2016 in camera proceedings with the appellant herein and the co-convict having been seated in a manner that they could hear the testimony of the victim but could not have any ocular contact with him. The child when he was examined on 7.12.2016 was about 13 years of age and was administered oath by the learned Trial Court after having spoken to the child asking him a few preliminary questions to ascertain whether he was capable of giving rational answers and after ascertaining that the child was capable of understanding the sanctity of oath. The child Victim 'A' thereafter had testified on oath to the effect that on 24.1.2016 at about 10 p.m. he had gone to watch a jagran with his friend child N near Haridass Vatika, and at about 3 a.m. three boys between the age group of 18-25 years came there and asked him to accompany them as they wanted to speak to him about something and he went with them from the back gate of the jagran pandal for a distance of about 25-30 paces and when he refused to proceed further with them they beat him forcibly and made him board the cabin of an oil tanker which was lying parked there and those boys also boarded the said cabin. The child A further

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testified that thereafter the two boys who appeared to him to be around 20-25 years of age committed penetrative sexual assault on him through his anus one by one and the third boy who appeared to the child victim A to be around 18 years of age kept a knife at his neck asked him not to raise an alarm failing which he would stab him. The child further testified that after sometime his friend child N came there along with one uncle from the jagran in search of him and found him and on seeing that uncle and the friend N those three boys ran away.

11. The child N is stated to have been carrying a mobile phone at that time and the uncle thus asked him to make a call at number 100 and thus the child N made a call to the police and thereafter after five minutes of the call, the PCR van came to the spot. The local police also came to the spot and the child victim A was taken to the hospital where he was medically examined whereafter his father also reached the hospital and the victim child A was taken to the police station and his statement was recorded by the police. The victim child A identified his signatures on the statement at point 'A' on Ex PW-4/A. The child further stated that he went along with the police party in search of those boys in the area and he found one of those boys standing near Budh Bazar Road and he pointed out to that boy to the police to be one of those boys who had waylaid him and had committed penetrative sexual assault on him and then that boy was arrested by the police and his name was learnt to be as Chand, i.e. the appellant herein.

12. The child A further testified to the documents i.e. the arrest memo, personal search memo and disclosure statement of the

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appellant having been prepared by the Investigating Officer on which he stated that he had signed being Ex. PW-4/B to D and also testified to Ex.PW-4/E being the pointing out memo of the spot of the incident prepared at his behest by the Investigating Officer. He also stated he had shown him the place of the incident to the Investigating Officer who prepared the site plan and that the child victim A also pointed out towards the cabin of the oil tanker which was lying parked near the main gate of the police station which oil tanker was also seized vide the seizure memo vide Ex.PW-4/G bearing his signatures thereon. The child A further stated that the accused i.e. the appellant herein was brought to the police station and that he disclosed the names of the two other co-accused boys as Benam and JCL(A1). Thereafter the police party had taken him to the house of the other two co-accused but they were not present at their rented accommodation. The child also stated that his statement had also been recorded prior to his testimony by a Judge and was thus shown his statement under Section 164 Cr.P.C. taken out from a sealed cover on which the child identified his signatures at point A on Ex.PW-4/H. It was also stated by this Child witness A that on 15.4.2016 he had received a call from the police and he was asked to come to the police station and accompany the police party in searching the co-accused persons and went near the Chaudhary Baldev Senior Secondary School where the co-convict Benam was present and the child A pointed him out to the police and that Benam @ Sajid (since convicted as the co-convict) was arrested and the documents in relation to his arrest were prepared.

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13. Inter alia, the child victim A had stated that he had informed the police that the accused had shown him a knife and had held him by his hand. The child victim 'A' further stated that the police had called him at the police station again after some days and the police had shown him a video clip and he was asked to identify A1, ie. the JCL and he duly identified him in the said video clip. The child identified the tanker through the photographs placed on record. The identity of the tanker was not disputed on behalf of the defence.

14. During the course of the trial the child victim A also identified the appellant herein and the co-convict Mohd. Sajid @ Benam in the Court correctly.

15. Inter alia, during the course of his cross-examination on behalf of the appellant and the co-convict, it was stated by the child victim A that he can read and write English and that he also gave the registration number of the oil tanker as HR 55T 2966 and stated that there were other vehicles apart from the tanker at that time. He also stated that whilst he was being forcibly taken by the accused persons he had raised an alarm but they gave him beatings and he had to stop screaming. The child victim A denied that he knew the co-convict Mohd. Sajid @ Benam and used to go to the Mosque to offer Namaz on Fridays. He stated that when his friend came along with an uncle no public person had gathered there at that time. He also stated that the accused persons had taken the knife along with them at the time of fleeing from the spot. The child also denied that the accused since convicted Benam used to study in his school. He inter alia stated that he never made any complaint of the similar nature to the police prior

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to this incident and stated that he did not know who had organized the jagran and for what occasion it was being done. He stated that the jagran was a family function of the organizer and people were coming and going and that the organizers were not even known to his friend N. He stated further that there was only one gate for entry and exit of the persons attending the jagran and from inside the pandal there was a separate entry from the back side for taking prasad/food. He further stated that there was only one camera in that jagran. He stated that he had taken dinner at the jagran. He stated further that he had not given the facial description and clothing of the accused persons in his statement and but had given their age only. The child victim A stated that he did not know whether at the place in front of the jagran there was any SBI and ICICI ATM and stated that in front of the jagran venue is Vijay Dharam Kanta but denied that the tanker was standing in a gali in front of that Vijay Dharam Kanta and stated that the tanker was on the way between the venue of jagran and Vijay Dharam Kanta. He stated that he did not know the colour of the seat of the tanker on which he was laid. The child victim A further denied that he is a pickpocket or that any injury was caused while he had fallen down in a chase by people whose pocket was picked by him at that time or that people in the jagran had pulled him by his legs due to which his pant had gone off and some pointed object might have struck his anus. He denied that small pebbles and concrete pieces were lying scattered near the venue of the jagran. The child victim A further denied that he had falsely identified the accused persons to be the assailants and denied that the offence was committed with him in a truck which was

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very much close to the jagran venue or that no offence was committed upon him by the accused persons or that he had testified falsely at the instance of the police to save himself from the case of pick pocketing and had cooked up a false story of a sexual assault in order to divert the attention of the entire police present at the spot. The child victim A also denied that he being a pick pocket was habitual in going to functions to pick pockets there.

16. The other child witness N examined as PW-5, the friend of the child victim A was also aged 13 years at the time of his examination on 7.12.2016, the same date when the child Victim A was examined as PW-4. PW-5, the child witness N was also administered oath by the learned Trial Court after ascertaining the capability of the said child to understand the sanctity of oath. This child stated that the child victim A is his friend and resides in his neighbourhood. He stated that on 24.1.2016 he and the child victim A had gone to attend the jagran of Khatu Shyam Ji being held at Baba Haridass Vatika and at about 3.00 a.m. when they were both inside the pandal three boys came there and they called the child victim A outside on the pretext of discussing something with him and the child victim A went out of the pandal from the back gate with the said three boys. This child witness stated that he too followed them but one other person hit him with a belt and asked him to go back so he went back. He stated further that there three/four other friends of his in jagran and that he told them about the said three boys having taken away the child victim A and they all came out of the pandal from the back gate in order to search the child victim A but five/six boys blocked their way and gave beatings to

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them. This child witness N stated that he came back to the pandal again, and there he found one uncle and told him the entire facts and he took the child witness N on his scooty to make a search for the child victim A and then they met some other boys who told them that the child victim A, the member of their team, had been waylaid by three boys in a tanker which was found halted there bearing registration no. HR 55T 2966. The child witness N further stated that the said uncle knocked the door of the cabin of the tanker and one of the boys opened the glass and told them that they were truckwalas and were sleeping there and that when that uncle asked him to open the door, they all ran away through the other gate. The child witness N i.e. PW-5 further stated that the child victim, i.e. A , was found inside the cabin with his pant half removed and on the asking of that uncle he, i.e. N, made a call to the police at number 100 and the police came there. The child N further stated that the child victim A was in a state of shock and was not able to tell the facts properly and he, i.e., N, told the facts to the police after asking them from the child victim and thereafter the police took the child victim A to the hospital for his medical examination and he, i.e., N was also taken to the police station.

17. This child witness N on being cross-examined by the counsel for the accused persons, i.e., the appellant herein and the co convict Mohd. Sajid @ Benam, stated that he did not raise alarm after being hit by a belt by the boy because his other associates were present there and stated that he did not inform about the said three boys having waylaid the child victim A initially to anyone in the pandal but had

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told it to other boys of his team. This child witness N however stated that the entire area of the pandal was covered by the camera but stated that he did not remember the name of that uncle. Inter alia, the child witness N stated that at that time he had a Karbon mobile with him but did not remember its number at the time of his testimony nor did he remember the name of the police officer who had recorded his statement though he stated that he had come with the same police officer who had recorded his statement to the Court that day (the name of the said police officer had been recorded by the Court as being SI Jitender). This witness N reiterated that he had seen the said three boys who had taken the child victim A with them. He, i.e., N had stated that in the jagran he, i.e., N and the child victim had sat side by side and had decided that they would leave the pandal together. This child witness N further stated all their friends were sitting in different directions at a distance in the pandal among the rows and that all the friends had been maintaining ocular contact with each other in the pandal but stated that their other friends had not seen the child victim A being taken away by those three boys.

18. The child witness N further stated that it was correct that he came to know as to what happened to the child victim A only as told by him, i.e., the child victim A. He further stated that he had a very good friendship with the child victim A and with other friends he was on talking terms. He however stated that if one of them fell in a problem the others would be eager to help the other out. He denied the suggestion put forth on behalf of the accused persons that when he was beaten by the four/five boys outside the pandal none of his friends

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had come to his rescue and stated that the two friends had come who had also been beaten. He stated that he did not make a call either at home or to the police nor after the forcible waylaiding of the child victim A but denied that he had not made such a call because he was carrying a stolen mobile or that the child victim A had also run away after picking someone's pocket in the jagran. He stated further that he was hit with a belt near the pandal and the remaining beatings were received by him near the tanker. The child witness N denied that he was a member of the team of pick pockets or that was the reason he could not tell the mobile number which was with him at that time of the alleged incident and denied that he was beaten by five to six boys as they caught him while stealing a mobile phone. The child witness N further denied that the child witness A was dragged by the public as he saw him being beaten by the said boys. It was also denied by this witness PW-5, i.e., the child witness N that his friends did not make any sincere attempts to fight with those five/six boys as they all were members of the pick pocket gang.

19. PW-9, Mr.Pushpender, examined before the learned Trial Court by the prosecution stated that in the night intervening 24/25.01.2016 he was present in the jagran of Shri Khatu Shyam Ji being organized at Baba Haridass Park where he had gone of his own and was neither a member of the organizing committee nor was he invited there and at about 1:30 p.m.(sic) he came out of the pandal as he was feeling tired because had been sitting in the jagran from 10 p.m. onwards and there he saw a child aged about 12-13 years weeping and he asked him the reason of his weeping, he told him that 2-3 boys had forcibly taken

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away his friend at the back side of the pandal and pleaded with him to help him in tracing his friend. PW-9 stated that he went along with that boy whose name he did not remember, towards the backside of the pandal on foot and they had moved about 50 paces when he found an oil tanker lying there and also found 2/3 boys passing through the road in front of the tanker and thus he made an inquiry from them as to whether they had seen some boys forcibly taking another boy to which one of the boys told him that some children are there in the cabin of the tanker. PW-9 stated that he knocked at the door of the cabin of that tanker which led to the opening of the latch and he saw 2-3 boys jumping and running out of the other gate of the cabin and saw a child whose pant was lying half removed and he brought him down from the cabin and asked him as to how he had come there and it was informed by the child that 3 unknown boys had forcibly taken him to the tanker and at that time as the battery of mobile of PW-9 was dead, he made a call to the police at number 100 from the mobile phone of that boy (N) with whom he had been searching this boy (child victim A) and then the police of the PCR as well as from the police station came and thereafter PW-9 left the spot and went back home and he was called by the police next day and an enquiry was made from him and his statement was recorded.

20. This witness PW-9 however on being cross-examined by the learned Additional Public Prosecutor for the State denied that the child victim A had told him that the three boys who had forcibly taken him to the tanker had committed penetrative sexual assault upon him per annum on the point of a knife and denied that he had deliberately

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concealed this material fact from the Court to save the accused persons.

21. PW-10 examined by the State was Dr.Gurdeep, CMO, SGM Hospital, Mangol Puri, Delhi, who stated that he had seen the MLC No. 1283 and 1330 in the name of the child male, aged 13 years dated 25.01.2016 who had been brought to the casualty for the medical examination by Constable Bhargav at about 6:35 a.m. with the alleged history of sexual assault/sodomy by 3 persons and that the patient was examined by Dr.Rajesh in casualty and on local examination an abrasion was found present over the anal region and that Dr.Rajesh had prepared the MLC and made observations on the MLC Ex.PW-10/B and the patient was referred to SR surgery for further opinion. It was stated by this witness Dr. Gurdeep that he could identify the handwriting and signatures of Dr.Rajesh.

22. The accused persons did not cross-examine this witness Dr.Gurdeep.

23. As per the endorsement on Ex.PW-10/B the MLC of the child victim A, it was mentioned to the effect:

*“ Alleged H/o Sexual Assault,
sodomized by 03 persons today at about 4 a.m., as
told by B/B and self
e/e conscious/oriented
P 78/min,
vitals stable
S/E Non.
L/E Abrasion (+) over Anal region
Adv. -inj. Voveron 1 im stat
Surgery opinion
(Dr.Shashi Kant)*

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S/R Surgery”

*“25.1.16, 9:30 Am
Forensic opinion
Possibility of Anal Penetration
or Intercourse cannot be ruled
out on the basis of Surgical
examination.*

*Dr.Mahipal Singh
M.O.”*

24. PW-13, Shamshad, the driver of the oil tanker bearing registration No. HR-55T- 2966, belonging to Arjun Bal, stated that the appellant herein, is the brother-in-law of his brother Naushad and he was working, as a conductor/helper with him,i.e., Shamshad on that oil tanker and stated that he used to pay him Rs.5,000/- as his salary and that on 24.1.2016 he had to get the fitness of the said tanker, he had brought it near Haridass Vatika near Vijay Dharam Kanta, Prem Nagar, and had left the accused Chand on the said vehicle as he had to go to his in-laws house with his wife at Dilshad Garden and on 25.1.2016 in the morning hours he received a call from the police station Aman Vihar informing him that he should reach the police station as his vehicle had been broken and he reached the police station and came to know that accused Chand, i.e., the appellant herein, was missing and had committed some wrong act in the tanker with a minor child with his other friends and he made search for accused Chand, i.e, the appellant herein with the police, who was found at the house of his sister Farzana at Budh Vihar Road.

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25. This witness on cross-examination on behalf of the accused stated that he could not produce any document before the police to show that he had been employed as driver on that tanker nor could he produce any document before the police which could show that he had employed the accused Chand, i.e., the appellant herein as a helper on the said tanker and that he had been paying Rs.5000/- per month to him as salary. This witness denied that it was he who committed the wrong act with the victim child or that in order to save himself he had falsely projected accused Chand, i.e., the appellant herein as his helper on the said tanker.

26. This witness denied that he had not visited the police station 25.1.2016 as he was under fear that he could be recognized by the child victim as being the real assailant.

27. Apart from the above witnesses, the other prosecution witnesses examined were:

- PW-1 *Ct. Hawa Singh*
- PW-2 *ASI Nem Singh*
- PW-3 *Ct. Virender Singh*
- PW-6 *Yadunath Pandey*
- PW-7 *Mr. Shirish Aggarwal, Learned MM*
- PW-8 *Arjun Bal, the owner of the Oil Tanker Registration No. HR-55T- 2966*
- PW-9 *Pushpender*
- PW-11 *R, father of the victim child A*
- PW-12 *SI Devender*
- PW-14 *W/Ct. Snehlata*
- PW-15 *Dr. Mahipal Singh*
- PW-16 *HC Munde Tuka Ram*
- PW-17 *SI Jitender Joshi and*
- PW-18 *ASI Mahender Singh*

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28. In his statement under Section 313 of the Cr.P.C., 1973 the appellant, herein, denied the incriminating evidence led against him and claimed innocence stating that he had been falsely implicated in the instant case and his signatures were obtained by the police on blank papers on printed proformas and denied that that he was a driver or the helper on the said tanker and stated that in order to save the real culprits he was planted as an accused in the case.

29. Through oral submissions and written submissions made on behalf of the appellant it was sought to be reiterated on behalf of the appellant that the victim child A and his friend N were pick pockets and had gone to the jagran for pick pocketing and were caught and had thus made a false story and implicated the appellant. It was also submitted on behalf of the appellant that there are major discrepancies in the version putforth by PW-5, i.e., the child witness N, and PW-9 the independent witness who did not support the prosecution version in relation to the child PW-4, i.e., child victim A, having informed of his having been sodomized by the accused persons.

30. Inter alia, on behalf of the appellant it was submitted that neither PW-4, i.e., the child victim A nor the Investigating Officer, i.e., PW-17 nor any other witness explained as to how they learnt that the appellant could be found in Budh Bazar Road, or that the appellant was the culprit and that PW-13 Shamshad, the truck driver, as to how he received information about the incident nor did PW-8, the owner of the oil tanker Arjun Bal inform as to how he received the information of the incident.

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31. On behalf of the State it was submitted that the prosecution version stood established in relation to all material particulars of the incident and the injuries caused to the minor child through sodomization were corroborated through the MLC of the minor PW-4 i.e., the child victim A.

32. The learned Trial Court vide the impugned judgment has concluded to the effect that the date of birth of the child victim A was 15.8.2002 as per records of the Saraswati Model School and thus concluded that the age of the victim A was 13 years at the time of the incident. The learned Trial Court also drew the presumption in terms of Section 29 and 30 of the POCSO Act, 2012, which read to the effect:

“Section 29:-Presumption as to certain offences- where a person is prosecuted for committing or abetting or attempting to commit any offence under section 3,5,7 and section 9 of this Act, the special court shall presume that such person has committed or abetted or attempted to commit the offence as the case may be unless the contrary is proved

Section 30:-Presumption of culpable mental State- (1) in any prosecution for any offence under this act which requires a culpable mental state on the part of the accused, the special court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.”,

observing to the effect that the said presumption had not been repelled or dislodged in any manner by the appellant and the co-convict and that the non-recovery of the knife from Sajid was not a ground to grant any benefit to the appellant. It was also observed by the learned Trial

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Court that there was nothing to indicate as to why the minor child victim A would falsely implicate the appellant and the co-convict in the matter and that evasive replies of ‘**it is incorrect**’ and ‘**I do not know**’ had been given by the appellant and the co-convict under Section 313 of the Cr.P.C., 1973, and the defence of the appellant had not been brought forth substantially to discredit and demolish the prosecution version. It was further observed by the learned Trial Court vide observations in paragraph 45 of this verdict to the effect:

“45. It has further been argued by the Id defence counsel that accused persons were not named in the FIR which falsifies the case of the prosecution. This contention of Id defence counsel is liable to be rejected as it is not the case of the prosecution that accused persons were known to the victim prior to the incident. The victim/complainant had not mentioned the names of accused persons in his complaint which further strengthens the prosecution case and shows that victim was not acquainted with the accused persons and there was no previous enmity between the victim and accused persons. So, there is no reason for victim to falsely implicate the accused persons and let go the actual assailants.”

33. As regards the minor discrepancies in the testimonies of prosecution witnesses, it was observed by learned Trial Court that the testimonies of the prosecution witnesses can be accepted to the extent that their version was found to be dependable in terms of the verdict of the Hon’ble Supreme Court in ***State of U.P. Vs. Ramesh Prasad Mishra & Anr.***; AIR 1996 Supreme Court 2766 wherein it

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had been held by the Hon'ble Supreme Court that the evidence of a hostile witness cannot be rejected in entirety if the same has been given in favour of either the prosecution or the accused but is required to be subjected to a scrutiny and thereafter the portion of the evidence which is consistent either with a case of the prosecution or that of the defence may be relied upon.

34. The said observations of the learned Trial Court are undoubtedly correct and the Trial Court has thus rightly concluded qua the veracity of depositions of PW-4, PW-5, PW-9 and PW-13.
35. It is essential to observe that there is no reason to disbelieve the testimony of the two minor children, i.e., the victim child A and the child witness N, in the circumstances of the case. It is essential to advert to the observations laid down in "***Dinesh Chand Vs. State***" a verdict dated 18.03.2019 in CRL.A.330/2018 vide paragraph 7 thereof to the effect:-

"7. It is essential to observe that it is only a rule of prudence that the Court always finds it desirable to have the corroboration of the evidence of a child from the testimonies of witnesses and it is not the law that if the witness is a child, his evidence shall be rejected even if it is found reliable. As observed by this Court in "Afzal Vs. State (Govt. of NCT of Delhi)" 2018 X AD (Delhi) 434 and as laid down by the Hon'ble Supreme Court in "Nivrutti Pandurang Kokate&Ors. Vs. State of Maharashtra" AIR 2008 SC 1460, wherein there were observations to the effect:-

"The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who

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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.”

it is apparent that where the Court comes to the conclusion that there is an impress of truth in the statement of the minor, there is no obstacle in the way of accepting the evidence of a child witness. There is nothing on the record in the instant case to indicate that the minor child examined as PW-3 had in any manner been tutored for even though he stated that he had stated what the ‘police uncle’ told him to state in the Court, he categorically denied that he had identified the accused i.e. the appellant herein on the basis of what the ‘police uncle’ had told him.”

to observe to the effect that it is only a rule of prudence that the Court finds it desirable to have the corroboration of the evidence of the child

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from the testimonies of the witnesses and it is not the law that if a witness is a child, his evidence shall be rejected even if it is found reliable and thus it is essential to observe that the child victim A and child victim N have categorically supported the prosecution version in *toto* and the veracity of the PW5, the child witness N, has brought forth clearly through his statement that in relation to the aspect of sodomization of PW-4, he had only stated on the basis of what the child victim A had informed him which itself makes it apparent that PW-5 is a truthful witness.

36. Taking into account the totality of the circumstances of the case as brought forth through the Trial Court and conclusions drawn by the learned Trial Court and the presumptions under Sections 29 and 30 of the POCSO Act, 2012, drawn by the learned Trial which had have not in any manner been repelled by the appellant, the commission of aggravated gang penetrative sexual assault by the appellant in conjunction with the co-accused person under Section 5(g) of the POCSO Act, 2012 punishable thus under Section 6 of the POCSO Act, 2012 stands established as also the offence of criminal intimidation to the minor child victim A at the point of a knife.

37. Though the knife is stated to have been put on his neck by the boy aged around 18 years of age, nevertheless, the aspect of a common intent between the appellant and the co-accused in this case is apparently made out and thus the appellant has been rightly convicted for the offence described under Section 5(g) of the POCSO Act, 2012, punishable under Section 6 thereof as well as qua the

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offence punishable under Section 506/34 of the Indian Penal Code, 1860.

38. In the circumstances, there is no infirmity whatsoever in the impugned judgment and the appellant merits no leniency and it is held that there is no infirmity neither in the impugned judgment dated 19.2.2020 nor the impugned order on sentence dated 20.2.2020. The appeal is thus declined.

39. However, in as much as the appellant is aged about 24 years of age, 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**" **MANU/DE/0430/2017 : 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 **Crl.A. No. 456/2017**, "**Chattu Lal vs. State**" in **Crl.A. No. 524/2017**, "**Afzal vs. State (Govt. of NCT of Delhi)**" in **Crl.A. No.996/2016**, "**Billo Vs. State NCT of Delhi**" in **Crl.A. 378/2017**, "**Dinesh Chand Vs. State (Govt. of NCT of Delhi)**" in **Crl.A. No. 330/2018**, "**Rinku @ Ram Prasad Vs. State**" in **CRL.A. 865/2019**, "**Sanjeev Kumar vs. State (NCT of Delhi)**" in **Crl.A. No.643/2019** and "**Manoj Tyagi Vs. The State (Govt. of NCT, Delhi)**" in **Crl. A. No. 93/2019**, 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.

40. It is thus directed that the concerned Superintendent of the Jail, New Delhi where the appellant shall be incarcerated for the remainder

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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.*

41. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent, Central Jail-03, Tihar, New Delhi to this Court till the date of release of the measures being adopted for reformation and rehabilitation of the appellant.

42. Copy of this judgment be also sent to the Director General, Prisons, Delhi and to the Secretary, Law, Justice and Legislative Affairs, GNCTD, Delhi to ensure compliance of the above directions.

43. The CRL.A.621/2020 is disposed of accordingly.

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44. The Trial Court Record be returned.
45. Copy of this judgment be supplied to the appellant and be sent to the Superintendent Jail, Delhi for compliance.

ANU MALHOTRA, J.

FEBRUARY 04. 2021/SV



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