



2025:DHC:138



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:13.01.2025

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CRL.A. 124/2024 & CRL.M.(BAIL) 247/2024

SANJAY

.....Appellant

versus

STATE (GNCT) OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Rohan J. Alva, Advocate (DHCLSC).

For the Respondent : Mr. Naresh Kumar Chahar, APP for the State.

Mr. Zeeshan Diwan, Advocate (DHCLSC)-
Through V.C. and Mr. Ahmed Faraz,
Advocate for Complainant.

SI Bharti (P.S. Dwarka North) & Inspector
Manju (P.S. Domestic Airport).

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal has been filed challenging the judgment on conviction dated 27.01.2023 (hereafter '**the impugned judgment**') and order on sentence dated 11.04.2023 (hereafter '**the impugned order on sentence**'), passed by the learned Additional Sessions Judge,



Dwarka Courts, New Delhi, in SC No. 440994/16 arising out of FIR No. 175/2014, registered at Police Station Dwarka North.

2. The learned Trial Court by the impugned judgment has convicted the appellant for offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (**‘POCSO Act’**).

3. By the impugned order on sentence, the learned Trial Court has sentenced the appellant to undergo rigorous imprisonment for ten years for the offence under Section 6 of the POCSO Act with a fine of ₹30,000/- and in default, simple imprisonment for 30 days.

4. Briefly stated, the FIR in the present case was registered based on the statement of the mother of the victim (5 years old at the time of the incident) alleging that on 14.03.2014, at around 8pm, when her daughter (victim) was not found in the room, she peeped into the room of the accused /appellant, who used to reside at the same floor in a rented premises and saw that the victim was made to hold the penis of the accused in her hand. She alleged that the landlord – Ram Kumar on being informed about the incident, asked them not to report the matter to the police. However, later the victim revealed that the accused inserted his penis into her mouth which led to the registration of the present FIR under Sections 376 of the Indian Penal Code, 1860 and Sections 4/6 of the POCSO Act.

5. The victim supported the case of the prosecution in her statement under Section 164 of the CrPC.

6. By order dated 13.05.2014, charges were framed against the appellant for offences under Section 6 read with Section 5(L) of the



POCSO Act for committing aggravated penetrative sexual assault upon the child victim.

7. The prosecution cited 9 witnesses in support of its case. The said witnesses included the victim's mother (PW1) and the child victim (PW2).

8. The appellant denied the allegations in his statement under Section 313 of the CrPC and contested that he was being falsely implicated by the victim's family members.

9. The learned Trial Court convicted the appellant of the alleged offences by the impugned judgment by taking into consideration the testimony of the prosecution witnesses, especially, the victim and her mother. It was noted that the victim had completely supported the case of the prosecution and her testimony is corroborated by that of her mother. It was observed that the discrepancies in the statements of the victim and her mother were only minor in nature and not fatal to the case of the prosecution.

10. The learned counsel for the appellant submitted that the learned Trial Court erred in not granting benefit of doubt to the appellant and convicting him mechanically without appreciating that the prosecution has been unable to establish its case beyond reasonable doubt and prove the foundational facts.

11. He argued that there is no incriminating medical evidence against the appellant and the learned Trial Court erroneously placed reliance on the version of the victim. He submitted that there is no independent material to corroborate the version of the victim and the



same cannot be blindly relied upon in view of the inconsistencies and improvements in the victim's statements.

12. He submitted that the learned Trial Court has erroneously observed that there is only a minor discrepancy in the statements of the victim, as it contained material contradictions and inconsistencies that significantly undermined the credibility of the prosecution's case. The discrepancies related to the sequence of events, the location of the assault, and the physical description of the incident. The counsel argued that these contradictions were not minor but struck at the very root of the prosecution's case.

13. *Per contra*, the learned Additional Public Prosecutor for the State vehemently contested that the victim had supported the case of the prosecution and the same alone is sufficient to confirm the conviction of the accused.

Analysis

14. At the outset, it is relevant to note that while dealing with a challenge to an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction this Court is required to re-appreciate the evidence in its entirety and apply its mind independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi & Ors. v. The State of Madhya Pradesh : Criminal Appeal No. 1350/2021*** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:



*“9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in **Majjal v State of Haryana** [(2013) 6 SCC 798], where the Court held:*

‘6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.

7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment



may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.’ ”
(emphasis supplied)

15. In the present case, the allegations levelled against the appellant are grievous in nature. It is the case of the prosecution that the appellant committed aggravated penetrative sexual assault upon the child victim, who was merely five years old at the time of the incident.

16. It is relevant to note that the appellant has been convicted for the offence under Section 6 of the POCSO Act. The same prescribes the punishment for aggravated penetrative sexual assault and attracts the presumption under Section 29 of the POCSO Act. The same reads as under:

“29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 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.”

17. It is trite law that the said presumption only comes into play once the prosecution is able to establish foundational facts and it can be rebutted by discrediting the witnesses through cross-examination as well [Ref. *Altaf Ahmed v. State (GNCTD of Delhi)*: 2020 SCC OnLine Del 1938].



18. In the present case, the prosecution has sought to establish its case essentially through the evidence of the prosecution witnesses, especially the victim.

19. It is therefore imperative to peruse the statements tendered by the witnesses. In the FIR, it was stated by the mother of the victim/complainant, that when she peeped into the room of the appellant, she saw that that the victim was made to hold the private part of the appellant in her hand. She further alleged that the victim told her that the appellant inserted her private part into her mouth. In her statement under Section 164 of the CrPC, she reiterated the facts as stated in the FIR. She further alleged that the victim informed her that the appellant attempted to commit penetrative sexual assault by trying to insert his private part into the victim's vagina and also put it in her mouth. During her examination, the mother of the victim (PW 1) supported the case of the prosecution.

20. The victim in her statement under Section 164 of the CrPC, stated that the appellant removed her lower clothes and committed penetrative sexual assault upon her by trying to insert his private part in her vagina and had also put his private part in her mouth. During examination, the child victim (PW 2) deposed that the appellant put his private part in her mouth and said that he would give her toffees and some money. Further, during her cross examination, the victim stated that "*Accused Sanjay is a bad person*" on her own volition.

21. It is pertinent to note that since no document was placed on record by the parents of the child victim to prove her age, ossification



test of the victim was conducted and as per ossification report Ex. PW11/A, the age of the victim was opined to be between 6 to 8 years. Hence, undisputably, the victim is a 'child' within the meaning of Section 2(d) of the POCSO Act.

22. It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same. The law on this aspect was discussed in detail by the Hon'ble Apex Court by ***Nirmal Premkumar v. State* :2024 SCC OnLine SC 260**. The relevant portion of the same is produced hereunder:

"11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

12. In Ganesan v. State⁴, this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

*13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in **Rai Sandeep v. State (NCT of Delhi)**⁵. The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:*

"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept



it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(underlining ours, for emphasis)

14. In **Krishan Kumar Malik v. State of Haryana**⁶, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's



testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences. 32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”

15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While a victim’s testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”

(emphasis supplied)

23. It is also relevant to note that the victim in the present case is a minor girl who was only five years old at the time of the incident and when her statement under Section 164 of the CrPC was recorded. As



rightly noted by the learned Trial Court, it is difficult to fathom as to why a young girl of merely five years of age would make up such a story to falsely implicate the appellant.

24. The Hon'ble Apex Court in the case of ***State of H.P. v. Sanjay Kumar* : (2017) 2 SCC 51** had relied upon the evidence of the child victim who was raped when she was nine years old by her uncle and noted as under:

“30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted. We have already discussed above the manner in which the testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevents such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well. Equally, there is also a dire need to have a survivor-centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long-lasting effects on such victims.

31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find



*no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See *Bhupinder Sharma v. State of H.P.* [Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551 : 2004 SCC (Cri) 31]). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.*

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33. At this juncture, we would also like to reproduce the following passage from the judgment of this Court in ***State of Rajasthan v. Om Prakash*** [*State of Rajasthan v. Om Prakash*, (2002) 5 SCC 745 : 2002 SCC (Cri) 1210] : (SCC p. 755, para 19)

'19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them.



In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. The overturning of a well-considered and well-analysed judgment of the trial court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt was not called for. The minor contradiction of recovery of one or two underwears was wholly insignificant.’ ”

(emphasis supplied)

25. The Hon’ble High Court of Calcutta in the case of **Animesh Biswas v. State of W.B. : 2023 SCC OnLine Cal 2633** has succinctly summarised the law on evaluation of the testimony of a child victim and observed as under:

*“34. In catena of decisions Hon’ble Apex Court held that the evaluation of the evidence of child witnesses, especially where the child is the victim herself/himself, is always a tricky affair. Combating, and, at times, conflicting, considerations come into play in such cases. **On the one hand, there exists a presumption that a child of tender years would not, ordinarily, lie.** The applicability, or otherwise, of this presumption, would necessarily depend, to a large extent, on the age of the child. No dividing line can be drawn in such cases; however, one may reasonably presume that a child of the age of four, or thereabouts, would be of an age at which, to questions spontaneously put to the child, the answer would ordinarily be the **truth. As against this, the Court is also required to be alive to the fact that children are impressionable individuals, especially when they are younger in age, and are, therefore, more easily tutored.** The possibility of a small child, whose cognitive and intellectual faculties are yet not fully developed, being compelled to testify in a particular manner, cannot be easily gainsaid. Even so, the prevalent jurisprudential approach proscribes courts from readily treating the evidence of child witnesses as tutored and, ordinarily, where a child is subjected to sexual assault, her, or his, statement possesses considerable probative value.*



35. On the other hand, Hon'ble Apex Court reiterated that one of the cardinal principles to be borne in mind, while assessing the acceptability of the evidence of a child witness, is that due respect has to be accorded to the sensibility and sensitivity of the Trial Court, on the issue of reliability of the child, as a witness in the case, as such decision essentially turns on the observation, by the Trial Court itself, regarding the demeanour and maturity of the concerned child witness. An appellate court would interfere, on this issue, only where the records make it apparent that the Trial Court erred in regarding the child as a reliable witness. Where no such indication is present, the appellate court witness, where the Trial Court has found it to be credible, convincing and reliable. It went onto note that in the present case it is not disputed that the victim (Child witness) was not competent to depose to the facts and was not a reliable witness. Once 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 evening he absence of oath, the evidence of a child witness can be considered under Section 118 of the Indian Evidence Act, 1872 provided that such witness is able to understand the answers thereof. (Dattu Ramrao Sakhare v. State of Maharashtra, 1997 Latest Caselaw 447 SC)."

(emphasis supplied)

26. On careful examination of the statements of the victim and the mother of the victim, it appears that while there are certain discrepancies in the statements but that does not give benefit to the appellant since there is sufficient evidence on record to prove that the alleged act was committed by the appellant. The essential ingredient to bring home charge under Section 6 of the POCSO Act is penetration into vagina, mouth, anus etc. In the present case, both the material witnesses have corroborated the testimony of each other on the said aspect of insertion of penis into the mouth of the child victim.

27. The learned Trial Court, rightly noted that the testimony of the victim's mother also substantially corroborates and supports the



version of the victim. It is suffice to say that discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when all the important probabilities factor echoes in favour of the version narrated by the witnesses.

28. As noted above, while the Court has to be sensitive while considering the statement of a child victim in such cases, the reality of the impressionable nature of children and the possibility of them being tutored cannot be ignored. At the same time, when the learned Trial Court has found the victim to be reliable and when the victim has stuck by her version throughout trial, mere apprehension of the appellant that the victim has been tutored is not enough to disregard the victim's evidence. The said factor has to be established by either showing motive for false implication or through the evidence of the witness herself.

29. The appellant has raised the defence that he has been implicated due to prior enmity between the appellant and the family of the victim. As noted by the learned Trial Court, the appellant has not led any evidence and has been unable to create any doubt through cross-examining the witnesses in this regard. Apart from the bare averments of the appellant, there is nothing to support his defence that he has been falsely implicated due to prior animosity.

30. In view of the same, the testimony of the witness inspires confidence and the appellant has been unable to show that the version of the victim is tutored. In such circumstances, the foundational facts



stand proved by the prosecution through the evidence of the victim and her brother and the appellant has not been able to create any doubt to rebut the presumption under Section 29 of the POCSO Act.

31. Insofar as the sentence of the appellant is concerned, in the opinion of this Court, the learned Trial Court has rightly appreciated the seriousness of the offence and taken into account that the victim was merely five years old at the time of the incident while the appellant was a grown man. This Court finds the quantum of sentence to be proportional with the crime as has been committed by the appellant.

32. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned judgment and order on sentence.

33. The appeal is dismissed in the aforesaid terms. Pending application stands disposed of.

AMIT MAHAJAN, J

JANUARY 13, 2025