



2025:DHC:9767



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

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Date of Decision: 07.11.2025

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CRL.A. 1095/2019

KRISHNA NAND TIWARI

.....Appellant

Through: Mr. Adit S. Pujari, (DHCLSC) Ms. Vanya Chhabra, Mr. Manvendra Singh Shekhawat and Mr. Harshwardhan Pushkin Sharma, Advs.

versus

STATE

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with SI Shyam Bir Singh, Okhla Indl. Area, Mr. Himanshu Anand Gupta, (Amicus Curiae)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been preferred seeking to assail the judgment of conviction dated 11.07.2019 and order on sentence dated 30.08.2019, vide which the appellant has been convicted for the offences under Section 5(m) punishable under Section 6 POCSO Act, and sentenced to undergo rigorous imprisonment for a period of 12 years with a fine of Rs. 20,000/-, in default whereof, he was further sentenced to undergo simple imprisonment for a period of 6 months. The benefit of Section 428 Cr.P.C. was extended to



the appellant.

2. Brief facts in nutshell are that on 13.04.2013, DD No. 19 came to be recorded at P.S Okhla Industrial Area, wherein, it was alleged that the accused who at the time was running a molding machine in the building where the victim used to reside, had committed “*Ched Chaad*” with her. In the complaint, it was alleged that after taking the victim to his room, the accused tried to disrobe himself, and when she made a hue and cry due to this, she was allowed to leave. Further, the appellant had threatened her not to disclose the incident to anyone. On receipt of the complaint, the FIR under Section 354 IPC came to be registered and medical examination of the victim was carried out on the next day i.e., 14.04.2013. Subsequently, on 29.06.2013, the victim, in her statement recorded under Section 164 Cr.P.C. alleged that the appellant while committing the offence also tore her clothes and attempted to penetrate his private part.

The statement of mother of the victim was also recorded by the police. On completion of investigation, the charge sheet came to be filed under Section 354/376 IPC and Section 8 of the POCSO Act. The Trial Court, however, framed the charge under Section 6 POCSO Act.

3. Mr. Adit S. Pujari, learned counsel for the appellant has assailed the impugned judgment by contending that reading of the first statement of the victim did not make out the ingredients for the offence under Section 6 POCSO Act in any manner. Further, he contends that even the MLC also does not record any external injury or bleeding on the private parts of the victim. Lastly, he contends that the victim in her subsequent statement under Section 164 CrPC and court deposition has materially improved upon the allegations, primarily, on account of monetary transactions between the



family of the victim and the appellant.

4. Ms. Shubhi Gupta, learned APP for State as well as Mr. Himanshu Anand Gupta, learned *Amicus Curiae* appointed to represent the victim, however, have defended the impugned judgment and disputed the contentions. It is submitted that the testimony of the child victim is categorical. The child victim, who was aged about 10 years and 2 months old on the date of the incident, has clearly and consistently narrated the acts committed by the appellant upon her. The victim had informed her mother about the facts of the incident who has also deposed on similar lines.

5. As noted above, the investigation commenced with the lodging of the complaint on 13.04.2013. In the said complaint, the victim alleged only “*Ched Chad*”. On the following day, the statement of the mother was recorded, wherein she stated that the child victim had complained to her that the appellant had confined her in his room and engaged in “*ched-chad*”, and when he began disrobing himself, the victim raised an alarm, upon which she was allowed to leave. To the same extent is the history of assault noted at the time of the child victim’s medical examination in the MLC conducted on 14.04.2013. Pertinently, the FIR was registered only under Section 354 IPC.

It appears that approximately 2 and a half months later, on 29.06.2013, statement of the child victim came to be recorded under Section 164 Cr.P.C, wherein, for the first time, allegations of an attempt to penetrate were introduced. The child victim stated that the appellant had torn her “*salwar*” and attempted to penetrate her and in the said process, he had ejaculated as well. The narration of events as given by the child victim reveals that not only are they carrying material improvements on the nature



of the alleged offence, but also there are inconsistencies with respect to the circumstances in which she is stated to have met the appellant. In her initial statement, she had deposed that it was the appellant who had come to her house. However, in her subsequent statement recorded under Section 164 Cr.P.C., she stated that while she was playing with a ball, it had rolled into the appellant's room where he was operating a molding machine which is when the incident came to be committed. During her deposition before the Court, the victim again stated differently. She stated that the appellant had come to her room, taken her to his room, where he bolted the door, removed his clothes and after tearing her '*salwar*' attempted to penetrate her.

6. The victim was confronted with her earlier statements and suggestions were given that her mother had taken a loan from the appellant and when he demanded repayment of the same, he was falsely implicated. Similar suggestions were also given to the victim's mother during her cross-examination, wherein she admitted that victim's brother was earlier employed with the appellant. Prosecution had also examined the landlord 'H' as PW4 and during his examination-in-chief, he stated that there was an incident on 13.04.2013, however, it was a false complaint and the dispute between two families was something else.

7. No doubt, the conviction came to rest on the sole testimony of the child victim, however, for the Court to rely on this testimony it has to be credible, reliable and sterling in character with devoid of any material inconsistencies and improvements. In this regard, the decision of the Supreme Court, has laid down the criteria regarding the appreciation of a testimony of a child victim which needs to be carried out with a greater



scrutiny. In a recent decision of State of Madhya Pradesh vs. Balveer Singh¹, the Supreme Court has examined the principles governing the testimony of a child-witness and summarized the legal position in the following manner:

“58. We summarize our conclusion as under:-

...

(VII) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirable or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition..”

8. A witness can fall in 3 categories, wholly reliable, wholly unreliable, and neither wholly reliable nor wholly unreliable. The Supreme Court in Mahendra Singh v. State of M.P., discussed this in the following manner: -

“12. It will be apposite to refer to the following observations of this Court in its celebrated judgment in Vadivelu Thevar [Vadivelu

¹ 2025 SCC OnLine SC 390



Thevar v. State of Madras, 1957 SCR 981 : AIR 1957 SC 614] : (AIR p. 619, paras 11-12)

11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

13. It could thus be seen that this Court has found that witnesses are of three types viz. (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is “wholly reliable”, the court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the court finds that the witness is “wholly unreliable”, there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

9. The sequence of events narrated by the victim and her mother in Court is full of material improvements over their earlier statements. Moreover, suggestions of monetary transactions between the parties which lead to the aspect to false implication have also been given. Thus, conviction cannot be solely based on the deposition of the child victim and other evidence would also have to be taken into consideration.

10. The independent witness examined, that is the landlord (PW4), has



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also not supported the case of prosecution. It is also pertinent to note that no samples were seized during the investigation, including the torn “*salwar*” and as such, there is no FSL report on record. Further, the MLC notes that hymen was intact and further no external injury or bleeding was noted on the private parts.

11. Considering the aforesaid, on an overall view of the facts and circumstances, considering that the testimony of the victim and her mother in the present case do not inspire confidence, and no supporting evidence is available on record to prove the prosecution case beyond reasonable doubt and as such, the benefit must go to the appellant.

12. Consequently, the appeal is allowed. The appellant is held to be acquitted. The impugned judgement and the order on sentence are accordingly set aside.

13. The appellant be released forthwith, unless wanted in any other case.

14. The Court records its appreciation for the assistance rendered by learned Amicus Curiae.

15. A copy of this judgment be communicated to the Trial Court as well as concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 07, 2025/*sn*