



2025:DHC:11462



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

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+ **CRL.A. 603/2024**

GAJENDER SINGHAppellant
Through: Mr. Dhruva Bhagat, Advocate

versus

STATE NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State,
with SI Priyanka, P.S. SP Badli.
Ms. Pallavi Sharma, Mr. Saurabh
Kansal, and Mr. Raghav Vij,
Advocates for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The appellant seeks setting aside of the judgment of conviction dated 06.07.2023 and order on sentence dated 30.04.2024 passed by the Trial Court in proceedings arising out of FIR No. 362/2017 registered under Sections 376/354D/342/506 IPC and Sections 6/12 POCSO at P.S. S.P. Badli.
2. Vide the aforesaid judgment, the appellant was convicted under Sections 376(2)/342/506(II) IPC and Section 6 POCSO; and by way of the impugned order on sentence, he was sentenced to undergo RI for 6 months and pay a fine of Rs.1,000/-, in default thereof to undergo RI for 15 days, for



the offence under Section 342 IPC; undergo RI for 4 years and pay a fine of Rs.2,000/-, in default thereof to undergo RI for 1 month, under Section 506(II) IPC; and undergo RI for 20 years and pay a fine of Rs.2,000/-, in default thereof to undergo RI for 1 month, under Section 376(2) IPC. All the sentences were directed to run concurrently and the benefit under Section 428 Cr.P.C. was granted to the appellant.

3. The background facts, as noted by the Trial Court, are as under:-

“It is the case of the prosecution that on 28.04.2017 at about 1:14 pm, DD no. 16A regarding galat kaam with a child was received at the police station. Accordingly, SI Sushila reached Dr BSA Hospital where she met the victim ‘C’, her mother Smt. ‘P’; and W/Ct. Premwati. The victim was medically examined and her exhibits were taken by the doctor and handed over to SI Sushila. The victim was got counselled through an NGO and later her statement was recorded in the presence of her mother. The victim stated that 10 days back she had come from the village, where she resided with her grandmother, to her mother in Delhi for studies. She stated that she was got admitted to a private school. She stated that four days back when she was going to school, she met a man who told her that her mother was calling her but he took her to his rented room. She stated that the said man removed her clothes & his own clothes and committed a wrong act with her. She stated that he kissed her face. She stated that he did wrong acts on her urinary part “susu wali jagah gandi baat karne laga” and when she tried to scream, he gagged her mouth and threatened to kill her. She stated that thereafter, he left her but she was scared and she did not tell anyone about it. She stated that thereafter, the said man continued to take her to his room every day, and he used to do wrong acts on her urinary part. She stated that on 28.04.2017, that man took her from her school to his room and locked her there. She stated that he threatened her and then let her go. She stated that when she was returning, he started following her, and she got scared. She stated that when she saw her previous teacher – ‘R’, she told her what had happened. She stated that the said man fled from there but ‘R’ told her mother everything. She stated that she took her mother to the house of that man and her mother apprehended him. She stated that



her mother called the police and later she came to know that his name was Gajender.

In the MLC of the victim, the doctor observed that there was 1 cm x 1 cm redness on the inner side of her labia majora, slight congestion in the left labia majora and slight congestion in the forchette. The hymen was found torn but there was no bleeding.”

4. The medical examination of the child victim was conducted, and her statement under Section 164 Cr.P.C. was recorded. The I.O. also seized the DVR of the CCTV camera which was installed in the street where the room of the appellant was situated and the same was sent to FSL. The exhibits seized during the medical examination of the child victim, too, were sent to the FSL. On completion of investigation, the chargesheet came to be filed and charges were framed, to which the appellant pleaded not guilty and claimed trial.
5. While assailing the impugned judgment, the learned counsel for the appellant contended that the child victim is tutored, as there are various contradictions as to the occurrence of events and its reporting. Further, the victim's deposition also does not find support in her MLC or the forensic examination. The allegation of rape is also falsified by the CCTV footage, which does not show the victim even entering the appellant's premises. It is also contended that the appellant is falsely implicated in the case as the victim's family had taken loan of Rs.15,000/- from him, which they did not want to repay.
6. The contentions have been opposed by the learned APP for the State, as well as the learned counsel representing the victim, who jointly defended the impugned judgment. It is stated that the identity of the appellant is not in dispute, and the victim has consistently stated on the aspect of confinement,



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rape and the threats given by the appellant.

7. The child victim was examined as PW-1. She deposed that while her mother along with her siblings was living in Delhi, she used to reside with her maternal grandmother at their native village, and in the month of April 2017, she had come to Delhi to stay with her mother, who got her admitted into a private school. She stated that four days prior to the arrest of the appellant, the appellant had met her, and on the pretext that her mother was calling her, he had taken her to his room and after removing her as well as his own clothes, committed the act of rape upon her. She further stated that as the appellant had put his hand on her mouth, she could not even scream. The appellant also inserted his finger in her vagina. He also threatened her not to disclose the incident; else she will be killed. She stated that as she was scared, she did not inform anyone about the incident. In this manner, the appellant continuously took her to his room for four days and committed the offence of rape. On 28.04.2017, after he had taken her to his room for the fourth day and committed the offence, while she was returning to her house, the appellant followed her. As she was scared, she stopped at a Govt. school and told one madam about the conduct of the appellant. The said madam called the child victim's mother, and the child victim thereafter went with her mother and pointed out the place where the appellant used to commit rape upon her. The appellant was at home. Her mother caught hold of the appellant and called the police. The child victim also exhibited her statement recorded under Section 164 Cr.P.C. and the photographs of the place of incident. She also exhibited her shirt and *pajami* as Ex. P-1 (collectively), panty as Ex. P-2, the bedsheet as Ex. P-3, and the clothes as Ex. P-4.



In cross-examination on behalf of the accused/appellant, she answered that the appellant was already known to her as he used to live in the neighbourhood and frequent their house. A suggestion was given regarding the appellant having a dispute with the child victim's parents, and the same was denied. She stated that she goes to school alone and that it takes her half an hour to reach the school. When the appellant was taking her to his room, she did not raise any hue and cry. She also stated that there was no camera installed inside the room, however, outside there was a camera.

Considering the tender age of the child victim, no further cross-examination was allowed; however, it was noted that in case there are any contradictions in her testimony, the same will be looked into at the time of the final arguments.

8. The child victim's mother, namely 'P', was examined as PW-2. She deposed that the child victim had come from the village about 10 days prior to the incident in question and that the witness had got her admitted in a private school. She used to drop her daughter to school as the child was not aware of the way. Once the child became aware of the route, the witness stopped accompanying her to school. She stated that victim did not go to school for 4 days as she was taken away by the appellant. On the fourth day, when her daughter came home crying, she inquired about her, upon which the child disclosed the incident to her. She stated that she also received a call from the school.

In cross-examination, she stated that it takes about 10 minutes to go from her house to her daughter's school. The street where the appellant's room is located has a CCTV camera installed. She denied the suggestion that



she knew the appellant prior to the incident. She also denied that the appellant used to come to her house often and that when she could not repay the loan of Rs.15,000/- she had taken from the appellant, a quarrel took place between her and the appellant, resulting in false implication.

9. The prosecution had examined the principal of the school where the child victim was studying, and accordingly, the documents relating to the date of birth of the child victim were brought on record, which disclosed the child to be a minor at the time of the incident. Even otherwise, the child victim's age is not in dispute.

10. The teacher, purportedly informed about the incident by the child victim, was examined as PW-6. She disclosed that on 28.04.2017, she was present in school when she observed that the victim was weeping. On being asked, the victim continued to cry, and then her mother was called.

11. The victim's MLC was exhibited through the testimony of Dr. *Aastha*, who was examined as PW-8. The MLC notes redness on the inner side of the victim's labia majora. The MLC does not record any fresh injury; however, it notes hymen torn, but no bleeding.

12. The prosecution also examined one *Amit Kumar* as PW-11. He deposed that on 28.04.2017 at about 12.30 PM, he saw the victim's mother, who was known to him, taking the victim somewhere. As the victim was crying, he inquired as to the reason, and the victim told him about the incident of rape committed by the appellant. The victim informed him that the appellant was living on the same street as where they were, and the witness accompanied them to the appellant's room. The police were called thereafter and the appellant was arrested.



In cross-examination, he admitted that he never saw the victim going to the house of the appellant. He further admitted that he was not a witness to the incidents in question.

13. The owner of the house where the CCTV camera was installed was examined as PW-16. He deposed that he handed over the DVR, camera, power supply, and mouse to the I.O. He identified the equipment in Court. In cross-examination, he stated that he had shown the video clips of the previous three to four days to the I.O.; however, in none of the video clips could the appellant be seen taking the victim to his house.

14. The remaining witnesses are police officials who deposed as to various aspects of the investigation.

15. The appellant, at the time of recording his statement under Section 313 Cr.P.C., denied the prosecution case and stated that the entire case was planted as the victim's mother did not want to return the sum of Rs.15,000/- that she had borrowed from him. He stated that he had asked the victim's mother to return his money, and a quarrel had transpired between them on the day of the incident. He examined one defence witness, a neighbour. DW-1 stated that in the month of April 2017, he had seen the appellant quarrelling with some lady who was residing as a tenant in *Amit's* house. The quarrel was on account of some money issue. He tried to pacify both the parties. He further stated that he had never seen the victim child coming to the house of the appellant. He stated that he was also shown the CCTV footage of 15 days from the date of the incident and at no point did he notice the victim coming into or going out of the house of the appellant. He further admitted that the appellant was residing on the same floor as him.



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16. The FSL Report regarding the seized DVR opined that the recordings were continuous and also included the date and time.

17. The Trial Court, while finding the testimony of the child victim to be consistent, discarded the CCTV footage by observing that the possibility of the time and date being fed into the DVR manually cannot be ruled out. The Trial Court further relied on the medical examination report of the accused, wherein, upon local examination, smegma was found absent.

18. Learned counsel for the appellant, while pointing out the various contradictions in the statements of the child victim, has referred to her initial statement recorded under Section 164 Cr.P.C., as well as the Court deposition of the child victim. It is worthwhile to note that initially, the child victim stated that the accused had taken her to his house on the pretext that her mother was calling her. In her statement under Section 164 Cr.P.C., however, she stated that she was dragged and blind-folded. There is also variation as to how the mother became aware about the alleged incident. While the child victim states that she had informed the Govt. school teacher, who then called the mother; the victim's mother stated that the child came home crying and on the mother inquiring, disclosed the incident. The school teacher rather stated that the child victim was seen crying and was not saying anything, whereafter somebody called her mother, and then the child left along with her mother. The teacher does not say anything about being informed of any wrong committed against the child victim by the appellant.

19. At this stage, it is also worthwhile to note that the exhibits seized during the medical examinations of the victim and the appellant were sent to the FSL, and the FSL report has remained inconclusive.



20. I find strength in the submission of learned counsel for the appellant that the Trial Court, without any basis, discarded the evidence of CCTV footage. The reasoning given by the Trial Court for the same appears to not be borne out from the record, but only from self-induced doubt about the date and time of the footage. The Trial Court failed to appreciate that there was an FSL Report which categorically opined that there was continuity in the recording and that there was no indication of alteration in the continuous footage of the CCTV recording as per the frame-by-frame analysis conducted by the FSL using Video Analyst System. The CCTV footage rather showed that at no point in time was the victim seen being taken by the appellant to his room or exiting therefrom.

21. The Trial Court further relied on medical examination report of the appellant wherein smegma was found to be absent. The same is also misplaced as the last act in question was allegedly committed in the forenoon of 28.04.2017, whereas the appellant was medically examined the next day on 29.04.2017. In this regard, a gainful reference may be made to the observation of the Supreme Court in Aman Kumar and Ors. Vs. State of Haryana¹, wherein it reiterated its observations made in Dr. S. P. Kohli, Civil Surgeon, Ferozpur Vs. High Court of Punjab and Haryana thr. Registrar as under:

“7. ... It is well-known in the medical world that the examination of smegma loses all importance after twenty four hours of the performance of the sexual intercourse. (See Dr. S. P. Kohli, Civil Surgeon, Ferozpur v. High Court of Punjab and Haryana thr. Registrar MANU/SC/0080/1978 : 1978CriLJ1804)”

¹ Decision dated 10.02.2004 in Criminal Appeal No. 1016 of 1997.



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22. The medical examination of the child victim, despite revealing the hymen to be torn, does not note any fresh bleeding or injuries, which also creates a doubt on the allegations that victim was raped continuously for four days.

23. On the aforesaid aspect, the cross-examination of the neighbours, *Amit Kumar* and *Udaiveer*, is relevant, as they have admitted that they did not see the victim ever brought to the appellant's room.

24. In the considered opinion of this Court, the Trial Court has committed an error in convicting the appellant, who is entitled to the benefit of doubt. Accordingly, the present appeal succeeds and the impugned judgment of conviction and order on sentence are set aside. The appellant is directed to be set free unless required in any other case.

25. A copy of this judgment be sent to the concerned Jail Superintendent for information and necessary compliance.

26. A copy of this judgment also be communicated to the Trial Court for records.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 16, 2025

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