



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

Reserved on: 6th March, 2025

Pronounced on: 25th March, 2025

+ **CRL.A. 574/2022, CRL.M.(BAIL) 1513/2023**

NIRANJAN TIWARI

.....Appellant

Through: Ms. Sakshi Tanwar and Mr. Rohan
Kumar, Advocates.

versus

STATE

.....Respondent

Through: Mr. Sunil Kumar Gautam, APP for
State with Ms. Ekta, SI, PS-Bindapur.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973¹ is directed against the judgment and order of sentence dated 25th August, 2022 and 19th October, 2022 respectively, passed by the Additional Sessions Judge in the case titled “*State v. Niranjana Tiwari*”, in pursuance of FIR No. 1138/2015 dated 13th August, 2015 registered at P.S. Binda Pur, for the offence under Sections 10 and 9(m) of the Protection of Children from Sexual Offences Act, 2012.²

Factual Background

2. The factual matrix leading to the filing of the present appeal is as

¹ “CrPC”

² “POCSO Act”



follows:

2.1 The victim, an 11-year old girl,³ at the time of the alleged incident, was attending tuition classes at IGA Institute located at Gali No. 8, F-103, Vishwas Park, Solanki Road. On 12th August, 2015, the Prosecutrix returned home from the tuition classes, visibly distressed and weeping. Upon inquiry by her mother (PW-2), the Prosecutrix narrated an alleged incident of inappropriate physical contact by the accused Appellant. The Prosecutrix informed her mother that, while her tutor (Baby) had briefly stepped out of the tuition room, the Appellant, Niranjana Tiwari, who is the tutor's father, sat behind her and touched her on her body, cheeks and thighs. She further disclosed that two days before the said incident, she had noticed the Appellant staring at her inappropriately. The mother of the Prosecutrix subsequently conveyed the incident to her husband, who called the police helpline number (100) to lodge a complaint. A written complaint was also submitted on the same day.

2.2 Based on the complaint, FIR No. 1138/15 was registered at P.S. Binda Pur under Section 10 of the POCSO Act and Section 354 of the Indian Penal Code, 1860.⁴ The investigation culminated in the filing of a chargesheet, and the Appellant was charged with the offence under Section 10 read with Section 9(m) POCSO Act.

2.3 To establish their case, the Prosecution presented seven witnesses, which included: PW-1 (Prosecutrix): The victim and the primary witness, who narrated the details of the alleged incident; PW-2 (Mother of the Prosecutrix): The first informant who testified to the disclosures made by the Prosecutrix; PW-3 (Father of the Prosecutrix): Corroborated the version of

³ "Prosecutrix"

⁴ "IPC"



the Prosecutrix and her mother; PW-4 (Constable Sanju); PW-5 (SI Surender); PW-6 (Head Constable Kamal); and PW-7 (SI Sohan Lal): Investigating officers and police officers, who detailed the procedural steps taken during the investigation, including the registration of the FIR and subsequent examination of witnesses.

2.4 In his statement recorded under Section 313 of the CrPC, the Appellant vehemently denied the allegations. He asserted that the Prosecutrix had fabricated the incident to retaliate against him for reprimanding her due to non-payment of tuition fees and disruptive behaviour during class. The Appellant further contended that the narrative presented by the Prosecutrix was completely baseless and emphasized that he had never engaged in any inappropriate conduct. However, the Appellant did not produce any evidence in his defence.

2.5 After the conclusion of trial, the ASJ passed the impugned judgment dated 25th August, 2022, convicting the Appellant for the offences under Section 10 read with 9(m) of the POCSO Act.

2.6 Thereafter, the order on sentence was passed on 19th October, 2022, whereby the Appellant was sentenced to undergo rigorous imprisonment for a period of five years with a fine of INR 3,000/-, and further simple imprisonment for a period of three months in case of default in the payment of fine. The Appellant was further directed to pay compensation amounting to INR 40,000/- to the Prosecutrix.

Appellant's Case

3. Aggrieved by the foregoing, the Appellant has approached this Court, seeking set aside of the impugned judgement as well order on sentence. In this background, Counsel for the Appellant makes the following



submissions:

3.1 There are several contradictions in the statements of the Prosecutrix and the Complainant. The Prosecutrix, in her first statement to the police under Section 161 CrPC, stated that the Appellant came and sat near her, and touched her on her feet, hands and sides. She further stated that she was wearing a shirt having a zip, which the Appellant pulled up and touched her stomach. In contrast, the written complaint submitted by the Complainant alleged that the Appellant had touched the Prosecutrix's cheeks, thighs and private parts. In her Section 164 CrPC statement, the Prosecutrix reiterated her earlier claims made under Section 161 CrPC, but made no mention of being touched on her private parts. These discrepancies between the written complaint and the statements made under Sections 161 and 164 CrPC are fundamental and go to the root of the Prosecution's case. The absence of any mention by the Prosecutrix regarding inappropriate contact with her private parts, as claimed in the written complaint, raises serious doubts about the reliability of her testimony and the Complainant's version. These contradictions were improperly ignored by the Trial Court.

3.2 The Trial Court also failed to consider the discrepancies regarding the payment of tuition fees, which are borne from the testimonies of PW-1, PW-2 and PW-3. Specifically, PW-1, in her cross-examination, stated that *"For tuition classes, no fees was paid. Vol. We were attending the tuition classes on trial basis"*. PW-3, father of the Prosecutrix, in his cross-examination, on the contrary stated that *"The child victim was taking tuition classes for last 3-4 months before the incident in the present case"*. PW-3 further stated *"We used to pay tuition fee regularly. The amount of the fee was around R.250-300/-. No receipts were obtained for the same."*



3.3 The Trial Court erred in failing to consider that the tuition centre was a public place, with 10-12 children present in the class. Furthermore, the Appellant's daughter, being the tutor, was also a part the class, and the Appellant had merely come to pick her up. The Prosecutrix did not allege that the Appellant had taken the Prosecutrix to any secluded or private area away from the class. Given these circumstances, it is reasonable to infer that the Appellant had no sexual intent, as his alleged actions occurred in a public environment in the midst of several other people.

3.4 The Trial Court has failed to appreciate the testimony of PW-5 (SI Surrender). He, in his cross examination, stated, "*There used to be around 10 to 12 other children also who used to take tuition classes. I have made inquiries from the other children also but they were not supporting the version of the victim. I had not recorded their statements under Section 161 Cr.P.C., however, I have mentioned the above-said fact in the case diary of the case*". Therefore, it is evident from the testimony of PW-5 that the students present in the tuition did not support the allegations of the Prosecutrix.

3.5 The Trial Court also failed to appreciate that the brother of the Prosecutrix was also attending tuition classes on the day of alleged incident. In fact, the Prosecutrix, in her testimony stated, "*Vol. Later on, I had told about the incident to my brother outside the class room.*" This statement establishes that the Prosecutrix's brother was present at the time of the incident and was informed of it immediately thereafter, making him a material witness to the case. However, he was not examined by the Prosecution.

3.6 Furthermore, the Trial Court failed to appreciate that, due to the



contradictions in the testimonies of the witnesses, it cannot be conclusively stated that the Prosecution has proven its case beyond a reasonable doubt.

3.7 In support of the aforementioned contentions, counsel for the Appellant has placed reliance on the following judgments—*Amol v. State of Maharashtra*;⁵ *Veerpal @ Titu v. State*;⁶ *Nirmal Premkumar v. State*;⁷ and *Sonu v. State of Madhya Pradesh*.⁸

Respondent's Case

4. On the other hand, Mr. Sunil Kumar Gautam, APP for the State, defends the impugned judgment and order on sentence, asserting that there are no material contradictions in the statements of the Prosecutrix. Mr. Gautam contends that the statements of the Prosecutrix, recorded under Sections 161 and 164 of the CrPC, are consistent, clear, and unequivocal, leaving no room for doubt regarding the culpability of the Appellant. The alleged discrepancies pointed out by the Appellant, he argues, are minor and inconsequential, failing to undermine the core of the allegations made by the Prosecutrix. He submits that courts have time and again held that, in cases involving sexual offences, a victim's testimony, if cogent and credible, requires no further corroboration. Additionally, he highlights that under Section 29 of the POCSO Act, a presumption exists regarding certain offences. He submits that, in cases involving such offences, the Special Court shall presume that the accused has committed the offence unless the contrary is proved. In this instance, he asserts, the Appellant has entirely failed to establish a credible defence, having not examined any witnesses to support their case. Consequently, the presumption in favour of the

⁵ CrI. Appeal No. 600/2017 dated 23rd April, 2018, High Court of Bombay, Nagpur Bench.

⁶ *Veerpal v. State*, 2024 SCC OnLine Del 2686.

⁷ *Nirmal Premkumar v. State*, 2024 SCC OnLine SC 260.

⁸ CrI. Appeal No. 3370/2023 dated 9th May, 2024, High Court of Madhya Pradesh.



Prosecutrix remains unrebutted.

Analysis

5. The Court has duly considered the submissions of both parties and carefully reviewed the impugned orders. At the outset, it must be noted that the Prosecutrix was heard by this Court, on 6th March, 2025, wherein she stated, that having regard to the age of the Applicant, he should be released from jail. The aforesaid statement does not constitute a valid basis for this Court to set aside the impugned judgment and order of sentence. Accordingly, the Court proceeds to examine the facts and contentions raised by the parties.

Age of the Prosecutrix

6. First, there is no dispute regarding the age of the Prosecutrix, which is proved by her school records (Ex. A-1), confirming that the Prosecutrix was approximately 11 years old at the time of the alleged incident. This finding of the Trial Court does not warrant interference. Considering the age of the Prosecutrix at the time of the incident, charges under Sections 9(m) and 10 of the POCSO Act are attracted, which trigger the presumption under Section 29 of the Act. However, it is settled law that this presumption arises only once the Prosecution has successfully established the foundational facts of the case.⁹ The said presumption can be rebutted by either discrediting the witnesses through cross-examination or by leading defence evidence.

Statements of the Prosecutrix

7. At the outset, it is important to emphasize that it is settled law that an accused may be convicted solely on the basis of the testimony of the complainant or victim, provided that such testimony inspires the confidence

⁹ Altaf Ahmed v. State (GNCTD of Delhi), 2020 SCC OnLine Del 1938.



of the Court. This principle has been clearly articulated by the Supreme Court in *Nirmal Premkumar v. State*,¹⁰ whereby the Court observed as follows:

“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.”

xx...x....x...

13. 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]

8. Furthermore, the Supreme Court, in *Krishan Kumar Malik v. State of Haryana*,¹¹ held that although the victim’s solitary statement in matters relating to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the statement is found unreliable and insufficient. The Court emphasized that for the testimony of a child victim to form the basis of a conviction, it must be reliable, consistent, and free from any doubts. The victim’s account should be unassailable, trustworthy, and of sterling quality, capable of supporting the conviction of the accused based on the solitary evidence provided.

9. At this juncture, it is essential to emphasize that the Prosecutrix was

¹⁰ 2024 SCC OnLine SC 260.

¹¹ (2011) 7 SCC 130.



of a tender age of 11 years at the time of the alleged incident and, as such, cannot be expected to recall every detail with absolute precision or perfectly reproduce them in her statements. Consequently, the Court acknowledges that minor contradictions and inconsistencies in her account should not be deemed entirely detrimental to her case. However, given that the Prosecution's case largely depends on the testimony of the Prosecutrix, it is crucial that her statements are coherent, consistent, and free from material contradictions. Accordingly, the Court now proceeds to examine the statements of the Prosecutrix under Sections 161 and 164 CrPC as well as her testimony before the Trial Court.

10. For ease of reference, the statements of the Prosecutrix are reproduced as follows:

Statement under Section 161 CrPC

*"I say that I live at the abovesaid address with my parents and I study in 7th class. On 12.05.2015 I went to the tuition to study. Baby (Jai Shree) teaches me in tuition. Madam made me to sit in last. Father of my madam came and sit near me. He was touching my feet, hands and besides. I was wearing a shirt with chain. He was pulling it up and touching stomach. When tuition was over I came home and told to my mother. **When I went on the first day then he was staring at me.** You have made Naksha Mauka on my identified marked. You have written my statement as told by me. I have listened and understood the statement, it is ok."*

Statement under Section 164 CrPC

*"Yesterday I went to tuition to study. Madam asked me to sit in last. Father of madam came and sit near me. He was touching my feet, hands and besides. I was wearing a shirt with chain. He was pulling it up and touching stomach. When tuition was over I came home and told to my mother. **When I went on the first day then he was staring at me and he was doing the same with another girl too. He was touching her stomach.** Name of my madam is Baby."*

Testimony of Prosecutrix (PW-1)—Examination in Chief

"I used to go to attend tuition classes near my home. I do not remember



the exact date. however, on the day of incident, when my teacher had gone out of the class to attend some phone call, her father sat besides me and started touching me inappropriately on my legs and hands. He had also pulled my shirt up and touched my stomach and waist. After returning home, I had told about the incident to my mother. Later on, the matter was reported to the police.”

Testimony of Prosecutrix (PW-1)—Cross Examination

*“I had started attending tuition classes 3-4 days prior to the registration of the present case. I used to attend my tuition classes with 5-6 other students. It is wrong to suggest that around 14-15 students used to attend tuition classes. **My elder brother also used to attend tuition classes. My brother was also present in the class room on the day of incident. I had not raised alarm in the class room nor I revealed about the incident to my brother, my teacher or any other student in the class room. Vol. Later on, I had told about the incident to my brother outside the class room.** On the day of incident, I had attended my tuition classes from 7 p.m. to 9 p.m. In between the said period, our teacher had gone outside to attend some phone call. My parents never used to pick or drop us for tuition classes. It is wrong to suggest that my parents used to accompany me to the tuition classes. I do not know as to who used to pick my teacher after tuition classes. It is wrong to suggest that accused used to come after tuition classes to pick her daughter i.e. my teacher. **For tuition classes, no fees was paid. Vol. We were attending the tuition classes on trial basis.** I do not remember if any student by the name of Shivam was also attending the tuition classes. It is wrong to suggest that I used to make nuisance in the tuition classes or that I had also quarreled with Shivam. It is wrong to suggest that when my teacher had rebuked me due to the said reason, I had called my parents or that a false story had been concocted in order to falsely implicate the accused. Police had made inquiries from me around 3-4 times. **The police officials had not made any inquiry from my brother or any other student.** It is wrong to suggest that the accused had never touched me inappropriately on any of my body parts or that a false case has been made against the accused in order to avoid payment of tuition fees.”*

11. A close examination of the statements of the Prosecutrix reveals the following inconsistencies: In her statements under Sections 161 and 164 CrPC, the Prosecutrix was unable to specify the exact date of the incident. That apart, she alleged that the Appellant “*sat besides me and started touching me inappropriately on my legs and hands. He had also pulled my*



shirt up and touched my stomach and waist.” She further stated that after returning home, she narrated the incident to her mother, subsequent to which, the matter was reported to the police. She also asserted that, on a prior occasion, the Appellant had been staring at her and also engaged in similar conduct with another girl, *“When I went on the first day then he was staring at me and he was doing the same with another girl too. He was touching her stomach.”* However, this allegation of prior conduct involving another student was conspicuously absent in her testimony before the Trial Court. This omission raises concerns about the consistency of her allegations, particularly regarding the Appellant’s alleged recurring behaviour.

12. Further, the said unnamed girl, in the Prosecutrix’s statement, was never identified by the Prosecutrix, nor was she examined as a witness. Additionally, the Investigating Officer,¹² SI Surender (PW-5), in his testimony before the Trial Court, categorically pointed out, *“I did not find any other child who had made complaint against the accused though in the statement of child victim u/s 164 C.P.C. there is mentioning of one another child also”*. Consequently, the Prosecutrix’s allegation that the Appellant had engaged in similar conduct with another child was not only unsubstantiated by any evidence, but directly contradicted by the testimony of the IO, which raises significant doubt on the credibility of her account and her allegations against the Appellant.

13. Moreover, during cross-examination, the Prosecutrix introduced new claims that were not part of her earlier statements under Sections 161 and 164 CrPC or her examination-in-chief. The Prosecutrix, for the first time,

¹² “IO”



asserted in her cross-examination that her elder brother was present in the classroom on the date of the incident. This significant claim was never mentioned earlier, including in her statement to the police or the Magistrate. Not only did she fail to raise an alarm during the alleged incident, but she also admitted that she did not disclose the incident to her brother, the teacher, or other students at the time. However, then she unilaterally changed her stance and stated that she had indeed informed her brother about the incident outside the classroom. These contradictions regarding her brother's presence and her disclosure of the incident to him become even more critical because of the Prosecution's failure to examine her brother as a witness. As an alleged eyewitness, especially a 'related witness', his testimony could have provided crucial corroboration to the Prosecutrix's account. The lack of his testimony, coupled with the failure on the part of the Prosecution to examine other students or the tutor (the Appellant's daughter), creates significant gaps in their case.

14. Another inconsistency arises regarding the payment of tuition fees. In her cross-examination, the Prosecutrix claimed she was attending classes on a trial basis and had not paid any fees. This statement is directly contradicted by her father, who stated in his cross-examination, "*The child victim was taking tuition classes for the last 3-4 months before the incident in the present case.*" He further stated, "*We used to pay tuition fee regularly. The amount of the fee was around R.250-300/-. No receipts were obtained for the same. It is wrong to suggest that we did not used to pay the fee regularly.*" Such contradictions between the Prosecutrix's and her father's accounts further diminish the credibility of the Prosecution's narrative.

15. It is therefore observed that the statement of the Prosecutrix before the



police under Section 161 CrPC, her statement before the Magistrate under Section 164 CrPC, and her testimony before the Court are all marred by several discrepancies, rendering it wholly unreliable. Considering these inconsistencies, and having regard to the legal principles laid down by the Supreme Court in relation to appreciation of evidence in such cases, the Court deems it necessary to assess whether the testimony of the Prosecutrix finds corroboration from the statements of other prosecution witnesses. Such corroboration would help the Court establish the reliability and credibility of the Prosecution's case, in order to determine as to whether the evidence is sufficient to sustain the Appellant's conviction.

PW-2: Complainant/ Prosecutrix's mother

16. In support of the Prosecution's case, the Complainant/ Prosecutrix's mother deposed as PW-2. She too could not provide the exact date of the incident, yet she stated, on one occasion, the Prosecutrix returned from tuition classes crying and disclosed that the Appellant *"had touched her inappropriately on her body parts including her private part and her thigh"*. However, it is noted that the Prosecutrix herself did not make any such allegation regarding touching of private parts, either in her initial statement under Section 161 CrPC, her statement before the Magistrate under Section 164 CrPC, or even during her testimony in Court.

17. Concededly, PW-2 was not an eyewitness to the incident and merely recounted what the child victim had purportedly confided in her. However, PW-2's version materially diverges from the Prosecutrix's own testimony, casting serious doubt on the reliability of her account. Pertinently, during cross-examination, PW-2 stated that the Prosecutrix had previously informed her that the Appellant would stare at her and that she was reluctant



to continue attending tuition classes. Yet, despite such concerning disclosures, PW-2 admitted that she never lodged any complaint, nor confronted the tutor or the Appellant regarding this alleged conduct. No explanation was offered for this inaction.

18. It is also significant to note that both the Prosecutrix and her mother acknowledged that 5-7 other students attended the tuition class alongside the Prosecutrix. According to their own accounts, the alleged incident took place while these other students were present in the classroom. Yet, the Prosecution made no effort to examine any of these individuals, who could have served as independent witnesses to the incident.

PW-3: Prosecutrix's father

19. PW-3, the father of the victim, similarly failed to specify the exact date of the incident. He testified that one particular night, around 9 PM, when the Prosecutrix returned from her tuition classes, she was crying and revealed that the Appellant had *"misbehaved her by touching her body parts inappropriately"*. However, like PW-2, PW-3 is not an eyewitness to the incident, and could only testify as to what the Prosecutrix had conveyed to him. This version of events, as relayed by the Prosecutrix to her father, does not align with the account allegedly given to PW-2, raising further inconsistencies in the prosecution's narrative.

20. While the Prosecutrix in her statements under Sections 161 and 164 CrPC stated, *"When I went on the first day then he was staring at me"*, PW-3, during cross-examination, contradicted the said averment, stating, *"The child victim was taking tuition classes for the last 3-4 months before the incident in the present case. During the abovesaid period, before the incident, no other incident had taken place."* Thus, in stark contradiction to



the Prosecutrix's statement of attending tuition classes for the last 3-4 days on a trial basis, PW-3 deposed that the Prosecutrix had been attending tuition classes for the last 3 to 4 months before the alleged incident. By deposing that that no prior incident had occurred before the date of the alleged offence, he directly contradicted the Prosecutrix's allegation that the Appellant had been staring at her on a previous occasion.

21. Moreover, PW-3 stated that the tuition fees of INR 250-300/- was being regularly paid, but he acknowledged that no receipts had been obtained. This directly contradicts the Prosecutrix's earlier statement that she was attending tuition on a trial basis and had not paid any fees, further casting doubt on the consistency and credibility of the Prosecution's case.

22. Additionally, PW-3, in his cross-examination, admitted that no other student had complained about the Appellant. He also admitted to making inquiries with the other students, who allegedly initially supported the Prosecutrix's account but later retracted, denying any such incident.

23. To sum up, the inability of all the three Prosecution witnesses—the Prosecutrix, her father, and her mother—to specify the exact date of the incident and other material contradictions in their statements discussed above add to the ambiguity surrounding the Prosecution's version of events. This lack of clarity, and absence of any independent witnesses, particularly in a case of this nature, weakens the Prosecution's narrative and raises questions about the reliability of the testimony provided by these key witnesses.

Investigation; Testimony of PW-5: SI Surrender and lack of examination of independent witnesses

24. As per the testimony of the Prosecutrix and the related witnesses PW-



2 and PW-3, it emerges that the alleged incident occurred within the confines of a tuition class attended by several students, including the elder brother of the Prosecutrix. Further, as per the version of the Prosecutrix, there was another girl from the tuition who was subjected to similar conduct by the Appellant. Thus, this is not a case where the incident is alleged to have occurred in solitude or behind closed doors; on the contrary, the setting was a classroom, with multiple potential eyewitnesses present at the relevant time. In this context, the testimony of PW-5, SI Surender, who was the IO, assumes critical importance. During his cross-examination, PW-5 categorically admitted that he had made inquiries with other children who attended the same tuition classes, but none supported the version narrated by the Prosecutrix. The relevant portion of his cross examination is as under:

“There used to be around 10 to 12 other children also who used to take tuition classes. I have made inquiries from the other children also but they were not supporting the version of the victim. I had not recorded their statements u/s 161 Cr.P.C., however, I have mentioned the abovesaid fact in the case diary of the case. It is wrong to suggest that no incident as mentioned in the complaint had ever happened or that a false case has been registered against the accused. I did not find any other child who had made complaint against the accused though in the statement of child victim u/s 164 C.P.C. there is mentioning of one another child also.”

25. Further, the chargesheet makes an assertion that: *“Later on the SI recorded the statement of 161 C.P.C. and also interrogates another children's who used to go there for tuitions”*. This creates an impression that the IO had taken statements of other students who were present in the tuition class at the time of the alleged incident or were potential eyewitnesses. However, a perusal of the chargesheet reveals that the Prosecution did not record the statements of the other students under Section 161 CrPC. There is also nothing on record to show that the IO made any effort to record



statements from their parents regarding the alleged misconduct. Rather, PW-5, the IO himself, admitted during cross-examination that while he had inquired with the other students, none of whom supported the version given by the Prosecutrix.

26. The aforesaid omissions are not mere procedural lapses, but strike at the heart of the Prosecution's case. The Prosecution, having had access to independent witnesses who were admittedly present at the scene, offered no explanation for their non-examination. In a case hinging largely on the sole testimony of the Prosecutrix, the failure to bring forth such independent accounts, especially when readily available, raises serious concerns about the fairness and objectivity of the investigation. The deliberate omission of potential witnesses whose statements may not have been favourable to the Prosecution undermines the credibility of the investigative process itself. If other students were present in the same classroom and did not endorse the Prosecutrix's claims, their statements, or at the very least, their absence from the witness stand, becomes a critical factor in assessing the reliability of the Prosecution's case.

27. It is, of course, well settled that the Prosecution's case cannot be discarded merely on the ground that independent witnesses have not been examined. Courts have consistently held that a conviction may rest on the sole testimony of the victim, particularly in offences of a sensitive nature. However, this principle applies only where the Prosecution succeeds in presenting a cogent, coherent, and intrinsically trustworthy account—one that inspires confidence in the mind of the Court. Where the investigation reveals contradictions or material evidence that may not wholly support the prosecution's version, the obligation to examine independent witnesses and



present a fair and complete picture assumes paramount importance. As held by the Supreme Court in *Takhaji Hiraji v. Thakore Kubersing Chamansing*,¹³ in cases where material and independent witnesses are withheld without explanation, particularly when there are gaps or infirmities in the Prosecution's case, the Court is entitled to draw an adverse inference against the Prosecution.

28. In the present case, independent witnesses were not only available, but very much present at the scene of the alleged incident, and yet they were neither examined nor cited, and no reasonable explanation has been offered by the Prosecution for the non-production of such witnesses, thereby enhancing the significance of this lapse. Further, the IO himself admitted that several children present at the tuition class were questioned during the inquiry, and that none of them supported the version of the Prosecutrix. The absence of any corroboration from these neutral witnesses, coupled with the lack of a cogent explanation for their non-examination, in our view, significantly weakens the credibility of the entire prosecution narrative.

29. It was incumbent upon the Prosecution not to merely rely on selective or favourable testimony, but to present before the Court the entire spectrum of evidence, particularly any inconsistencies or dissonant material that surfaced during the course of investigation. This duty assumes even greater significance in cases where the allegations rest solely on the testimony of the prosecutrix and where independent witnesses, who were admittedly present at the scene, did not support her version. The Court must emphasise that the Prosecution's responsibility is not merely to secure a conviction, but to assist the Court in arriving at the truth.

¹³ (2001) 6 SCC 145.



Conclusion

30. In light of the aforesaid contradictions, the testimony of the Prosecutrix and the statements of the witnesses fail to inspire the confidence of the Court. Given these contradictions, it cannot be ruled out that the case may have been influenced by external factors, such as the child being reprimanded or issues related to the payment of tuition fees.

31. As regards the presumption under Section 29, it is settled law that the same can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in the prosecution version or improbability of the incident, or leading defence evidence in order to rebut the presumption by way of preponderance of probability.¹⁴ In the present case, the said presumption stands discredited by the numerous discrepancies in the examination and cross-examination of the Prosecutrix and her parents. Moreover, the failure to examine key witnesses, such as the Prosecutrix's brother (who was allegedly present at the time of the incident), the tutor, and other classmates, further undermine the credibility of the Prosecution's case, which has been gravely prejudiced by their non-examination.

32. Therefore, the Prosecution's case is marred by contradictions that go to the very root of the case. As a result, the Prosecution has failed to establish the charge against the Appellant beyond a reasonable doubt. For the foregoing reasons, the appeal is allowed with the following directions:

- i. The impugned judgment dated 25th August, 2022 and order on sentence dated 19th October, 2022 passed by the Trial Court are set aside.
- ii. The Appellant is acquitted and is directed to be released forthwith, if not required in any other case.

¹⁴ Veerpal v. State, 2024 SCC OnLine Del 2686.



iii. A copy of this judgment be forwarded to the Jail Superintendent and the Trial Court for information and compliance. A copy be also provided to the Appellant, free of cost.

33. With the aforesaid directions, the appeal is disposed of. Pending application(s), if any, also stand disposed of as infructuous.

SANJEEV NARULA, J

MARCH 25, 2025

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