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

+ CRL.A. 1254/2019

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

versus

PANCHAM YADAV

.....Respondent

Through: Mr.Samarth Krishan Luthra and

Mr.Manoviraj Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

01.12.2025

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1. By way of the present appeal filed under Section 378 Cr.P.C, the appellant/State seeks to set aside the judgement dated 28.02.2017 passed by ASJ-01(POCSO Act), Central, Tis Hazari Courts, Delhi, in proceedings arising out of FIR No. 05/2015 registered at P.S. Burari, Delhi, whereby the Trial Court acquitted the respondent under Section 354 IPC and Sections 6/18 POCSO Act

2. Briefly put, the case of the prosecution is that on 01.01.2015, the complainant, who is the mother of the victim, lodged a complaint that she was residing alongwith her husband and three children including the child victim above a dairy owned by “Pappu Pehlwan”, where her husband used to work. The respondent also used to live in that building. On that day around 7:00 PM, she had gone to the market to purchase vegetables, while her husband was working at the dairy. At around 9:00 PM, when she returned home, she found that her daughter was in the room of the respondent. When she called for her, she came out of his room and informed her that the respondent had removed both their clothes and attempted to touch his genitals on her hips. On the basis of her statement, the present FIR



was registered.

3. The prosecution examined seven witnesses in support of its case. The material witnesses included the complainant, mother of the victim, who was examined as PW-1, and the victim herself, who was examined as PW-2. Dr. Shashi Kant Kumar, who proved the MLCs of both the respondent and the victim, was examined as PW-6. The remaining witnesses were formal in nature and deposed with respect to various aspects of the investigation.

In his statement recorded under Section 313 Cr.P.C., the respondent denied the prosecution's case in its entirety, claiming innocence and false implication. The father of the child victim had taken a loan of Rs.9,000/- from him for treatment of his mother when he demanded the money back, PW-1 and her associates gave him beatings and took him to the police station where he was made to sign blank papers.

4. Learned APP for State submits that the learned Trial Court erred in acquitting the respondent by placing undue emphasis on minor contradictions in the testimonies of PW-1 and PW-2. PW-2 has consistently narrated the incident and her testimony is corroborated by PW-1. It is further submitted that the victim was found in the respondent's room, and there is nothing on record to suggest that the complainant or the victim had any motive to falsely implicate the accused.

5. *Per contra*, learned counsel for the respondent supports the impugned judgment and submits that the contradictions highlighted by the Trial Court are not minor or peripheral, but material, going to the very root and genesis of the incident. It is contended that in the Court deposition, there exist significant inconsistencies and improvements over the initial statement and the prosecution case has not been proved beyond reasonable doubt.



6. I have considered the submissions advanced by the learned APP for the State, as well as the learned counsel appearing for the respondent and examined the evidence on record.

7. The mother of the victim was examined as PW-1. Her testimony suffers from multiple improvements over her initial complaint. She had deposed that she had inquired from her other daughter “K” about the whereabouts of the victim, and that she had heard cries from the room of the respondent and that when she went to the door of the respondent’s room, she saw him pulling his pants and fleeing and her daughter was wearing a frock and no cloth on lower part of the body. However, none of this was mentioned in the initial statement(Ex PW-1/B), which she was duly confronted with during her cross-examination. She further deposed that the respondent had lowered his pant, undergarment and was touching his penis against her vagina, however, the same was also not mentioned in the initial complaint. Though, she stated in her complaint that no wrong act was committed and only *chedchad* was done however, she improvised her stand during her testimony. She denied suggestions of quarrel and tutoring.

8. Furthermore, despite PW-1’s assertion that she made a PCR call immediately after the alleged incident, the prosecution failed to produce any record of such a call. Insp. Mukesh Devi was examined as PW-7. He stated that the victim and her mother were present at the police station where mother’s statement came to be recorded. He, or the other police witnesses, make no mention of any PCR call, nor has any documents pertaining to it has been placed on record. This omission seriously undermines the promptness and authenticity of the complaint. The incident statedly occurred around 9:00PM, however, the DD no. 3A as well as the *tehrir* came to be



recorded on the next day. Additionally, PW-1 deposed that respondent had fled upon seeing her however, the arrest memo of the respondent reflects that he was arrested from his residence on the next day of the incident at 6:00PM.

9. There are also contradictions in the statements of the child victim and mother. The mother has deposed that the child victim was only wearing a frock and there was no cloth on the lower part of her body. She also deposed that she had lifted her pant and undergarment of the victim which was lying over jute bag inside the house of the respondent. On the other hand, the child victim has categorically stated in her cross-examination that the respondent made her wear her underwear and *pajami*. The child victim has further stated that the respondent was arrested from his brother's house on the same night of the incident. As discussed earlier, the respondent was actually arrested from his own room on the succeeding day.

10. The MLC records no fresh external injury on any part of the body and her hymen was intact. There was no bleeding or injury on the genital region and her mother had refused for internal examination.

11. On an overall view of the facts and circumstances, considering that the initial complaint was made by the mother who has materially improved upon her initial statements, the contradiction in her statement with that of the child victim, and non-supportive medical examination, cast a shadow of doubt on the prosecution's case. In the overall analysis, the case against the respondent has not been proved beyond reasonable doubt.

12. At this stage, it is also apposite to note that an order of acquittal carries with it a double presumption of innocence and the benefit of doubt extended to the respondent in the present case is not liable to be interfered



with unless the Trial Court's view is perverse. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage, after his acquittal by the Trial Court, is settled. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as (2022) 8 SCC 536, wherein it was observed, as hereunder:

"8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)

"25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

13. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as (2020) 10 SCC 166, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

"14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

" ...

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR



1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

'... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

...

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

14. Considering all the aforesaid, this Court is of the considered view that the contentions put forth by the learned APP for the State are not convincing enough to warrant setting aside of the impugned judgment, and the same is accordingly upheld.

15. Consequently, the present appeal is dismissed.

16. A copy of this judgement be communicated to the Trial Court.

MANOJ KUMAR OHRI, J

DECEMBER 1, 2025

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