



2025:DHC:6704



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

% Reserved on : 06.08.2025
Pronounced on : 08.08.2025

+ **CRL.A. 920/2023 & CRL.M.(BAIL) 1622/2025**

MUKESH PURIAppellant

Through: Mr. Kunal Malhotra, Mr. Ravinder
Gaur and Mr. Shivansh Bhateja,
Advocates.

versus

GOVT. OF NCT OF DELHIRespondent

Through: Ms. Shubhi Gupta, APP
for State with S.I. Sangeeta Malik
alongwith S.I. Usha Rani, P.S. J.P.
Kalan
Ms. Shelly Dixit, Amicus Curiae for
the Complainant

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 11.05.2023 and the order on sentence dated 22.07.2023, passed by the learned Additional Sessions Judge-01, POCSO, Dwarka Courts, New Delhi, in SC No. 650/2017 arising out of FIR No. 661/2017 registered under Sections 10 and 9(m) POCSO at P.S. Bindapur, Delhi.

Vide the aforesaid judgment and order on sentence, the appellant was



convicted under Section 10 read with Section 9(m) POCSO and sentenced to undergo rigorous imprisonment for a period of 5 years along with a fine of Rs.30,000/-, in default whereof he was directed to further undergo simple imprisonment for a period of 30 days. Benefit under Section 428 Cr.P.C. was extended to the appellant.

2. The prosecution's case in a nutshell is that on 06.09.2017, the 5-year-old child victim, accompanied by her 8-year-old cousin, went to a photo studio to collect photographs, and while at the studio, the appellant called the child victim over, unzipped his pants, and forced her to touch his private parts. Distressed, the child victim hurried home and informed her mother of the incident. Based on her statement, an FIR was lodged against the appellant and he was arrested by the police. Upon completion of the investigation, a chargesheet was filed, and the Trial Court framed charges against the appellant under Sections 10 and 9(m) POCSO.

3. During the trial, the prosecution examined a total of 10 witnesses in support of its case. The child victim testified as PW-1, her mother as PW-2, her cousin as PW-9, and the owner of the photo studio as PW-5. On the other hand, the appellant, in his statement recorded under Section 313 Cr.P.C., asserted his innocence and claimed false implication. He led defence evidence and examined two witnesses: his sister, who was examined as DW-1; and a neighbour of the appellant who was a battery-rickshaw driver by profession, as DW-2.

4. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. He contends that the appellant has been targeted due to his exposure of a neighbourhood sex racket, and that the present case is an attempt to extort money from him.



The defence of alibi has been raised, and the learned counsel further submits that there are material discrepancies in the various statements of PW-1 and PW-9, which suggest that the testimonies of the child victim and her cousin may have been tutored. He also argues that the appellant has been targeted as a result of a quarrel between the child victim's mother and the owner of the studio. Additionally, the learned counsel points to shortcomings in the investigation, such as the failure to seize photographs, the cash bill, or the studio's customer register, and lastly, the non-examination of any public witnesses during the appellant's arrest.

5. Learned APP for the State, duly assisted by the learned *Amicus Curiae* appointed for the complainant, has vehemently opposed the present appeal, asserting that the appellant has been rightfully convicted by the Trial Court. She submits that the impugned judgment of conviction is well-reasoned and that the points raised by the appellant are frivolous and trivial in nature, which do not in any way affect the core of the matter. It is further submitted that the appellant's defence of alibi was an afterthought, and the other contentions raised by the appellant are wholly unsubstantiated and do not undermine the conviction in any way.

6. I have heard the learned counsels for the parties and gone through the record.

7. In the child victim's complaint recorded by SI *Usha* (PW-10), which is exhibited as PW-1/A, the child victim stated that when she went to the photo studio to collect her photographs, an "uncle" present at the studio called her to come near him, unzipped his pants, and grabbed her hand, placing it inside his pants. She also mentioned that her cousin sister, who had accompanied her, was sitting on a sofa at the time. The child victim



further stated that she felt distressed and hurried home, while her cousin sister collected the photographs and followed her home.

To the same effect is her statement recorded under Section 164 Cr.P.C., exhibited as PW-1/B.

8. The child victim was examined as PW-1 and deposed that on the day of the incident, she, along with her cousin sister, went to the photo studio to collect the photographs. Her cousin sister remained outside while the child victim entered the shop. She stated that the photographer was not present, but there was another person sitting inside. She inquired about the photographs from him, at which point the person unzipped his pants and made her hold his private parts. Distressed, she immediately ran out of the shop. When her cousin sister went inside to ask about the photographs, the said person asked her to send the child victim back inside. Afterward, both of them went home, where the child victim narrated the entire incident to her mother. Following this, the police were informed. The child victim further stated that after telling her mother, she, along with her mother, went immediately to the photo studio, where she met the police officials for the first time. The child victim correctly identified the appellant as the person who had committed the wrongful act after seeing his face on the LCD screen in the courtroom.

9 PW-1's testimony was corroborated by her mother, PW-2, who deposed that on 06.09.2017, her daughter and cousin went to collect photographs from the studio. When they returned home, both children appeared nervous, and the child victim revealed the incident. PW-2 then went to the studio with her sister and the children, where the appellant was identified by the child victim. Upon confrontation, the appellant denied the



incident, and the police were called. In cross-examination, it was put to PW-2 that the appellant was falsely implicated due to a quarrel between PW-2 and the owner of the photo studio, which PW-2 categorically denied.

10. The child victim's version of events was further corroborated by the testimony of her cousin sister/PW-9, who confirmed that she stood outside the studio while the child victim went inside to get the photographs. Shortly after, the child victim ran outside and told her that the man inside had opened his zip and made her hold his private part, prompting her to flee. PW-9 further deposed that that she went inside the photo studio to collect the photographs, at which point the appellant asked her to send the child victim back inside to receive them. She stated that thereafter, they both returned home and informed the child victim's mother about the incident. PW-9 also identified the appellant as the person who had been sitting inside the studio.

The child victim's cousin, in her brief statement recorded under Section 164 Cr.P.C., exhibited as PW-9/A, similarly stated that she had gone to collect photographs with the child victim, and that she stood outside the door while the child victim was called inside by the "uncle".

11. The fact of the appellant's presence at the photo studio on the day of the incident is further corroborated by the testimony of the owner of the photo studio/PW-5, who deposed that the appellant was a friend of his and used to work as a photographer, and that he would look after the studio in his absence. PW-5 also testified that he was not present at the studio on the day of the incident, as he had gone to Haryana to attend the last rites of his uncle, and that in his absence, the appellant was present at the studio. No



question was put to PW-5 regarding a quarrel with the child victim's mother/PW-2.

12. The appellant himself has admitted that he was present at the studio on the day of the incident. He has not stated that he did not go to the studio at all, rather, the appellant has taken the defence of alibi for the one-hour period during which the offence is alleged to have been committed. In his statement recorded under Section 313 Cr.P.C., the appellant has stated that he is innocent and has been falsely implicated in the present matter due to his exposing a sex racket that was being run in the neighbourhood, and that the present matter is an attempt at extorting money from him. He stated that two men had entered the studio at around 6:00 pm and asked him to take photographs, but since the camera was not working properly and lacked a flash, he left the studio and went home, where he had a meal with his sister before returning to the shop about an hour later, only to find police officials present, who then took him to the police station. The appellant led defence evidence before the Trial Court and examined two witnesses in support of his case.

13. The appellant's sister/DW-1, corroborated the appellant's alibi in her testimony. She deposed that she was visiting her parental home on 06.09.2017, and her brother/the appellant came home around 6:15 PM to take flash for the camera, and after having a meal with her, he left at around 7:00 PM. DW-1 further deposed that shortly thereafter, her neighbour informed her that her brother had been arrested. She went to the police station, where she saw a woman who was demanding Rs.2,00,000/- to settle the case. DW-1 could not provide evidence to confirm her presence at her parental home on the day of the incident.



14. The appellant's neighbour and friend/DW-2, who is a battery-rickshaw driver, testified that on the day of the incident, he was waiting for passengers in front of the photo studio. He stated that he saw the appellant coming out of the studio apprehended by the police. DW-2 then went to the appellant's house, which was nearby, and informed the appellant's sisters. He later went with one of the sisters to the police station but remained outside. DW-2 stated that he has known the appellant for the last 20-25 years and believes the appellant has been falsely implicated in the case due to his exposure of a sex racket in the neighbourhood.

15. Learned counsel for the appellant has contended that there are significant variations and discrepancies in the various statements of the child victim/PW-1 and her cousin sister/PW-9, both within their individual statements and in comparison to each other. For instance, in her statement under Section 164 Cr.P.C., the child victim stated that her cousin sister was sitting on the sofa, whereas in her own Section 164 statement, the cousin sister stated that she was standing outside. Another inconsistency pointed out is that, while in her complaint the child victim stated that her cousin sister simply collected the photographs and followed her home, in their later depositions both witnesses added that the appellant had asked the cousin to send the child victim back inside to receive them. The learned counsel has stated that such discrepancies call into question the credibility and reliability of their testimonies. However, on perusal of the record, I find no merit in this contention. The victim and her cousin sister were five and eight years old respectively at the time of the incident, and their testimonies were given under distressing circumstances. Furthermore, the inconsistencies pointed out by the appellant's counsel do not go to the core of the offence.



Similarly, the alleged shortcomings in the police investigation, as pointed out by the learned counsel, including the failure to seize the photographs, the cash bill, or the studio's customer register, and the omission to examine any public witnesses at the time of the appellant's arrest, also do not serve to discredit the testimony of the child victim, which stands corroborated by her cousin/PW-9 as well as her mother/PW-2.

16. The appellant was duly identified by the child victim as well as her cousin and the fact of the appellant's presence at the studio also stands confirmed in view of the testimony of the child victim/PW-1, her cousin/PW-9, the studio owner/PW-5, as well as the appellant's own admission.

17. The appellant's plea of alibi has not found favour with the Trial Court. In his statement under Section 313 Cr.P.C., the appellant stated that he had been apprehended by the police upon reaching the studio. It is trite law that when a plea of alibi is taken, the burden to establish it rests on the person taking such plea, under Section 106 Evidence Act. In the present case, the appellant has failed to discharge this burden. The vague plea of alibi cannot be accepted at face value on the basis of the sole testimony of his sister, which is not backed by any material evidence and does not inspire confidence.

18. The appellant's plea regarding him being falsely implicated due to a quarrel between the child victim's mother/PW-2 and the owner of the photo studio/PW-5 similarly falls flat in view of PW-2's denial of such a quarrel, and in light of the fact that no questions in this regard were even put to PW-5.



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19. The appellant's plea with respect to him being targeted as a consequence of exposing a sex racket in his neighbourhood also finds no legs to stand on, as besides the bald statement made by a friend of the appellant/DW-2 in this regard, there exists no corroboration or material evidence to support the said plea.

20. Considering all of the aforesaid, the present appeal is dismissed, alongwith pending applications, and the impugned judgment and order on sentence are upheld.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 08, 2025
NB