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

+ **CRL.A. 967/2023 & CRL.M.(BAIL) 1651/2023**

IKRAMUDDIN

.....Appellant

Through: Mr. Gautam Khazanchi
and Ms. Suruchi Jaiswal,
Advts.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Kiran Bairwa, APP
for the State with SI
Prashant, PS Laxmi Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

27.03.2025

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1. The present appeal is filed against the order of conviction dated 23.05.2023 (hereafter '**impugned order**') and order on sentence dated 21.08.2023 passed by the learned Additional Sessions Judge, East District, Karkardooma Courts, Delhi in SC No. 226/2017 in FIR No. 636/2016.

2. By the impugned order, the learned ASJ convicted the appellant for the offences under Sections 354/354A/363 of the Indian Penal Code, 1860 ('**IPC**') and Section 10 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO**'). By the order on sentence dated 21.08.2023, the appellant was sentenced to undergo rigorous imprisonment for 06 years and to pay a fine of ₹5,000/-, and in default to undergo rigorous imprisonment for 6 months for the offence under Section 10 of the POCSO. The appellant was further sentenced to undergo rigorous imprisonment for 01 year and to pay a fine of ₹2,000/-, and in default to undergo rigorous imprisonment for a period of 02 months for the offence under Section 363 of the IPC. The



sentences were ordered to run concurrently.

3. The FIR being FIR No. 636/2016 was registered on a complaint given by the complainant namely Vicky Kumar. It is alleged that on 17.06.2016 at about 11 AM, the complainant and his friends were playing cricket near Juggi situated near SDM Office, Geeta Colony, Delhi. It is alleged that the complainant and his friends observed that one auto bearing registration No. DL-1R P 0914 was standing on the road under the flyover towards Akshardham. It is alleged that the appellant and a girl aged about 10 years (hereafter '**the victim**') were found to be sitting in the said auto.

4. It is alleged that upon first glance the complainant and his friends reasoned the appellant to be the father of the victim. It is alleged that thereafter the complainant and his friends observed that the appellant was kissing the victim, and was also touching her inappropriately, which led them to deduce that the appellant was not the father of the victim. Thereafter, the complainant and his friends approached the appellant and confronted him. In the meanwhile, other public persons also gathered near the spot, and the appellant, allegedly being nervous, failed to supply any answer to their questions. It is alleged further that since the victim appeared to be mentally retarded, the complainant brought her to the police station. Consequently, FIR No. was registered 636/2016 at Police Station Shakarpur for offences under Sections 354 of the IPC and Section 10 of the POCSO.

5. By the order dated 05.02.2018, charges were framed against the appellant for offences under Sections 354/354A/366 of the IPC and Section 10 of the POCSO.

6. By the impugned order, the learned ASJ convicted the appellant for the charged offences. It was noted that the victim,



on the date of the incident, was about 11 years, and the factum of her date of birth had not been disputed by the appellant. It was noted that the complainant/PW-1 and another eye-witness/PW-2 deposed that when they were returning to their homes after playing cricket, they noticed an auto standing near the jhuggis and also noticed the presence of the appellant alongside the victim, who was touching, kissing and lifting the clothes of the victim. It was noted that both PW-1 and PW-2 had duly corroborated the allegations mentioned in the FIR.

7. The learned ASJ noted that admittedly the presence of the victim was noticed by PW-1 and PW-2 in the auto-rickshaw of the appellant that was standing underneath the flyover of Geeta Colony. It was noted at as per the testimony of PW-3/father of the victim, the victim had left her home at around 9:30 AM, and was not traceable in her vicinity. It was noted that the house of the victim was not near the spot from where the victim was traced and brought to Police Station Shakarpur. It was noted that the factum of how the victim came in the possession of the appellant or in his auto-rickshaw was within the knowledge of the appellant.

8. It was noted that the appellant in his statement under Section 313 of the Code of Criminal Procedure, 1973 ('CrPC') had not adequately discharged his burden to refute the allegations made against him. It was noted that the appellant had merely claimed that he had parked his auto-rickshaw, and had gone to buy gutka, and had found the victim in his auto-rickshaw upon his return. It was noted that the witnesses had made specific allegations against the appellant.

9. It was noted that there existed no scope of dispute of identity of the appellant. It was noted that the matter was reported



to the police, and the case was registered on the same day. The learned ASJ noted that the appellant had raised a claim thereby refuting the allegations made against him. It was noted that but for the averments made by the appellant, no cogent evidence had been led on behalf of the appellant to establish the proposed plea of defences on record.

10. The learned ASJ noted that PW-1 and PW-2 categorically deposed that the appellant had committed the act of aggravated sexual assault by kissing, lifting the clothes, and inappropriately touching the victim in his auto-rickshaw underneath the flyover, Geeta Colony, which is situated far away from the house of the victim. It was noted that the victim was only about 11 years at the time of the commission of the offence, and was suffering from mental retardation. It was noted that the public witnesses cannot be said to have a grudge against the appellant so as to falsely implicate him. It was noted that the testimonies of the public witnesses, and other PWs were consistent insofar as the wrongful acts committed by the appellant were concerned. Consequently, the learned ASJ, by the impugned order, convicted the appellant of the offences under Sections 354/354A/363 of the IPC and Section 10 of the POCSO.

11. The learned counsel for the appellant submits that the learned ASJ erred in convicting the appellant of the charged offences. He submits that the appellant has been falsely implicated in the present case. He submits that there are various inconsistencies in the statement of the witnesses which casts a doubt on the story of the prosecution.

12. He submits that according to the case of the prosecution, the incident occurred at around 11AM, however, the FIR was registered only at 5:45 PM, and such delay had not been



explained by the prosecution. He submits that in the complaint, the complainant had stated that he had seen a standing auto where both the appellant and the victim were seated on the back seat. He submits that the complainant, in his statement under Section 164 of the CrPC, however, stated that when the complainant and his friends were playing cricket, one auto came there, and that after having stopped the auto, the appellant went and sat on the back seat with the victim.

13. He submits that PW-2, in his examination in chief stated that the appellant was sitting on the rear seat, and the victim was sitting on the appellant's lap. He stated that such inconsistencies in the statement of the witnesses casts a doubt on the story of the prosecution. He submits that it is the case of the prosecution that the alleged incident was witnessed by several people, however, no such person had been made an independent witness to support the story of the prosecution.

14. *Per contra*, the learned Additional Public Prosecutor for the State vehemently contests that in accordance with Section 29 of the POCSO, the presumption of commission of offence was raised against the appellant, who failed to bring cogent evidence to refute the presumptions raised against him. She submits that PW-1 and PW-2 had made specific allegations against the appellant, and had consistently supported the case of the prosecution. She submits that minor inconsistencies do not discredit the case of the prosecution, and ought to be ignored.

Analysis

15. At the outset, it is relevant to note that while dealing with a challenge to an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction this Court is required to re-appreciate the evidence in its entirety and apply its



mind independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi & Ors. v. The State of Madhya Pradesh : Criminal Appeal No. 1350/2021*** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

*“9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in ***Majjal v State of Haryana*** [(2013) 6 SCC 798], where the Court held:*

‘6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.

7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by



*reasons. In such appeals it is a court of first appeal. **Reasons cannot be cryptic.** By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.’ ”*

(emphasis supplied)

16. The POCSO Act provides a legal framework for safeguarding the rights and well-being of children and protecting them from sexual offences. The act acknowledges the unique vulnerability of children in such cases and it provides for punishment of sexual offenders who commit such offences against children. Therefore, these cases must be dealt with utmost sensitivity.

17. In the present case, the allegations levelled against the appellant are grievous in nature. It is the case of the prosecution that the appellant committed aggravated sexual assault upon the child victim and also assaulted her with an intent to outrage her modesty, who was merely 11 years old at the time of the incident.

18. It is relevant to note that the appellant has also been convicted for the offence under Section 10 of the POCSO Act. The same prescribes the punishment for aggravated sexual assault and attracts the presumption under Section 29 of the POCSO Act. The same reads as under:

“29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

19. It is trite law that the said presumption only comes into play once the prosecution is able to establish foundational facts



and it can be rebutted by discrediting the witnesses through cross-examination as well [Ref. *Altaf Ahmed v. State (GNCTD of Delhi)*: 2020 SCC OnLine Del 1938].

20. In the present case, the prosecution has sought to establish its case through the evidence of the prosecution witnesses. It therefore becomes imperative for this Court to peruse the statements tendered by the witnesses.

21. PW-1/complainant, in his evidence, stated that he alongwith his friends including PW-2 were playing cricket, and that after playing cricket at about 11-11:15 AM, they were returning to their homes when they noticed the auto-rickshaw standing near the jhuggis. PW-1 deposed that he saw one person aged about 35 years sitting on the driving seat of the auto, and the victim aged about 10-11 years sitting on the back seat of the auto-rickshaw. He deposed that the driver was touching, kissing and lifting the clothes of the victim. He deposed that he initially thought that the appellant may be the father of the victim, however, upon seeing the actions of the appellant, he approached the appellant and confronted him to which the appellant replied that the victim was his daughter. PW-1 further deposed that when they asked the victim about her relations with the appellant, she started crying loudly.

22. In his cross-examination, PW-1 elaborated upon the position of the accused and the victim and stated that the accused was facing towards the rear seat where the victim was in a standing position. He further clarified that he had been observing the behaviour of the accused for quite a substantial amount of time and the accused had initially been sitting with the victim on the rear seat and later, on the front seat when he was confronted.



PW1 also denied all assertions that he had deposited falsely to extort money or that he was unemployed at that time.

23. PW-2, in his evidence, deposed that he saw the appellant sitting on the rear seat, and the victim was sitting on the lap of the appellant. He stated that the appellant was kissing the victim, and was also touching her inappropriately. During cross-examination, PW2 stated that when he saw the accused, the victim was sitting on his lap and he had observed the behaviour of accused for quite a long time with his friend–PW1.

24. PW-3/father of the victim, in his evidence, stated that the victim, at about 9:30 AM had left home and could not be found. He deposed that one person in the neighbourhood had informed him that he had seen the victim under the flyover near SDM Office, Geeta Colony, and that the public had apprehended one auto driver and the police had taken the auto driver and the victim to Police Station Shakarpur.

25. PW-5 deposed that the victim was suffering from mild mental retardation amounting to 50% mental disability.

26. On the other hand, the appellant, in his statement under Section 313 of the CrPC stated that he had been falsely implicated in the present case in order to extort money from him. He stated that on the date of the incident, he had parked his auto near the CNG Pump, SDM office to buy gutka and water from the road vendor. He stated that when he was about to leave after having started his auto, he saw one girl child in the mirror sitting on the rear seat in the auto rickshaw. He stated that he had stopped to inquire from the child, who in response, started crying and did not appear to be mentally fit. He stated that when he was in the process of removing the victim from his auto, the victim started crying which led the crowd to gather.



27. Much emphasis has been placed by the appellant on the fact that there exist inconsistencies in the statements of the witnesses which casts a doubt on the story of the prosecution. It has been argued that on one instance, PW-1 stated that the appellant and the victim were seated on the rear seat of the auto-rickshaw, however, in his statement under Section 164 of the CrPC, PW-1 stated that the appellant stopped his auto-rickshaw and went behind and sat with the victim. It has further been contended that PW-2, in his examination in chief stated that the appellant was sitting on the rear seat, and the victim was sitting on the appellant's lap.

28. It is pertinent to note that a similar question had been put to PW-1 by the learned Trial Court. On that occasion, PW-1 had stated that he had been observing the behaviour of the appellant for a substantial time. He stated that he had initially not approached the appellant since he assumed the appellant to be the father of the victim. He stated that upon seeing the actions of the appellant, he subsequently approached the appellant and confronted him.

29. It is trite that mere variation in two statements of the witness does not suffice to discredit the witness unless the inconsistency is of such nature so as to raise a reasonable suspicion about the evidence [Ref: ***Edakkandi Dineshan v. State of Kerala : (2025) 3 SCC 273***].

30. From a perusal of the material on record, it is apparent that the complainant duly corroborated the allegations mentioned in the FIR that the appellant was kissing the victim and lifting her clothes. PW-2 further corroborated the allegations, and stated that the appellant was behaving inappropriately with the victim. Both the witnesses stated that they had been observing the actions of



the appellant for some time, and had confronted the appellant only when the activities of the appellant appeared to be indecent.

31. It is pertinent to note that both PW-1 and PW-2 supported the case of the prosecution throughout and the defence was not able to shake their testimony in cross-examination or bring forth any material contradictions, so as to render their evidence unworthy of belief.

32. It is apparent that both PW-1 and PW-2 categorically deposed that the appellant was kissing, lifting the clothes of the victim, and was touching the victim inappropriately. It is also pertinent to note that the victim was found at a place that was located far away from her house. In accordance with the testimony of PW-3/father, the victim had left her home at around 9:30 AM, and was not traceable in the vicinity despite numerous efforts. As rightly noted by the learned ASJ, the fact regarding how the victim came in the possession of the appellant or how the victim came in his auto-rickshaw is best known to the appellant.

33. Further, since the appellant was charged for the offence under Section 10 of the POCSO, the appellant was required to dislodge the presumption raised against him in relation to the commission of the offence. It is pertinent to mention that no cogent evidence has been led on behalf of the appellant in order to establish his case. The appellant had contended that he has been falsely implicated by the complainants only in order to extort money from him. However, no complaint in that regard had been made.

34. On the contrary, both PW-1 and PW-2, have consistently maintained their stance in relation to the conduct of the accused. On careful examination of the statements, it appears that while



there are certain discrepancies in the statements but that does not give benefit to the appellant since there is sufficient evidence on record to prove that the alleged act was committed by the appellant. In the present case, both the material witnesses have corroborated the testimony of each other on the said aspect of the appellant kissing, lifting the clothes, and inappropriately touching the victim.

35. The appellant has also emphasised that he has been falsely implicated in the present case. It is pertinent to mention that both PW-1 and PW-2 are independent witnesses. The learned ASJ noted that the witnesses are neither related with the family of the victim nor with the family of the appellant. Contrary to what has been alleged by the appellant, it is unclear why PW-1 and PW-2, who are unrelated to both the appellant and the victim would attempt to falsely implicate the appellant.

36. Insofar as the sentence of the appellant is concerned, in the opinion of this Court, the learned ASJ has rightly appreciated the seriousness of the offence and taken into account that the victim was only 11 years old at the time of the incident while the appellant was a grown man. This Court finds the quantum of sentence to be proportional with the crime as has been committed by the appellant.

37. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order and the order on sentence.

38. The present petition is accordingly dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

MARCH 27, 2025

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