



2025:DHC:7162



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

% Reserved on : 19.08.2025
Pronounced on : 21.08.2025

+ **CRL.A. 767/2024**

NEERAJ @ KUPPAAppellant
Through: Ms. Inderjeet Sidhu, Advocate
(DHCLSC).
Versus

THE STATE GOVT OF NCT DELHIRespondent
Through: Mr. Pradeep Gahalot, APP for State
with SI Ankit Sagar, P.S. Neb Sarai.
Mr. Hemant Singh, Ms. Urvashi Jain,
Mr. Attrev Gupta and Mr. Aman
Bidhuri, Advocates for Victim.

AND

CRL.A. 770/2024

FAISAL ALAM @ SHARUKAppellant
Through: Ms. Aishwarya Rao and Ms. Mansi
Rao, Advocates.
versus

STATE GOVT OF NCT OF DELHI THROUGH SHO PS NEB
SARAI DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State with
SI Ankit Sagar, P.S. Neb Sarai.
Mr. Hemant Singh, Ms. Urvashi Jain,
Mr. Attrev Gupta and Mr. Aman
Bidhuri, Advocates for Victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI



JUDGMENT

1. By way of the present appeals, the appellants seek to assail the judgment of conviction dated 31.07.2023 and the order on sentence dated 13.02.2024, passed by the learned Additional Sessions Judge-01, Special Court (POCSO), South District, Saket Courts, New Delhi, in SC No. 129/2017 arising out of FIR No. 857/2016 registered under Sections 377/367/506 IPC and Section 6 POCSO at P.S. Neb Sarai, Delhi.
2. As the impugned judgment and order on sentence are common, and common submissions have been addressed by the parties, the above noted appeals are taken up for consideration together and are disposed of by this common decision.
3. The facts, in a nutshell, as noted by the Trial Court are extracted hereunder:

“Succinctly, the facts of the case unfolded from the charge sheet filed u/s 173 of Criminal Procedure Code (for short Cr.P.C) are that on 08.12.2016, a complaint was made before the SHO, Police Station, Neb Sarai by the complainant/victim 'NK' stating that on 08.12.2016 at about 5.00 PM, he alongwith his younger brother 'KK' were returning to their home after withdrawing money from the ATM and when they stopped near Noorani Masjid for urination, two unknown boys came there and started abusing them. He has further stated that when they asked not to abuse them, said boys showed them knife and took them for a long distance inside the jungle. He has further stated that one of the said two boys put a knife on the neck of his younger brother 'KK' and asked him (victim 'NK') to put off his pant otherwise threatened to kill his brother 'KK'. He has further stated that due to said fear, he has put off his pant and said boy put his penis in his mouth. He has further stated that after some time, said boy called his associate who put his penis in his anus and then forcibly put the same in his mouth. He has further stated that thereafter both the said boys gave them beatings and snatched their cash of Rs.2,500/- which they had withdrawn from the ATM and both the accused ran away from the spot. He has further stated that in the meantime, two other boys came there and asked them as to what they were doing there and left the spot. Thereafter,



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he called the police at 100 number. These are the allegations of the complainant/victim upon which present FIR bearing No.857/2016 was registered against both the accused persons.”

4. On conclusion of investigation, a charge-sheet was filed, and initially, the Trial Court framed charges under Sections 377/367/392/394/397/506 IPC and Section 4 POCSO against the appellants. However, these charges were later altered by the Trial Court to Sections 377/367/392/394/397/506 IPC and Section 6 r/w Section 5 POCSO. The prosecution examined 10 witnesses in support of its case, with the material witnesses being the two child victims, ‘N’ and ‘K’, who were examined as PW-1 and PW-2, respectively. Two independent eyewitnesses, namely *Manish* and *Raja*, were examined as PW-3 and PW-4, respectively. The MLC of the victim/N was proved through the examining doctor, who was examined as PW-8.

5. Learned counsels for the appellants have called into question the impugned judgment, contending that the statements of both the victims are not only full of material improvements over their own previous statements but also in relation to each other. It is further contended that the two alleged eyewitnesses cited by the prosecution did not support the prosecution’s case and turned hostile. It is also argued that the prosecution has failed to connect appellant/*Faisal Alam* with the present case as the DNA profile generated from the victims’ exhibits was not found to be similar to the DNA profile of male origin generated from the exhibits related to the appellants. The mode and manner of the appellants’ involvement is also doubted as the defence of the appellant/*Faisal Alam* is that he was arrested when called to the police station with respect to an enquiry in some other case. The independent witness to his arrest, PW-3, has not only denied the suggestion that the



appellant/*Faisal Alam* was arrested at his instance, but also failed to identify him. Similarly, the other independent eyewitness, PW-4, also did not identify either of the appellants. Lastly, it is pointed out that while the incident was alleged to have taken place at 5:00 p.m., the *tehrir* was recorded at 10:50 p.m.

6. The contentions made on behalf of the appellants are refuted by the learned APP for the State, who is duly assisted by the learned counsel for the victims. It is contended that victims have consistently stated the mode and manner in which the offence was committed and have also duly identified the appellants during the trial. Further, the injuries noted in the MLC of victim/N lend credence to the testimonies of the victims. It is stated that even if the independent witnesses have not supported the case of the prosecution, the conviction can still be upheld. It was further pointed out that both the appellants have refused TIP proceedings.

7. Statedly, the investigation commences pertaining to events that took place on 08.12.2016, when the victims were returning home between 5:00 to 6:00 p.m. The first information about the incident was recorded on that day at about 5:40 p.m. through DD No. 32A (Ex.PW-9/G), which records receipt of a call about snatching and “*Galat Kaam*” with the brother of the caller. As per the case of the prosecution, the inquiry was assigned to Ct. *Inderpal*. The information was then assigned to SI *Talib Khan* for further inquiry, who reached the spot and met both victims as well as their father. He recorded the statement of victim/N (Ex. PW-9/A) and sent the victims for their medical examination. He also prepared the *rukka* and recorded the statements of the two independent witnesses, *Manish* and *Raja*. In his testimony, he stated that appellant/*Faisal Alam* was arrested at the instance



of public witness *Manish*, from Sangam Vihar, vide arrest memo exhibited as PW-3/A. The record of TIP proceedings of appellant/*Faisal* is exhibited as Ex. PX-5. As noted above, the appellant/*Faisal* had refused to participate in the TIP proceedings. He also arrested the other appellant/*Neeraj* on 19.12.2016 and proved the arrest memo as Ex. PW-6/A. He, too, refused to participate in TIP proceedings. PC remand of appellant/*Neeraj* was obtained and on his disclosure one knife was recovered. Seizure memo was exhibited as Ex. PW-6/F. The witness also placed on record documents relating to birth of the child victim/N.

8. Coming to the testimony of the child victim, it is noted that counsels have not contested the age of the child victims and thus they are held to be children as defined under the POCSO Act. The child victim/N was examined as PW-1. He deposed that on 08.12.2016 between 5:00-6:00 p.m. he alongwith his brother was returning from the house of their cousin when, as his brother/K felt the urge to urinate, they went towards a *Pahari* near *Noorani Masjid* which was a jungle area. At that time two unknown boys came and took away his mobile phone. When they demanded return of the mobile phone, they were asked to accompany them deep into the jungle area. One of the appellants asked the witness' younger brother/K to remove his pants, which K refused to do, on which he was threatened. The witness offered to remove his own pants instead, after which one of the appellants removed his pants and committed sodomy. Thereafter, the said appellant also put his penis in the victim's mouth. Till that time, the other appellant kept standing alongside the witness' brother, holding a knife to his neck. After the first appellant had finished the act, the other appellant also committed the act of sodomy as well as put his penis in the witness' mouth.



The witness further stated that after both the appellants had committed the offence, they received a call wherein they asked the caller to reach “*Bada Adda*”. Thereafter, two other boys reached the spot and handed over the witness’ mobile phone to him. The victims were asked to leave the spot and when the witness asked for return of Rs.2500/- the same was denied. The victim further stated that after coming out of the jungle area they made a call to the police. He clarified that the money was withdrawn by his younger brother/K from an ATM. The child victim also identified both the appellants.

During his cross-examination, a suggestion was given as to how the victim reached the place of incident and on the aspect of withdrawal of money from ATM, the victim stated that he and his brother/K had gone to their cousin’s house, which was at a distance of 10-15 minutes from *Asthal Mandir*. They had stayed at their cousin’s house for about 30-60 minutes and left at about 5:00 p.m. The victim was confronted with his statement under Section 161 Cr.P.C., wherein he had not stated that they were returning to their own house from the house of their cousin. The witness was further confronted with his statement under Section 161 Cr.P.C. wherein certain aspects of his testimony were not stated in the same manner, which will be dealt with hereafter. Notably, the testimony of PW-2, the brother of the victim/N, is cumulative to that of his brother/PW-1.

9. Coming to the aspect of improvements and contradictions as contended on behalf of the appellants, indeed there are minor variations in the testimonies recorded, which were not stated or were stated differently in their statements recorded under Section 161 Cr.P.C. For example, in their previous statement, they did not state that they were returning from the



house of their cousin; that they were taken inside the jungle on the pretext of returning of phone; that it was victim/K who was first asked to remove his pants on which the victim/N offered to remove his own pants; that before committing the act of sodomy the accused had put saliva on his penis; and that after commission of offence two boys had come who had handed over the mobile phone to the victims and then on asking of return of their Rs.2500/- had asked them to go away. The contentions on the aspect of inconsistencies between the statements of the two child victims also pertain to the events that took place prior to the commission of the offence, as to when and from where the victims were returning, and whether they were together or the victim/K had joined subsequently. However, a careful perusal and conjoint reading of the previous statements and testimonies shows that there is no material inconsistency or contradiction on the point that the victims had stopped near *Noorani Masjid* when one of them felt the urge to urinate. Both the victims have narrated that it was victim/N who was sodomised, whereafter one of the accused had put his penis in victim's mouth, and the same act was repeated by the other accused. During this time when one accused was committing the act, the other accused was holding a knife to the neck of the other victim. It is contended that the testimony of a child victim requires close scrutiny and deeper analysis as child victims are prone to tutoring. The present is not a case where any prior motive existed or even suggested. The appellants were unknown strangers to the victims. The ages of the victims in the present case were 13 and 17 years respectively at the time of the incident. As noted above, the age and competency of the victims to depose is not under challenge. Also, no contentions have been raised on the aforesaid aspect.



Indeed, the two public witnesses have turned hostile on the material aspects including identification of the appellants, however a perusal of their testimonies shows that they had stated that on the day of the incident at about 5:30 p.m., when they were going to *Dargah Peer Baba* in the jungle, they heard the cries of two children. Though they have identified their signatures on the arrest memo and personal search memo of appellant/*Faisal*, they have denied the rest of the prosecution case. They further stated that they were not aware on what documents their signatures were obtained. Be that as it may, it is pertinent that they have not identified the appellants.

10. Further examining the testimony of victims, though the FSL has not lent any credence to the case of the prosecution, however, the MLC of the child victim/N records the following:-

“Local Examination (anal region)

The person is examined in knee elbow position in the presence of police constable.

Tenderness is present at anal region during examination.

A reddish abrasion is present at 6 o’ clock position at anal verge, extending inwards into anal canal.

Anal sphincter tone is exaggerated.

No signs of fecal staining or worm infestation are present.

No scar/skin tag is present over the anal margins”.

The MLC was duly proved by the examining doctor/PW-8 and nothing substantial was extracted in her cross-examination.

11. The position of law regarding the appreciation of the testimony of a child victim has recently been analysed by the Supreme Court in State of Madhya Pradesh vs. Balveer Singh, reported as **2025 SCC OnLine SC 390**, wherein it was held:



“58. We summarize our conclusion as under:-

- (I) *The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence cannot be rejected outrightly.*
- (II) *As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*
- (III) *Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*
- (IV) *The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.*
- (V) *The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*
- (VI) *The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*
- (VII) *There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.*
- (VIII) *Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and*



prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirable or required, and would depend upon the peculiar facts and circumstances of each case.

- (IX) *Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.*
... ”

12. In State of Punjab Vs. Gurmit Singh, reported as (1996) 2 SCC 384, the Supreme Court, while dealing with the case of rape of a minor, held that minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground to throw out an otherwise reliable prosecution case. It was observed that the evidence of the victim of sexual assault is sufficient for conviction and does not require any corroboration unless there are compelling reasons for seeking the same.

13. In Ganesan Vs. State, reported as (2020) 10 SCC 573, the Supreme Court held that the sole testimony of the victim, if found worthy of credence and reliable, requires no corroboration and may be sufficient to invite conviction of the accused.

14. In view of the above, the settled position of law is that even if the victim is the sole witness to the incident, a conviction can be sustained if victim's testimony is found to be credible and reliable. Further, Section 29



POCSO provides that the Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts. A three-Judge Bench of the Supreme Court in Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, reported as (2025) 2 SCC 399, has held that Section 29 POCSO comes into play once the foundational facts are established. It holds as follows:-

“35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the Pocso Act. Section 5 of the Pocso Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the Pocso Act defines what penetrative sexual assault is...”

15. A gainful reference in this regard may also be made to the decision of a co-ordinate Bench of this Court in Veerpal v. State, reported as 2024 SCC OnLine Del 2686, wherein it was held as under:-

“20. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability.”

16. In the present case, it is evident that if the testimony of the child victim inspires confidence and is reliable, the conviction can rest upon it. In the present case, the inconsistencies/contradictions pointed out by the learned counsel are minor in nature, concerned with the place from where the appellants were coming and the sequence of events that took place after



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the offence was committed i.e., how mobile phone was demanded and handed over. The Trial Court already discounted the allegations of offence qua the offence pertaining to robbery as even though the victim had stated that the money was withdrawn from an SBI ATM located at Duggal Colony, Khanpur, the Investigating Officer failed to carry out any further investigation to that end. The appellants were acquitted for the offences under Sections 392/394/397 IPC read with Section 34 IPC. The testimony of the child victims is, however, consistent insofar as the offence of sodomy and putting penis in the mouth of the child victim/N is concerned. Both the victims have consistently stated that the act was committed by both the appellants. In the trial, though the appellants had claimed false implication and attributed motive to the police officials to frame them in a false case, the appellants have failed to establish a motive as to why the child victims would falsely implicate them. In fact, no such suggestion was given to them during cross-examination. It is not the case of either of the parties that the appellants were known to the child victims. The testimonies of the child victims, having been found to be credible and reliable and duly supported by the MLC of victim/N, this Court finds no merit in the appellants' contentions, and consequently, the appeals are dismissed and the impugned judgment as well as order on sentence are upheld.

17. A copy of this order be communicated to the Trial Court as well as to the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 21, 2025

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