



2025:DHC:11701



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

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+ **CRL.A. 935/2018**

SH. SONU

.....Appellant

Through: Mr. Rovin Kumar and Ms. Shelly
Gujela, Advocates (M: 8130376733).

versus

STATE (GOVT. OF NCT OF DELHI)Respondent

Through: Mr Pradeep Gahalot, APP for State with
SI Charu Saini, P.S. Aman Vihar, Delhi.
Mr. Dushyant Kishan Kaul, Advocate
(Amicus Curiae, pro bono) for victim.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal arises in the context of the judgment of conviction rendered by the Trial Court on 16.05.2016, whereby the appellant was convicted for the offences under Section 6 POCSO and Section 506 IPC; as well as the order on sentence dated 18.05.2016, vide which the appellant was sentenced to undergo:-

- i. RI for 2 years along with payment of fine of Rs.1,000/-, in default whereof he would undergo SI for 1 month, for the offence under

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Section 506 IPC; and

- ii. RI for a period of 10 years along with fine of Rs.10,000/-, in default whereof he would undergo 6 months SI, for the offence punishable under Section 6 POCSO Act.

Both the sentences were directed to run concurrently and the benefit under Section 428 Cr.P.C. was granted to the appellant.

2. The facts as have emerged from the prosecution case are that the victim, a child aged 11 years, claimed that she was residing with her parents and 2 brothers, and that she was studying in 8th standard. Her father expired in the year 2006, whereafter her mother contracted a second marriage in the year 2009 with the accused, i.e., her stepfather. She alleged that her stepfather did not like her or her brother who had been born out of her mother's first marriage. Whenever her mother used to go to market, the stepfather would also send her two brothers away and, for the 6 months before the registration of the complaint, he had committed forcible vaginal and anal intercourse with her. He had further threatened her that in case she disclosed the incident to anyone, he would kill her and her mother. About a week before registration of the FIR, she was sleeping with her mother and brother on the floor, while the accused was sleeping on the bed. As it was dark in the night, the accused lied beside her and started touching her chest, and the same was seen by her mother, whereafter the child victim disclosed the entire facts to her. In the above backdrop, the FIR came to be lodged. The medical examination of the victim was conducted and her statement under Section 164 Cr.P.C. also came to be recorded. The exhibits



seized were sent to FSL. On completion of investigation, the chargesheet was filed, and thereafter charges were framed under Section 506 IPC and under Section 5 (l) (m) (n) and (p) of the POCSO Act; and alternatively, under Section 376 (2) (f) (i) and (n) IPC as well as Section 377 IPC. The accused pleaded not guilty and claimed trial.

3. Learned counsel for the appellant contended that the child victim has alleged that the acts in question were being committed for the last 6 months before the lodging of the complaint and that the last act was allegedly committed a week prior, which shows that there was still a delay of 8 days in the reporting of the incident. Further, the victim's mother refused internal medical examination of the victim. Lastly, it is stated that the testimony of the child victim is unreliable as there are material contradictions between the victim and her mother's depositions.

4. The contentions are opposed by the learned APP for State, as well as the learned *Amicus Curiae* appointed to represent the victim. Learned *Amicus* contended that the child victim has consistently stated about the offence committed by the accused. The identity of the appellant not being in doubt, his culpability stands established. He further submits that though the appellant gave suggestions to the victim's mother stating that he was falsely implicated as she had the intention of usurping his property in connivance with her uncle *Ramesh*; no documents in this regard or any details of the purported property were ever brought on record.

5. Before analysing the evidence that has come on record in light of these



contentions, it is deemed apposite to note that there is no contest regarding the age of the child victim. However, even otherwise, the age of the child victim was proved through the testimony of the School In-charge (PW-6), who produced the relevant school records as per which the date of birth of the child victim is 29.06.2002. The same is supported by the birth certificate issued by Municipal Corporation of Delhi (Ex. PW-6/B).

6. The child victim, examined as PW-11, deposed that the appellant is her stepfather, her mother having solemnized her second marriage after the father of the victim expired in the year 2006. While identifying the appellant, she stated that whenever her mother used to go outside the house, the appellant used to commit “*galat kaam*” with her. When a Court question was put to her about what she meant by “*galat kaam*”, the victim replied that the appellant used to insert his penis into her vagina as well as her anus. She further stated that the said act was committed by the appellant for the 6 months prior to the registration of the case. She had not disclosed the acts to her mother as the appellant had threatened her. One night, when she, along with her mother and brother, was sleeping on the floor, the accused got up from the bed and, under the influence of liquor, came down and laid near her. He started fondling her breast. Her mother also saw the incident. Upon being asked, the child victim narrated the past incidents to her mother. The mother thereafter called the victim’s maternal grandparents from their village, and on 09.07.2016, the incident was reported to the police. Her mother had refused the victim’s internal medical examination as she was told that it would entail a lot of pain to



the victim.

In cross-examination, she stated that at the time of the second marriage of her mother, she was residing in a hostel; but after some time, she started residing with her mother along with her siblings and the appellant. The appellant did not like the said fact and often used to pick quarrels with her mother and even used to beat her. He would also give beatings to the victim and her elder brother. A question was put to her as to whether, at the time of the last incident, the mother of the appellant was also present, to which the witness replied in the negative. She denied the suggestion that the appellant's mother used to reside with them in the concerned house. She stated that she had bled from her vagina when the accused had initially committed penetrative sexual assault. She did not take any medicine for the same but suffered pain. She denied that she had impleaded the appellant on tutoring by her mother.

7. The victim's mother was examined as PW-10. She deposed that in the last days of the month of June 2014, the appellant was sleeping on the bed and was under the influence of liquor. He came down and laid on the floor, thinking that the witness had slept. He put his hands on the breast of her daughter, but thereafter, on seeing the body movement of the witness, he immediately got up. She got suspicious about her husband's intentions as the night bulb was on, whereafter she awoke the victim, took her to the terrace, and asked her about what was done by the appellant. The victim confided in her about the "*galat harkat*" done by the appellant. A Court question was put to the witness as to what "*galat harkat*" meant, to which she answered that the appellant used to



insert his penis into the child victim's vagina as well as anus. She further deposed about being informed by the victim that the accused had also threatened her not to disclose the act to anyone. She informed the incident to her uncle, who advised her to wait for the arrival of her parents. On their arrival, the incident was reported to the police. The witness also stated that in the hospital, a para-medical staff told her that the victim being tender-aged, an internal gynaecological examination would entail a lot of pain to her, and under the said advice, she did not give permission for the same.

In the cross-examination, she stated that after her marriage with the appellant, the victim used to live in a hostel. As the appellant had not paid the hostel fee, the victim started residing with them in their house. As she was not working, she herself was not in a position to pay the said fee. It was a 25 sq. yards house having only one room and toilet bathroom. She denied the suggestion that she had not seen the appellant fondling the breast of the victim. A suggestion was given that at the time of her marriage with the appellant she had concealed the factum of her having two children from her prior marriage, which was denied. She also denied the suggestion that she had falsely implicated the appellant as he was not prepared to accept her two children from the previous marriage. Another suggestion was given that she had the intention of usurping the appellant's property in connivance with her uncle, to which she answered that the appellant had no property in his name and was residing on rent. She also denied the suggestion of tutoring the victim.

8. The MLC of the victim was exhibited through the testimony of Dr.



Supriya Parashar (PW-4) and the appellant's MLC was proved through Dr. *Vijay Singh* (PW-5), who proved in opinion that there was nothing to suggest that the appellant could not perform the act of sexual intercourse.

9. The appellant, in his statement recorded under Section 313 Cr.P.C., denied the allegations put to him, and while answering the last question, stated that he had been falsely implicated as he was not ready to accept the two children born to the victim's mother from her previous marriage, and as the victim's mother intended to usurp his properties.

10. The above factual narration indicates that the present case hinges on the oral testimony of the victim and her mother. As no internal medical examination was conducted and no exhibits were seized, there is no FSL report on record.

11. The law regarding the appreciation of the testimony of a child victim has been enunciated many a time, and a gainful reference in this regard may be made to the recent decision of the Supreme Court in State of Madhya Pradesh vs. Balveer Singh¹, wherein it was held as under:

"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 and 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.*

¹ 2025 SCC OnLine SC 390



- (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 desirous 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.*
- (X) *The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.*
- (i) *Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.*
- (ii) *Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under:-*
- *Opportunity of Tutoring of the Child Witness in question whereby certain foundational facts suggesting or demonstrating the probability that a part of the*



testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

- *Reasonable likelihood of tutoring wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.*

(XI) *Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.*

(XII) *Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of*



the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness.”

12. The above expostulation of law lays down that the sole testimony of a victim can form the basis of conviction, subject to the same being found consistent and credible (Ref: Deepak Kumar Sahu Vs. State of Chhattisgarh²). The victim, in her statement made during investigation as well as in her Court deposition, has consistently stated about the act of forcible vaginal and anal intercourse being committed by the appellant, who is none other than her stepfather.

13. Though the appellant had taken a defence that he was falsely implicated as he was not prepared to accept the two children from the first marriage of the victim's mother, it is pertinent to note that the mother of the victim married the appellant in the year 2009, whereas the present incident pertains to the year 2014, i.e., after the passage of 5 years.

14. The other ground raised by the appellant in his defence is that the child victim was tutored by her mother, who allegedly wished to usurp the appellant's property. However, this is a bare allegation, as the same finds no support from the material available on record. No details regarding any property owned by the appellant have been brought on record; instead, it has emerged from the deposition of the victim's mother that the appellant was living in rented accommodation. In view of the same, the said contention is found to be completely vague and unsubstantiated.

² 2025 SCC OnLine SC 1610



15. Learned counsel for the appellant also contended that there is a contradiction in the testimonies of the victim and her mother as to whether the light bulb was on or off at the time of the last incident. The same, however, does not go to the root of the matter. The allegation in the last incident, even otherwise, is only of fondling. The victim has not alleged that any act of penetrative sexual assault was committed on that night.

16. This Court concurs with the opinion of the Trial Court regarding the credibility and reliability of the testimony of the prosecutrix and has no hesitation in upholding the impugned judgment of conviction rendered by the Trial Court. Though there exists some variance as to whether the last act, where the appellant fondled the victim's breast, was seen by the victim's mother or not, it is worthwhile to note that no charge has been framed with respect to the said act. The appellant had faced trial only for the offences of repeated rape, carnal intercourse, and criminal intimidation.

17. Not only is the testimony of the child victim found to be credible and reliable, and the contradictions arising only minor, but the defence taken by the appellant is also moonshine. Accordingly, the present appeal is dismissed.

18. The personal bond furnished by the appellant stands cancelled and his surety is discharged. The appellant is directed to be taken into custody to undergo his remaining sentence.

19. Before parting, this Court records its appreciation for the efforts put in by Mr. Dushyant Kishan Kaul, the learned *Amicus Curiae* appointed to represent the victim.



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

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 20, 2025
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