



2025:DHC:10187



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

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Date of Decision: 13.11.2025

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CRL.A. 1214/2016

VIKAS KUMAR

.....Appellant

Through: Mr. Girindra Kumar Pathak, Mr. Shiv
Ram Singh and Mr. Navneet Anand,
Advocates

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for State
with SI Priyadarshani, PS Sagarpur
Mr. Hitesh Rai, Amicus Curiae for
Victim

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal is filed seeking to assail the judgment of conviction dated 07.11.2016 and the order on sentence dated 10.11.2016 passed by the learned ASJ-01, New Delhi District, Patiala House Courts, in SC No. 141/14 (FIR No. 360/14, PS Sagar Pur) in which the appellant was convicted for an offence punishable under Section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs. 50,000/-, in default to undergo simple imprisonment for three months. The appellant was however acquitted of offences under Sections 342, 376, 377 and 506 IPC and of Section 6 POCSO Act.



The sentence of the appellant was suspended by order dated 28.03.2017 and the appellant was released on suspension of sentence on 30.03.2017.

2. The brief facts are that on 19.08.2014 information was received via complaint/ DD No.17 A dated, that as per the prosecution, the prosecutrix had gone for tuition to the house of one "Ruby Didi". The complaint recorded that the person who gave tuition had done "*galat kaam*" with the child. On investigation, the prosecutrix allegedly stated that on about 18.08.2014 at about 5.00 p.m., while she was at the tuition venue, the appellant had committed penetrative sexual assault by inserting his penis into her anus and had gagged her mouth and pressed her breast, thereafter threatening to hang her on the fan if she raised an alarm. The prosecutrix was taken to DDU Hospital for medical examination and samples and clothes were seized.

3. Before the Trial Court the prosecution examined ten witnesses including the prosecutrix (PW-1), her mother (PW-2), her father (PW-3), the medical officers who conducted medical/forensic examination (PW-4, PW-5, PW-10), the police witnesses (PW-6, PW-9), the FSL examiner (PW-7) and other witnesses. The Trial Court convicted the appellant under Section 10 POCSO Act relying heavily on the scientific evidence (FSL report) which, according to the Trial Court, established presence of the appellant's DNA on the anal swab/anal smear. The Trial Court invoked Section 114 of the Evidence Act to infer that the appellant's semen reached the anus of the prosecutrix and thereby concluded commission of aggravated sexual assault though acquitting the appellant of the charge under Section 6 (penetrative sexual assault) and other offences.



4. Learned counsel for the appellant assails the impugned judgment on multiple grounds. The core contentions are that the prosecutrix and her parents turned hostile and did not support the case of the prosecution, the chain of custody of the seized articles is vitiated as the seized *pullandas* were not deposited in *malkhana* and remained in the custody of the investigating officer (IO) till they were sent to FSL. Further the clothes shown in court were not the same as those seized at the time of MLC (colour mismatch as blue clothes at MLC but black clothes in court). There was discrepancy in the seals on parcels and the FSL report as well as that there were two blood samples which has led to discrepancy as to which blood sample was sent to FSL. The place of incident has also come in question, due to the FIR location being different from the place shown in site plan. There was an unexplained delay in reporting as the incident is stated to have occurred on 18.08.2014 and the information given to the police was on 19.08.2014, certain incriminating facts relied upon by the Trial Court (like apology of the appellant to PW-3) were not put to the accused in his statement under Section 313 Cr.P.C. and overall the evidence is riddled with contradictions and so the benefit of doubt must go to the appellant.

5. The learned APP for the State defended the conviction relying primarily upon the FSL report (exhibited as Ex. PW7/A) which, as per the prosecution, establishes matching alleles between the appellant's blood sample and the anal swab/anal smear and with some of the garments. It was argued that scientific evidence is highly reliable.

6. The evidence of the prosecutrix (PW-1), her mother (PW-2) and father (PW-3) is the first and foremost material for consideration. It is not in dispute that these three witnesses are the principal witnesses and that their



testimony is critical. It is also not in dispute that each of these witnesses, in their testimony in court, materially deviated from the allegations recorded in the earlier statements and in the complaint. In their evidence-in-chief and during cross-examination these witnesses repeatedly denied or disowned earlier incriminating statements.

7. PW-1 (the prosecutrix) in her statement recorded before the police, in her MLC and in her section 164 statement various versions exist. While in the MLC there is a detailed chain of events as she was leaving from tuition on 18.08.2014, she was stopped by one Vikas and he had bolted the door of the room and threatened that he would do bad things with her, she also stated that there was another man in the room at the time whom she calls "tau". When she refused to give more details during the MLC, the victim's mother informed that the appellant had inserted his penis into the victims anus. The MLC records no fresh injuries. In her court testimony she expressly stated that she does not remember date and month, that she had gone for tuition to "Ruby Didi's" house and that she did not know or recognise anyone named Vikas and that she had not supported the allegations. She admitted in cross-examination that she had, out of fear, narrated/spoken lies to the doctor and to the Magistrate. On being shown the clothes in court she stated that they were not the clothes seized by the doctor. PW-2 (mother of the prosecutrix) in her chief and cross-examination too refused to support the prosecution case. She, inter alia, disowned relevant details regarding penetrative sexual assault and admitted that the clothes produced in court did not belong to her daughter and were not the clothes taken into possession by the doctor. PW-3 (father) likewise deposed that ultimately his daughter had told him that "Vikas had not done anything



wrong with her" and that the family had pardoned the appellant when he apologised to him.

8. PW-5 (Dr. Megha) states that she took the clothes (underwear, top and pyjama) and various swabs (anal, buccal, vaginal, etc.) and sealed them. She states that the sealed parcels were handed over to the police. The IO (PW-9) and the witness/constable (PW-6) claim to have taken possession of 15 sealed *pullandas* on 19.08.2014 and to have forwarded them to the FSL on 26.08.2014. PW-7 deposed about the testing but it appears the FSL witness's description of parcels and seals was derived from the forwarding letter and not from the physical inspection in court as she states that the samples were not taken into possession in her presence and there are apparent discrepancies in total number of parcels received as she said she received 16 parcels and not 15. The evidence indicates that the seized parcels remained in the custody of police officers until despatch to FSL, which was 7 days. The MLC (Ex. PW1/B) allegedly refers to blue-coloured clothes of the prosecutrix having been seized, whereas the garments produced and sent to FSL (and subsequently produced in court) were black in colour. PW-1 and PW-2 both denied that the clothes shown in court were the same as those seized at the hospital. No satisfactory explanation was offered for how an apparent change of clothes could have occurred between seizure and production in court. The prosecution's own evidentiary record displays other material weaknesses. There are contradictions as to the precise place of the incident. The FIR and the charge-sheet mention the house at RZ-225/98 *-Block, West S** Pur, however , the site plan prepared by PW-9 suggests the tuition was being given at RZ-39B Khasra No. 368,* block, West S**Pur. No cogent explanation was offered for this



inconsistency. Additionally, there was a gap/delay in reporting, the incident was alleged on 18.08.2014 but information reached the police on 19.08.2014. The prosecutrix and her parents in subsequent statements disowned earlier allegations. PW-3's statement about apology and pardon is unexplainedly relied upon by the Trial Court as incriminating even though it was not put to the accused for explanation at the time of his statement under Section 313 CrPC.

9. Having regard to the totality of the evidence the inconsistencies and recantations of the prosecutrix and her families testimony, the serious lacunae in chain of custody of the *pullandas*. The absence of MHC(M) testimony to confirm deposit/receipt of parcels, and the fact that the IO/WSI handled the parcels for several days before sending them to FSL weigh heavily against the prosecution. The mismatch in the colour of the clothes, the absence of proper *malkhana* proof and *malkhana* entries, the discordance in seals and parcel descriptions, the fact that the FSL witness's testimony about parcels was substantially based on the forwarding letter rather than on in-court identification. The cumulative effect of these deficiencies is that the DNA evidence, which might otherwise has only probative value, cannot be treated as conclusive.

10. In the circumstances, the cumulative weight of the contradictions, the hostility of the principal witnesses, the defective/uncertain chain of custody in the case persuade me that a conviction warrants an intervention.

11. Accordingly, the appeal is allowed and the judgment of conviction dated 07.11.2016 and the order on sentence dated 10.11.2016 are set aside, and the appellant is acquitted.



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12. The bail bonds furnished on behalf of the appellant shall stand cancelled and sureties are discharged.

13. A copy of this judgment be sent to the concerned Trial Court and the concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 13, 2025

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