



2025:DHC:9729



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

% Reserved on : 04.11.2025
Pronounced on : 06.11.2025

+ **CRL.A. 817/2017 and CRL.M.(BAIL) 256/2021**

RAVINDER MANDALAppellant
Through: Mr. Biswajit Kumar Patra, Advocate
versus

STATE (NCT OF DELHI)Respondent
Through: Ms.Shubhi Gupta, APP for State with
SI Priyanka
Mr.Mritunjay Kr. Singh, Advocate for
victim

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted against the impugned judgment dated 08.04.2016 and order on sentence dated 12.04.2016 passed by ASJ-01, District North, Rohini, New Delhi in SC No.248/2013 arising out of FIR No.443/13 under Sections 376/506 IPC and Section 4 of POCSO Act registered at PS. S.P. Badli, Delhi.
2. Vide the impugned judgment and order on sentence, the appellant was convicted for the offence under Section 376/506 IPC and Section 4 POCSO Act and sentenced to undergo RI of 10 years and fine of Rs. 5000/- under Section 4 POCSO Act, in default whereof, he was to undergo SI of 15 days. He was further sentenced to undergo RI for 1 year and fine of Rs. 3000/- under Section 506 IPC, in default of payment of fine whereof, he was to



undergo SI for 15 days. Benefit of Section 428 Cr.P.C was extended to the appellant. Sentences were to run concurrently.

3. The child victim had stated in her complaint (Ex.P1/A) that the appellant, who was a next door neighbour, had been committing wrong acts with her since a month prior to the registration of the FIR. On 13.09.2013, in the afternoon at about 1:00 P.M. when she returned from school, the appellant had come inside her house and committed *ched chad*. When her mother returned home for lunch, she separated the appellant from her and called one 'P' *bhaiyya* and from his phone called at No.100. She had also stated that the appellant had been misbehaving with her since the last month. It was further stated that 4 days prior to this, the appellant came inside her house early morning around 5:00 A.M. Her parents were sleeping on the upper floor and her sister had gone jogging. The appellant removed both their clothes and had inserted his '*susu wali jagah*' in her '*susu wali jagah*' and gagged her mouth when she started shouting. He threatened to kill her and her parents. The appellant came to be arrested. Child victim's statement under Section 164 CrPC was on similar lines. She also stated that on 10.09.2013, the appellant had given her eatables and pulled her cheeks, and when she resisted, threatened to kill her family.

4. The appellant was charged for the offence under Section 4 of POCSO Act and in the alternative under Sections 376 IPC and 506 IPC, for the offence stated to be committed on 09.09.2013. The appellant pleaded not guilty and claimed trial. In trial, a total of 13 witnesses were examined by the prosecution to prove its case. The child victim 'S' was examined as PW-1. Her mother was examined as PW-3; father was examined as PW-8 and her cousin 'P' was examined as PW-9. The MLC of the child victim was



proved by PW-4. The I.O. was examined as PW-13. The rest of the witnesses were formal in nature who deposed as to various aspects of investigation. The appellant, in his statement recorded under Section 313 CrPC, claimed false implication. He stated that the father of the child victim had borrowed Rs.10,000/- from him. Two days prior to the incident, the mother of the child victim had asked him for another Rs.20,000/-. Upon refusal of which, the complaint came to be filed.

5. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case by the child victim's family because he had refused to lend them more money. He submits that there is a delay of 4 days in registration of FIR. There are material improvements and contradictions between the testimony of the child victim and her mother. It is also submitted that the samples for the FSL report were taken 4 days after the incident and thus detection of appellant's semen raises doubt on the credibility of the report.

6. Learned APP for the State, duly assisted by learned counsel for the victim, have opposed the present appeal. They contend that the Trial Court has rightly convicted the appellant. Learned Amicus contended that the victim has consistently deposed as to incidents of rape and sexual assault and there is no delay since the victim did not disclose initially due to fear of the appellant. Further, the MLC and FSL are also supporting the prosecution case.

7. The child victim stated her date of birth to be 28.07.2000. The IO had also furnished the school certificate of the child victim and exhibited the same as Ex. PW13/F, showing the same D.O.B. This puts the age of the victim as 13 years old at the time of incident. The age was not disputed by



the appellant before the Trial Court. Even now, no question has been raised regarding the same.

8. The appreciation of testimony of a child victim needs to be carried out with a greater scrutiny. In a recent decision of State of Madhya Pradesh vs. Balveer Singh¹, the Supreme Court has examined the principles governing the testimony of a child-witness and summarized the legal position in the following manner:

“58. We summarize our conclusion as under:-

...

(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..”

¹ 2025 SCC OnLine SC 390



9. The child victim was examined as PW1. She deposed that on 09.09.2013, around 5 am, when her parents were sleeping and sister had gone jogging, the appellant sneaked in her room, removed both their clothes, shut her mouth by his hand and committed rape upon her by inserting his private part in her private part. He threatened to kill her if she did not remain quit. He said that he had a magic glass worth Rs 15 lacs, and he would kill her parents by using this. He also used to press her chest prior to this incident. She further deposed that on 13.09.2013, when she returned from school, the appellant came and started teasing her. When her mother returned, she saw the appellant lying upon her, and separated him. Her mother informed 'P', her cousin brother, who called the police. She identified her seized underwear as Ex. P1.

In her cross examination, She was confronted with her statement under Section 164 CrPC wherein she had not stated about the magic mirror of Rs 15 lacs with which the appellant had threatened her and her statement to the police under Section 161 CrPC, where she had not mentioned about any pills. She stated 'P' was living opposite her house with his wife. She did not remember whether she met the appellant or not on 10.09.2013. She denied that her parents had borrowed Rs. 10,000/- from the appellant.

10. The mother of the child victim was examined as PW3. She deposed that on 13.09.2013, she returned from work during lunch time to her house. When she was leaving her house after lunch, she saw appellant coming from his work place. She deposed that she had been cautioned about the appellant by her neighbours. She again returned to her home, and saw the appellant giving the child victim some money and eatables. When she asked about it to her daughter, she said that he had threatened her not to disclose anything



and that he had a magic glass costing Rs. 15 lacs and they would have been killed if it was shown to them. She further stated that the victim also told her that the appellant also used to take her in his room through terrace and sexually assaulted her by pressing her chest and cheeks and also raped her 4 days prior.

In her cross examination, she admitted to having money transaction with the appellant and borrowing Rs. 10,000/- at time of purchasing land in Noida. She stated that her daughter had not revealed about behaviour of accused before 13.09.2013. She stated that she saw the appellant had given eatables and tried to sexually assault her daughter. She stated that the family of appellant was sleeping at the time and he was on the roof at the time of incident.

11. The MLC of the child victim was proved by Ms. Tarang Yadav, Senior Resident (Obs and Gynae), Dr. B.S. A Hospital, examined as PW4. The hymen was found to not be intact, but there were no signs of fresh injury or bleeding. The underwear of the child victim was seized and handed over to the IO.

12. The FSL report was proved as Ex. F-1. As per the FSL report, human semen was found on the underwear of the child victim, vaginal secretion, cervical mucus collection and vaginal washing. The alleles from the blood of the blood of the appellant were found matching with the DNA isolated from the abovementioned exhibits.

13. In the present case, on a careful perusal, it is noted that the child victim has improved upon her testimony at various points. She has deposed that the appellant threatened her not to disclose about the alleged incidents by claiming that he had a magic glass costing Rs. 15 lacs which would kill



her parents if it was shown to them. However, this fact does not find any mention in her initial statement to the police on 13.09.2013. Even in her statement under Section 164 CrPC, she had stated that he threatened to kill her mother with magic but there was no mention about any glass. The child victim has specifically deposed about two incidents, one stated to have occurred on 09.09.2013 and the other on 13.09.2013. However, the charge only came to be framed for the incident pertaining to 09.09.2013. Another thing which reflects the victim's tendency to improvise is that in her statement under Section 164 CrPC, the victim had stated that on 10.09.2013 the appellant brought eatables for her and pulled her cheeks and when she resisted, threatened to kill her family. However, in her deposition, she stated that she could not remember whether appellant had met her on that day. The history recorded in the MLC notes the victim stating that the appellant had given her 3 pills 10-15 days prior. However, she has not stated this fact either to the police, or the magistrate, or before Court.

14. There is also a material contradiction between the testimony of the child victim and her mother, who allegedly witnessed the incident which occurred on 13.09.2013. As per the child victim, when her mother returned to the house for taking her lunch, she saw the appellant lying upon her and separated him. However, her mother, on the contrary, deposed that she saw the appellant coming back from work while she was leaving her house after returning from lunch. When she went to the house again, she saw the appellant giving eatables and money to her. It was only in her cross examination that she stated about him trying to commit sexual assault as well. However, she stated no details about what the appellant was doing nor did she state about removing him.



15. Insofar as contentions relating to the positive FSL report is concerned, it indicates that appellant's semen was detected on the underwear as well as vaginal secretions and washing of the child victim. However, as per prosecution's own case, the incident of rape occurred on 09.09.2013. As per the MLC, the samples of the child victim came to be collected on 13.09.2013. There is no allegation of penetration to have occurred on 13.09.2013. It was also not proved that the underwear collected was the same one which was worn on 09.09.2013. Moreover, the detection of semen in the vaginal secretions 4 days after the incident raises genuine concerns about the sanctity of the report. The Supreme Court in Rahul v State² has held that the DNA evidence is in nature of opinion evidence as envisaged under Section 45 of the evidence act and its probative value varies from case to case. In Manoj v State of M.P.³, the Supreme Court held that the value of such evidence was corroborative. In the present case, due to the factors discussed hereinabove, the probative value of this report has decreased to a great extent.

16. The appellant has claimed that he had already given the parents of the child victim Rs. 10,000/- and when he refused to give Rs. 20,000/- more, the present complaint came to be filed. Though the child victim has denied that her family took Rs. 10,000/-, both her mother and father in their testimonies have accepted the same.

17. Section 29 of POCSO Act provides that 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

² (2023) 1 SCC 83

³ (2023) 2 SCC 353



prosecution has to prove the foundational facts. [Ref: Sambhubhai Raisangbhai Padhiyar v. State of Gujarat.⁴]

18. On a careful analysis of facts and the evidence that has come on record, the victim's testimony has material improvements and it is also contradictory to the testimony of her mother. In view of the findings recorded in MLC and the shortcomings in the FSL report, as well as bearing in mind the existence of money transactions between the appellant and family of victim, on a cumulative assessment of all the aforesaid aspects, a shadow of doubt arises as to the prosecution case, the benefit of which must be extended to the appellant and accordingly, he is held to be acquitted.

19. The appeal is allowed and the judgement of conviction and order on sentence are set aside.

20. A copy of this judgment be communicated to the concerned Trial Court.

21. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 06, 2025

ry

⁴ (2025) 2 SCC 399