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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.L.P. 713/2015, CRL.M.A. 16191/2015 & CRL.M.A.
16192/2015

THE STATE (GNCT OF DELHI)Petitioner

Through: Mr. Hitesh Vali, APP for the State
with SI Neeraj, PS Kotwali.

versus

GULSHAN @ DHEELA @ VIJAYRespondent
Through: None

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
17.12.2025

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1. The State seeks leave under Section 378 of the Code of Criminal Procedure, 1973¹ to assail judgment of acquittal dated 13th April, 2025 passed by the Court of Additional Sessions Judge-01 (Central) Tis Hazari Courts, Delhi in SC No. 16/14, titled “*State v. Gulshan @ Dheela @ Vijay*”, whereby the Respondent has been acquitted of the offences alleged in FIR No. 38/2014, registered at P.S. Kotwali for the offences under Sections 354 and 376 of the Indian Penal Code, 1860² and Sections 5, 9 and 10 of the Protection of Children from Sexual Offences Act, 2012.³

Factual Background

2.1. The prosecution case, in brief, is as follows: the victim’s mother

¹ “Cr.P.C.”

² “IPC”

³ “POCSO Act”



lodged a complaint, alleging that on 15th January, 2016, the Respondent molested the victim in a park. She alleged that the Respondent took the victim under a quilt, compelled her to lie down, removed her *pyjama* and touched her private parts. On the basis of the said complaint, the present FIR came to be registered.

2.2. During investigation, the victim's statement was recorded under Section 164 Cr.P.C., and she was medically examined. On conclusion of investigation, chargesheet was filed for offences under Sections 354/376 IPC and Sections 5/9/10 of the POCSO Act. By order dated 7th March, 2014, the Trial Court framed charges against the Respondent under Section 6 of POCSO Act read with Section 376(2) IPC. The Respondent pleaded not guilty and claimed trial.

2.3. To prove the charge, the prosecution examined 7 witnesses, details whereof are as follows:

PW No.	Name/Description	Role/ Deposition
PW-1	Ali Ansari @ Public Witness Afsan	
PW-2	Mother of the victim	Complainant; corroborated the victim's disclosure.
PW-3	Father of the victim	Purported eyewitness
PW-4	HC Sudhir, Duty Officer	Recorded the DD, registered FIR, made endorsement on <i>rukka</i>
PW-5	Victim	Alleged digital penetration by the Respondent
PW-6	SI Sheela	Investigating Officer, recorded the Complainant's statement, prepared chargesheet
PW-7	Dr. Sonu	Medically examined the victim, prepared MLC.

2.4. After conclusion of prosecution evidence, the statement of the Respondent was recorded under Section 313 Cr.P.C. He denied the allegations in entirety, asserted false implication, and did not lead defence evidence.



2.5. Upon consideration of the victim's age, witness depositions, and the evidence on record, the Trial Court, *vide* judgment dated 13th April, 2015, acquitted the Respondent of all charges.

State's Contentions

3. Mr. Hitesh Vali, APP for the State, seeks leave to appeal against the impugned judgment, urging that the acquittal rests on an unduly sceptical approach and an erroneous appreciation of the record. He submits that the Trial Court has treated peripheral discrepancies as fatal and, in doing so, has lost sight of the substance of the accusation and the consistent core of the victim's account. He contends that the victim's version has remained materially consistent, both in her statement recorded under Section 164 Cr.P.C. and in her deposition before the Trial Court. The variations referred to in the impugned judgment are minor in nature, and are attributable to the age of the witness and the passage of time. It is further argued that in prosecutions of this genre, a conviction can rest on the sole testimony of the victim if it inspires confidence, and that the Trial Court has applied an unduly exacting standard, contrary to settled principles. The State contends that the testimony of the victim, read with the surrounding circumstances and the investigation record, is sufficient to call for a full appellate reappraisal, and therefore leave ought to be granted.

Analysis

4. Leave to appeal under Section 378(3) Cr.P.C does not lie as a matter of course, and the same must be analysed on merits. The appellate court is required to apply its mind to the material on record, including the sworn testimonies of the prosecution witnesses, and record reasons as to why leave should or should not be granted, and whether the acquittal recorded by the



trial court calls for interference.⁴

5. The prosecution case is founded on the allegation that the Respondent took the victim inside a quilt, made her lay down, took off her *pajami* and attempted to digitally penetrate her. Considering the age of the victim, which was not disputed, the Trial Court undertook a careful and detailed appreciation of the evidence led by the prosecution, beginning with the testimony of the victim herself (PW-5).

6. The deposition of PW-5, as noted by the Trial Court, raised several concerns. The Court specifically recorded that the victim was initially uncomfortable while deposing, asked her mother to be removed from the courtroom, and admitted during cross-examination that she had been told by her parents what to state before the Court and whom to identify. These circumstances, taken cumulatively, suggest towards the possibility of tutoring of the child victim.

7. On core aspects, the victim's account did not remain steady. At one stage, she denied that any incident occurred in the park and stated that she did not know what a "*rajai*" was. It was thereafter, upon being asked leading questions, that she alleged that the Respondent pulled her into a quilt and inserted his finger into her private part. On identification too, she first stated that she could not identify the person who committed the act, and only later identified the Respondent when he was shown. These shifting stand, read with her candid admission that her parents had tortured her, rendered her statement unreliable.

8. The Trial Court also weighed the contemporaneous record. The

⁴ State of Maharashtra v. Sujay Mangesh Poyarekar, (2008) 9 SCC 475; Manoj Rameshlal Chhabriya v. Mahesh Prakash Ahuja, 2025 INSC 282.



specific allegation of digital penetration did not find mention at the earliest stage. The medical examination did not record a history consistent with such penetration. This allegation surfaced later in the statement under the Section 164 Cr.P.C. statement recorded after an interval of about three days. Moreover, PW-2 (mother) admitted that she narrated the facts to the child prior to the recording of her statement before the Magistrate. In cases of sexual offences, delayed disclosure is not, by itself, fatal. However, where delay coexists with circumstances suggesting prompting and the absence of contemporaneous disclosure to medical or counselling authorities, it becomes a relevant circumstance for assessing whether the prosecution has proved guilt beyond reasonable doubt.

9. The testimony of PW-2 was also found replete with inconsistencies on material particulars. While the victim alleged that the Respondent had inserted his finger into her private part, PW-2 stated that the child had told her that the Respondent was *trying* to do so. The earliest account, including the DD entry and the FIR, mentioned of molestation, without the specific articulation of digital penetration. PW-2 did not furnish a cogent explanation for the absence of this serious allegation at the first available opportunity. The Trial Court also noticed contradictions regarding PW-2's whereabouts, who called the police, whether her statement was recorded at the spot, and the sequence of events thereafter. Taken cumulatively, these were not minor variations. They bore directly on the reliability of the prosecution narrative.

10. PW-3, the father, was projected as an eyewitness. However, his testimony also did not corroborate the allegation of penetrative sexual assault. He stated that he was at a distance of about 15 feet from the child. His version shifted between chief and cross-examination regarding the



position of the Respondent's hands. He stated that the sound he heard was similar to noises children make while playing. He admitted that the Respondent did not attempt to flee even after the quilt was removed. Crucially, he stated that the child complained only of "*ched-chhad*" and did not disclose digital penetration. In such circumstances the Trial Court held that PW-3 did not support the prosecution on the gravamen of the accusation.

11. PW-1, the public witness, also did not support the prosecution case on key particulars. He stated that after removing the quilt he merely saw the child lying there and the Respondent was not doing anything. He denied that the child's *pyjama* was pulled down or that the Respondent's hand was on her private parts. Though PW-1 was confronted with his statement under Section 161 Cr.P.C., he denied having made any incriminating statement. The Trial Court accordingly proceeded on the settled principle that a statement under Section 161 Cr.P.C. is not substantive evidence and can only be used to contradict the witness. Once the witness did not support the prosecution in Court, the earlier police statement could not, by itself, carry the prosecution case.

12. The Trial Court also noticed inconsistencies in the prosecution narrative concerning timing and the investigative sequence. The prosecution relied on DD and MLC timings indicating a late evening chronology, whereas PW-2 gave a materially different time and sequence. PW-2 also stated, at one stage, that she did not visit the police station, whereas the Investigating Officer (PW-6) deposed that PW-2 met her at the police station at about 10:15 PM. The Trial Court treated these contradictions as weakening the certainty of the immediate post-incident narrative. That



appreciation cannot be characterised as unreasonable at the stage of considering leave.

13. In the backdrop of material inconsistencies, the Trial Court concluded that the testimonies of the victim, her parents, and the public witness did not inspire confidence on the core allegation and lacked mutual corroboration on material aspects. It held that the prosecution failed to establish its case beyond reasonable doubt.

Conclusion

14. The victim was a child of tender age. That circumstance invites sensitivity, but it also demands careful scrutiny as to whether her account is free from suggestion and whether it carries the ring of truth on the core allegations. The record, as noticed by the Trial Court, contains vacillation on whether the incident occurred in the park, uncertainty about the quilt, and an initial inability to identify the assailant. The victim also admitted that her parents had told her what to depose and whom to identify. The depositions, in absence of any other scientific material, taken as a whole, do not yield a steady and reliable narrative on the core allegation. In these circumstances, the testimony does not qualify as a “sterling” version which can, by itself, safely sustain a conviction.

15. It is true that the law does not insist on corroboration as an inflexible rule in cases of sexual offences. However, where the charge is grave and the ocular account suffers from material wavering on core particulars, the Court is justified in looking for some dependable assurance from the surrounding circumstances. Here, the earliest version, the contemporaneous medical record, and the evidence of the parents and the independent witness do not provide such assurance. The allegation of digital penetration, in particular,



did not find a consistent and contemporaneous articulation at the first available stages, and the prosecution witnesses are not *ad idem* on what exactly was disclosed and when. On this evidentiary state, the Trial Court's hesitation to act on the uncorroborated version, as it emerged during deposition, cannot be misappreciation of evidence.

16. The statutory presumptions under the POCSO framework, do not dispense with the requirement that the prosecution first establish the factual foundation. Where that narrative itself remains uncertain on material aspects, the benefit of doubt necessarily follows. The view taken by the Trial Court, that the prosecution failed to prove guilt beyond reasonable doubt, is therefore plausible. In appeal, this Court is not to substitute that plausible view, merely because another view is conceivable. The acquittal also strengthens the presumption of innocence, and interference is warranted only where the view taken is perverse, manifestly illegal, or results in a miscarriage of justice.

17. Accordingly, no ground is made out to grant leave to appeal.

18. In view of the above, the present leave to appeal is dismissed.

SANJEEV NARULA, J

DECEMBER 17, 2025/ab