



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

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*Reserved on: 26th November, 2025
Pronounced on: 15th January, 2026*

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CRL.A. 1641/2025

STATE NCT OF DELHI

Through Additional Public Prosecutor

Delhi High Court, New Delhi.

.....Petitioner

Through: Mr. Utkarsh, APP for the State with
SI Jitender Kumar P.S. Nangloi.

versus

SHEEL KUMAR

S/o Sh. Bhajan Singh,

H. No.315, Camp No.02,

Nangloi, Delhi.

.....Respondent

Through: Appearance not given.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Criminal Appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") has been filed by the **State** against the *Judgment dated 10.01.2020*, whereby the learned MM acquitted the *Respondent/Sheel Kumar* of offences under *Section 323 Indian Penal Code, 1860* (hereinafter referred to as "IPC") and *Sections 8/10 POCSO Act*.

2. The **brief facts** are that Smt. M. D. (the Complainant) reported to the Police on 08.06.2014 regarding sexual assault/harassment of her daughter Ms. D., aged about 13 years, by her husband/Respondent Sheel Kumar, who is the father of the prosecutrix. On her Complaint, the FIR No. 0387/2014

CRL.A. 1641/2025

Page 1 of 9

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was registered under Sections 323/354 IPC and Section 12 of the POCSO Act.

3. On completion of the investigation, *Charge-Sheet* was filed in the Court.

4. **Charges were framed** against the Respondent under Section 323 IPC and Sections 8/12 of the POCSO Act, on 18.03.2015 to which he pleaded not guilty.

5. The Prosecution, in support of its case, **examined five witnesses**.

6. **PW-1 Ms. D.**, the prosecutrix and **PW-2 Smt. M. D.**, the mother of the prosecutrix, deposed on similar lines as the allegations made in the Complaint regarding the Respondent having sexually assaulted the prosecutrix by touching her breast and exposing his body to her.

7. **PW-3/HC Sewa Ram** registered the FIR Ex.P1.

8. **PW-4/SI Mahabir Singh (I.O.)**, **PW-5/Ct. Ajit Singh** who accompanied the I.O., deposed about the investigation and the arrest of the accused. The charge-sheet was filed after the completion of the investigation, by PW-4.

9. **Woman ASI Sunita** was dropped by the prosecution, as her testimony was on similar lines as that of PW-4 SI Mahabir Singh. The documents which were admitted under Section 294 Cr.P.C. are as under:

- I. *FIR No. 387/14 dated 08.06.2014 PS Nangloi recorded by DO HC Murari Lal Ex. PX1, endorsement on rukka Ex. PX2, and certificate u/s 65 B of Indian Evidence Act Ex. PX3.*
- II. *Proceeding/Statement u/s 164 Cr.P.C. of the prosecutrix recorded by Ld. MM Sh. Dhirender Rana along with the request*



of the IO SI Mahabir Singh for recording of the Statement and supplying a copy running into 10 pages, already Ex. PW1/A.

III. The MLC No. 10609 dated 08.06.2014 of the complainant Malti in the handwriting and signatures of Dr. M Dass Ex. PX4.

IV. The photocopy of MLC No. 10627 dated 09.06.2014 of the complainant Malti in the handwriting and signatures of Dr. Gurdeep Singh Mark PX.

V. Cumulative record of the date of birth of the prosecutrix issued from the Director of Education, Govt. of NCT of Delhi Ex. PX5 (Colly 3 pages).

10. The statement of the accused was recorded **under Section 313 Cr.P.C.**, in which he pleaded his innocence and took the defense that he had not committed any wrong with his daughter/prosecutrix and that he had been falsely implicated in the case due to his disputes with his wife/Complainant.

11. The **learned ASJ**, after examining the entire prosecution evidence, concluded that the prosecution failed to prove the case beyond reasonable doubt. The benefit of the doubt was given to the Respondent, and he was acquitted *vide* Judgment dated 10.01.2020.

12. Aggrieved by the aforesaid impugned Judgment, the present Appeal has been filed by the State.

13. The **grounds for challenge** are that the learned ASJ failed to appreciate the testimony of the prosecutrix, which in itself was sufficient for conviction. The prosecutrix had given a consistent statement under Section 164 Cr.P.C. as well as in her examination-in-chief recorded on 06.09.2017, but she turned hostile during her cross-examination conducted on 18.12.2019. Despite the witness turning hostile, the Prosecution has been



able to prove the guilt of the Respondent beyond reasonable doubt. The testimony of the prosecutrix is fully corroborated by her statement under Section 164 Cr.P.C. and medical documents.

14. It has not been appreciated that in the examination-in-chief, the Prosecutrix had supported the case of the Prosecution. Reliance has been placed on *Khuji @ Surendra Tiwari vs. The State of Madhya Pradesh*, (1991) 3 SCC 627, wherein the Hon'ble Apex Court held that the evidence of a hostile witness cannot be treated as wholly effaced if it is found to be dependable on a careful scrutiny thereof and finds corroboration from other evidence.

15. It is, therefore, submitted that the Judgment of acquittal be set aside and the Respondent be convicted.

16. Though the Respondent has appeared and contested the Appeal, no formal reply has been filed on his behalf.

17. *No written submissions have been filed on behalf of the parties.*

Submissions heard and record perused.

18. The case of the Prosecutrix commenced with a Complaint made by PW2 Smt. M, the mother of the Prosecutrix. She, in her Complaint dated 08.06.2014, stated that she had been living at the given address and earned her livelihood by doing sewing work. Her husband/Respondent was addicted to alcohol and routinely picked fights and beat her. After consuming liquor, he does “*galat harkat*” with the daughter/Prosecutrix, aged 13 years. He stands naked in front of her. On 07.06.2014 at about 09:30 P.M., the Respondent, under the influence of liquor, caught hold of the Prosecutrix with ill intent and did “*ched-chad*” with her. She got her daughter released, whereupon he started beating her. She further asserted that the Respondent



keeps doing “ched-chad” with the wrong intent with the daughter/Prosecutrix. The husband used to beat her without any reason. Hence, she made a Complaint (Ex.PW2/A).

19. The allegations in her Complaint were that the respondent used to routinely do “galat harkat” with the daughter/Prosecutrix, aged 13 years. He stands naked in front of her. On the day of incident, he did “ched chad” and whenever she tried to intervene, he would beat her as well.

20. Pertinently, she, in her testimony as PW2/A, turned completely hostile and denied all the allegations made in the Complaint. When confronted with the Complaint, she admitted her signatures at point A on the Complaint Ex.PW2/A but asserted that the contents had not been written by her. ***The Complainant, therefore, failed to support the case of the Prosecution.***

21. In this context, it is also pertinent to refer to the Statement under Section 164 Cr.P.C. (Ex.PW2/A) that was made by PW2. She stated therein that her *parents-in-law threatened to turn her out of the house and tortured her as well as her daughter*. Their intent was only to dispossess her from the house. She has three children and has no other house. She was apprehensive that something wrong could happen with her daughter. One day, in her presence, *the Respondent/husband had made the girl lie on the bed and had put his mouth on her body. Many times, he became naked and gave her beatings*. She requested that her parents-in-law be stopped from dispossessing her; in case the husband continued to live with them in the house, there was a danger to their daughter.

22. What emerges essentially from the Statement under Section 164 Cr.P.C. of the Complainant is that the husband/Respondent was a habitual consumer of liquor and beat her. Many a times, she was apprehensive that



she might be turned out of the matrimonial home. She was further scared for the safety of the daughter and apprehended that something wrong could happen with her. She thereafter, stated that *one day he made the girl lie on the bed and misbehaved with her, and many times he would strip off his clothes and used to give her beatings.*

23. In this Statement under Section 164 Cr.P.C., she does not state that the Respondent used to do ‘ched-chad’ with ill intent with the daughter, but *only had an apprehension of her being subjected to abuse.* This was essentially because the husband was addicted to liquor and she apprehended that she might be turned out of the matrimonial home. The incident of the Prosecutrix being made to lie on the bed was of “some day,” and no specific date was given. Also, there were general assertions that he used to become naked many times.

24. In this context, the **testimony of PW1, Prosecutrix**, may be considered. She deposed that at the time of the incident in the year 2014, she was studying in class 8th. Her father was living with them. In the summer vacation, one evening or night when she was at home with her parents, sister, and brother and *was taking her bath, the Respondent had been watching her bathe for the last 2-3 days. Even on that day, he was watching her while she was taking a bath.* She further explained that she, her mother, and her sister used to bathe in the room and not in the bathroom, as it was very hot during the summer months. The father used to watch her taking a bath in the room while he was in the kitchen. She informed her mother about the misconduct of the father. She also started noticing the father doing so on 2-3 occasions.



25. It is pertinent to note that this incident of the Prosecutrix being watched by her father while taking a bath, has neither been stated by the Prosecutrix in her statement under S.164 Cr. P.C. nor corroborated by PW2, the Complainant.

26. Pertinently, in her statement under Section 164 Cr.P.C. Ex.PW1/A, she deposed that her father used to misbehave with her, and when the mother used to intervene, he would beat her. About two years back, her father had given her *a fist blow on her chest, because of which she suffered Tuberculosis, for which her mother got her treated, and her father did not give a penny for her treatment. On 07.06.2014, her father made her lie on the bed, but her mother pushed her away, upon which the father started beating her. He had touched her many times on her chest, and sometimes he would become naked in front of her and make her hold "gandi cheez".* She feared that in case the father was released from jail, he might repeat the same acts with her.

27. It is blatant that essentially, the allegation in her testimony was of respondent secretly watching her while she took bath, but in her statement under S.164 Cr.P.C, there is no mention about the incidents of him watching her while bathing. Clearly, it is an exaggeration and a narration which does not find mention either in the Complaint of the mother or in the statement under Section 164 Cr.P.C. Ex.PW1/A of the Prosecutrix.

28. PW-1 further deposed that her father used to remove his clothes in front of her. Similar assertions had been made by her mother in the Complaint Ex.PW2/A, but she totally turned hostile in the Court and denied the contents of the Complaint totally. The testimony of the child in respect of this aspect is vague and does not give any specific dates.



29. Pertinently, in her testimony, she has narrated being hit on her breast by the Respondent, but interestingly, she claims that because of the blow, she suffered Tuberculosis. *It is clearly understandable that this is the imagination of a child who was barely 13 years old, as Tuberculosis cannot be acquired simply by a fist blow.* Even if it is accepted that there was a fist blow given, even though not proved, *that in itself cannot be termed as a sexual act.*

30. PW1 further deposed that the Respondent used to misbehave by making her lie on the bed and try to come upon her, and the mother used to stop him. This again is much of an exaggeration because, as per the Complainant, it was only on 07.06.2014 that the Respondent had allegedly tried to make her lie on the bed; but as per her testimony, he used to do so on various occasions, *which again is an exaggeration.* Furthermore, there are no time frames, let alone dates, given by the Prosecutrix.

31. This testimony of the Prosecutrix is relevant in the light of her own admissions that there was litigation between the paternal grandparents and her parents, for evicting the father from the house. She further admitted that her mother used to earn the family expenses by stitching clothes and never used to go out. *She further deposed in her examination-in-chief that there was a Domestic Violence case registered by the mother against the father and the Police had come to their house.*

32. Aside from the testimony of the child being exaggerated and full of contradictions, it is evident that her deposition was prompted essentially by the disputes between the mother and the father wherein the mother had an apprehension that she might be turned out of the house. It has been rightly observed by the learned ASJ that there was little truth emerging from the



testimony of the Prosecutrix, which was motivated on account of the disputes between the parents.

33. It is also pertinent to observe that since the Respondent started residing separately and the disputes got settled, the Prosecutrix was re-called for re-cross-examination under Section 311 Cr.P.C. on 18.12.2019, stated that she did not want her father to be punished as he is now living separately and had already remained in jail.

34. Clearly, it is a case where the testimony of the Prosecutrix does not seem to be truthful, but motivated by the surrounding disputes between the parents.

35. The learned ASJ has rightly observed that the case of the Prosecution remained in the realm of suspicion and acquitted the Respondent by giving the benefit of the doubt.

36. There is no infirmity in the Judgment, and the Appeal is hereby, dismissed.

37. The pending Applications, if any, are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 15, 2026/R/VA