IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.02.2025

\+ **CRL.A. 869/2024 & CRL.M.(BAIL) 1546/2024**

PRAMJEET@SANNI ..... Appellant

versus

STATE NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Manish Kumar, Adv.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the State.
WSI Anita, 2nd Battalion.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal has been filed challenging the judgment dated 15.02.2024 (hereafter '**the impugned judgment**') and the order on sentence dated 27.04.2024 (hereafter '**the impugned order on sentence**'), passed by the learned Additional Sessions Judge, Fast Track Special Court (POCSO), Dwarka Courts, New Delhi, in SC No. 26/2018, arising out of FIR No. 358/2017, registered at Police Station Uttam Nagar.

2. The learned Trial Court, by the impugned judgment convicted the appellant for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**') and by the impugned order on sentence, the appellant was sentenced to rigorous imprisonment for ten years along with a fine of ₹1,000.

3. The case of the prosecution is that on 17.06.2017, a complaint was lodged at PS Uttam Nagar by the grandmother of the minor victim (13 years old), alleging that the appellant/accused, a known person, had committed rape upon the minor victim in the absence of her guardian. The victim told the Investigating Officer that she had pain in her stomach. She further stated that the accused had repeatedly sexually assaulted her at her house, whenever her grandmother used to go to work. Consequently, the FIR in the present case was registered against the appellant for offences under Sections 376 of the IPC and Section 4 of the POCSO Act.

4. During the medical examination, the victim was found to be pregnant, and subsequently, her statement under Section 164 of the Code of Criminal Procedure, 1973 ('**CrPC**') was recorded, wherein she supported the allegations.

5. Consequently, the appellant was arrested on 16.11.2017.

6. Charges were framed against the appellant for offences under Section 6 read with Section 5(I) of the POCSO Act and in alternative under Section 376 of the IPC.

7. The prosecution cited 17 witnesses in support of its case including the victim (PW 3), victim's grandmother (PW-9), Welfare

Officer, CWC (PW-2), Dr. Dhananjay Kumar (PW-10), and Investigating Officer (PW-15).

8. The appellant denied the allegations in his statement under Section 313 of the CrPC and contested that he was being falsely implicated due to previous enmity since he had refused to marry the relative of the victim.

9. The learned Trial Court convicted the appellant of the alleged offences by the impugned judgment taking into consideration the testimony of the prosecution witnesses, especially the prosecutrix (PW-3), her grandmother (PW-9), and the Investigating Officer (PW-15). The court found the prosecutrix's statement to be consistent, credible, and free from material contradictions. Her testimony was corroborated by medical evidence, which confirmed her pregnancy, and by DNA evidence, which established that the appellant was the biological father of the foetus.

10. The learned Trial Court also considered the circumstantial evidence, including the appellant's absconding for five months, which indicated a guilty mind and an attempt to evade arrest. The learned Trial Court, after analyzing the entire evidence in light of Section 29 of the POCSO Act, which presumes guilt in such cases unless rebutted, concluded that the appellant had failed to discharge his burden of proof and was guilty beyond reasonable doubt.

11. The learned counsel for the appellant submitted that the impugned judgment is erroneous and unsustainable in law. He submitted that the identity of the accused was not properly established,

as neither the FIR nor the initial complaint mentioned the appellant's full address.

12. The learned counsel submitted that the prosecutrix's statement was inconsistent. In her statement under Section 164 of the CrPC, she stated that the appellant 'touched' her and 'lay over her', whereas, during the trial, she alleged full penetration and that the appellant used to administer some drug to her and also threatened her.

13. The learned counsel submitted that the FSL report does not conclusively establish that the foetus DNA matched with that of the appellant. He submitted that the prosecution failed to prove the age of the victim beyond a reasonable doubt, as the only document produced was an affidavit which was not independently corroborated.

14. Lastly, he submitted that there was an unexplained delay of five months in the appellant's arrest, casting doubt on the credibility of the investigation, the appellant was falsely implicated due to previous enmity with the victim's family.

15. *Per Contra*, the learned Additional Public Prosecutor for the State vehemently contested that the victim had supported the case of the prosecution and the same alone is sufficient to confirm the conviction of the accused.

ANALYSIS

16. At the outset, it is relevant to note that while dealing with a challenge to an appeal against judgment on conviction and sentence, in the exercise of Appellate Jurisdiction this Court is required to re-appreciate the evidence in its entirety and apply its mind

independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi & Ors. v. The State of Madhya Pradesh*** **: Criminal Appeal No. 1350/2021** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

> *"**9.** The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. **In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material.** As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in **Majjal v State of Haryaya** [(2013) 6 SCC 798] , where the Court held:*
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> *'6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.*
> *7. **It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High***

> ***Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. <u>Reasons cannot be cryptic.</u>*** *By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.' "*
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> *(emphasis supplied)*

17. The POCSO Act provides a legal framework for safeguarding the rights and well-being of children and protecting them from sexual offences. The act acknowledges the unique vulnerability of children in such cases and it provides for punishment of sexual offenders who commit such offences against children. Therefore, these cases must be dealt with utmost sensitivity.

18. In the present case, the allegations levelled against the appellant are grievous in nature. It is the case of the prosecution that the appellant committed aggravated penetrative sexual assault upon the victim, who was merely thirteen years old at the time of the incident.

19. It is relevant to note that the appellant was charged and has been convicted for the offence under Section 6 of the POCSO Act. The same prescribes the punishment for aggravated penetrative sexual assault and attracts the presumption under Section 29 of the POCSO Act. The same reads as under:

> *"29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."*

20. It is trite law that the said presumption only comes into play once the prosecution is able to establish foundational facts and it can be rebutted by discrediting the witnesses through cross-examination as well [Ref. ***Altaf Ahmed v. State (GNCTD of Delhi)*: 2020 SCC OnLine Del 1938**].

21. In the present case, the prosecution has sought to establish its case essentially through the evidence of the prosecution witnesses, especially the victim.

22. It is therefore imperative to peruse the statements tendered by the witnesses. In the FIR, it is stated that the victim, a minor, was repeatedly sexually assaulted by the appellant when her grandmother was away at work. The complaint was lodged after the victim confided in her grandmother in regard to the stomach pain, who then approached the police.

23. In her statement under section 164 of the CrPC on 20.06.2017, she reiterated the facts as stated in the FIR. She stated that " *wo mere se chipak kar galat kam karta tha. Apna kapda kholta tha. Wo mere chipat jata tha.*"

24. During her examination, the victim (PW 3) supported the case of the prosecution, she stated that the appellant warned her not to disclose the incidents to anyone, threatening her with harm. She deposed that the appellant had subjected her to sexual assault on multiple occasions and that she had initially been too afraid to disclose the abuse. She also testified that she became pregnant as a result of the sexual assault, and her pregnancy was later terminated at the hospital.

25. PW 9 is the grandmother of the victim. Her evidence is hearsay in nature. She deposed that the victim had told her about the pain in the stomach and the alleged incident on the same day she returned from work. She stated that took the victim to the police and narrated the incident.

26. PW- 13, D.S. Paliwal, Assistant Director (Biology), FSL, Rohini, New Delhi had conducted the DNA examination of the exhibits (liquid blood sample of the victim and blood gauze of accused) and opined that the DNA profiling performed on the exhibits is sufficient to conclude that the source of DNA was the biological mother and father of the foetus which was aborted upon the termination of the pregnancy of the victim.

27. PW 15 is the Investigating Officer who deposed about the arrest of the accused on identification by the victim, the medical examination of the victim, and collection of documents for proof of age which showed her date of birth to be 08.09.2007.

28. It is trite law that the accused can be convicted solely on the basis of evidence of the complainant/victim as long as the same inspires confidence and corroboration is not necessary for the same. The law on this aspect was discussed in detail by the Hon'ble Apex Court by ***Nirmal Premkumar v. State*** **: 2024 SCC OnLine SC 260**. The relevant portion of the same is produced hereunder:

> *"11.* ***Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable***

testimony, direct or circumstantial, as a requirement of the rule of prudence.

12. In Ganesan v. State4 , this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in ***Rai Sandeep v. State (NCT of Delhi)****5 . The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:*

"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain

intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(underlining ours, for emphasis)

14. In ***Krishan Kumar Malik v. State of Haryana*** *, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:*

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences. 32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."

15. ***What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. <u>The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case.</u> While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."***

(emphasis supplied)

29. It is also relevant to note that the victim in the present case is a minor girl who was only thirteen at the time of the incident. In the present case, the victim provided a detailed and consistent account of the events, both in her statement under Section 164 of the CrPC and during her examination. The learned counsel for the appellant sought to challenge her credibility by pointing to alleged inconsistencies in her narration, particularly regarding the nature of the assault. The victim initially stated that the appellant 'touched her and lay over her' but later provided a more detailed account of penetrative sexual assault. However, such developments in testimony are not unusual in cases involving minors, where trauma, memory suppression, and emotional distress can lead to gradual disclosure of events over time.

30. As rightly noted by the learned Trial Court, it is difficult to fathom as to why a young girl of merely thirteen years of age would make up such a story to falsely implicate the appellant. The victim never deviated from her categorical assertion that the appellant sexually assaulted her on multiple occasions. The minor inconsistencies pointed out by the defense do not dilute the overall credibility of her testimony.

31. The Hon'ble Apex Court in the case of ***State of H.P. v. Sanjay Kumar*** **: (2017) 2 SCC 51** had relied upon the evidence of the child victim who was raped when she was nine years old by her uncle and noted as under:

> *"30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted. We have already discussed above the manner in which the testimony of the*

prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. ***At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases.*** *In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevents such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well. Equally, there is also a dire need to have a survivor-centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long-lasting effects on such victims.*

31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. ***By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood.*** *It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed*

with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma v. State of H.P. [Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551 : 2004 SCC (Cri) 31]). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.

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33. At this juncture, we would also like to reproduce the following passage from the judgment of this Court in ***State of Rajasthan v. Om Prakash*** *[State of Rajasthan v. Om Prakash, (2002) 5 SCC 745 : 2002 SCC (Cri) 1210] : (SCC p. 755, para 19)*

> *'19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. The overturning of a well-considered and well-analysed judgment of the trial court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt was not called for. The minor contradiction of recovery of one or two underwears was wholly insignificant.' "*
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> *(emphasis supplied)*

32. The Hon'ble High Court of Calcutta in the case of ***Animesh Biswas v. State of W.B.*** **: 2023 SCC OnLine Cal 2633** has succinctly summarised the law on evaluation of the testimony of a child victim and observed as under:

"34. In catena of decisions Hon'ble Apex Court held that the evaluation of the evidence of child witnesses, especially where the child is the victim herself/himself, is always a tricky affair. Combating, and, at times, conflicting, considerations come into play in such cases. ***On the one hand, there exists a presumption that a child of tender years would not, ordinarily, lie.*** *The applicability, or otherwise, of this presumption, would necessarily depend, to a large extent, on the age of the child. No dividing line can be drawn in such cases; however, one may reasonably presume that a child of the age of four, or thereabouts, would be of an age at which, to questions spontaneously put to the child, the answer would ordinarily be the* ***truth. As against this, the Court is also required to be alive to the fact that children are impressionable individuals, especially when they are younger in age, and are, therefore, more easily tutored.*** *The possibility of a small child, whose cognitive and intellectual faculties are yet not fully developed, being compelled to testify in a particular manner, cannot be easily gainsaid. Even so, the prevalent jurisprudential approach proscribes courts from readily treating the evidence of child witnesses as tutored and, ordinarily, where a child is subjected to sexual assault, her, or his, statement possesses considerable probative value.*

35. ***On the other hand, Hon'ble Apex Court reiterated that one of the cardinal principles to be borne in mind, while assessing the acceptability of the evidence of a child witness, is that due respect has to be accorded to the sensibility and sensitivity of the Trial Court, on the issue of reliability of the child, as a witness in the case, as such decision essentially turns on the observation, by the Trial Court itself, regarding the demeanour and maturity of the concerned child witness. An appellate court would interfere, on this issue, only where the records make it apparent that the Trial Court erred in regarding the child as a reliable witness. Where no such indication is present, the appellate court witness, where the Trial Court has found it to be credible, convincing and reliable. It went onto note that in the present case it is not disputed that the victim (Child witness) was not competent to depose to the facts and was not a reliable witness. Once a child witness, if found competent to depose to the facts and reliable one such evidence could be the basis of conviction.*** *In other words evening he absence of oath, the evidence of a child witness can be considered under Section 118 of the Indian Evidence Act, 1872 provided that such witness is able to understand the answers thereof. (Dattu Ramrao Sakhare v. State of Maharashtra, 1997 Latest Caselaw 447 SC)."*

(emphasis supplied)

33. On careful examination of the statements of the victim, it is apparent that the victim's statement remained consistent in material particulars. Minor discrepancies, if any, are not fatal to the prosecution's case.

34. The appellant has challenged his identification as the perpetrator, arguing that no address was mentioned in the FIR. However, the prosecutrix and her grandmother both identified him during the investigation. The appellant was known to them, and no plausible explanation has been given for why the prosecutrix would falsely implicate him.

35. The appellant was arrested after five months, and it is contended that this delay weakens the prosecution's case. However, it has been established that the appellant absconded after the incident, and efforts were continuously made to trace him. Delay in arrest does not *ipso facto* create doubt on the prosecution's version.

36. The appellant has raised the defence that he has been implicated due to prior enmity between the appellant and the family of the victim. As noted by the learned Trial Court, the appellant has not led any evidence and has been unable to create any doubt through cross-examining the witnesses in this regard. Apart from the bare averments of the appellant, there is nothing to support his defence that he has been falsely implicated due to prior animosity.

37. In view of the same, the testimony of the witness inspires confidence and the appellant has been unable to show that the version of the victim is tutored. The forensic report also strongly supports the

conviction of the appellant and negates any claims of false implication.

38. In such circumstances, the foundational facts stand proved by the prosecution through the evidence of the victim and her brother and the appellant has not been able to create any doubt to rebut the presumption under Section 29 of the POCSO Act.

39. Insofar as the sentence of the appellant is concerned, in the opinion of this Court, the learned Trial Court has rightly appreciated the seriousness of the offence and taken into account that the victim was merely thirteen years old at the time of the incident. This Court finds the quantum of sentence to be proportional with the crime as has been committed by the appellant.

40. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned judgment and order on sentence.

41. The appeal is dismissed in the aforesaid terms.

42. Pending application stands disposed of.

AMIT MAHAJAN, J

FEBRUARY 7, 2025