



2025:DHC:5020



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:26.06.2025

+ **CRL.A. 691/2023 & CRL.M.(BAIL) 314/2025**

VINOD KUMAR

.....Appellant

versus

STATE AND ANR

.....Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Rajat Sang Sharma, Mr. Sandeep Singh Nainwal & Mr. Jitender Kumar Mishra, Advs.

For the Respondents : Mr. Ajay Vikram Singh, APP for the State SI Shweta, PS- Tilak Nagar
Mr. Pankaj Pathak, Adv. (through VC)

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed against the judgment dated 08.05.2023 (hereafter '**impugned judgment**') and the order on sentence dated 27.07.2023 (hereafter '**impugned order on sentence**') passed by the learned Additional Sessions Judge ('ASJ'), West, Tis Hazari Courts, Delhi in SC No. 242/2018 arising out of FIR No. 1378/2015 ('**FIR**').



2. By the impugned judgment, the learned ASJ convicted the appellant of the offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**') and Section 18 read with Section 6 of the POCSO Act and Section 506 of the Indian Penal Code, 1860 ('**IPC**'). By the impugned order on sentence, the learned ASJ sentenced the appellant to undergo imprisonment for a period of 10 years alongwith payment of fine for a sum of ₹10,000/- and in default thereof to undergo simple imprisonment for a period of one year for the offence under Section 6 read with Section 18 of the POCSO Act. For the offence under Section 10 of the POCSO Act, the learned ASJ sentenced the appellant to undergo imprisonment for a period of 05 years alongwith payment of fine for a sum of ₹1,000/- and in default of payment of fine to undergo simple imprisonment for six months. Further, the appellant was sentenced to undergo imprisonment for a period of six months along with payment of fine for a sum of ₹500 and in default to undergo simple imprisonment for a period of 15 days for the offence under Section 506 of the IPC. All the sentences were directed to run concurrently.

3. Succinctly stated, the FIR was registered on a complaint given by the mother of the prosecutrix. It is alleged that on 17.10.2014, the mother of the prosecutrix learnt that the appellant had sexually assaulted her daughter for the past three months. The appellant is stated to be the *fuffa* of the prosecutrix. It is alleged that on 03.09.2015 when the prosecutrix was playing in the park situated near her house, the appellant touched her hips. It is further alleged that when the



appellant had come to the house of the prosecutrix, he removed the clothes of the prosecutrix and touched his genitals to the prosecutrix's private parts.

4. Consequently, FIR No. 1378/2015 dated 22.09.2015 was registered at Police Station Tilak Nagar for offences under Sections 376/506 of the IPC and Section 5/6 of the POCSO Act.

5. The statement of the complainant under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC') was recorded on 23.09.2015. Subsequently, upon the conclusion of investigation, the chargesheet was filed.

6. The learned Trial Court *vide* order dated 04.03.2016 proceeded to frame charges against the appellant for the offences under Section 10 and Section 6 read with Section 18 of the POCSO Act and Section 511/376/506 of the IPC.

7. In order to establish its case, the prosecution examined 11 witnesses including PW-1 (mother of the prosecutrix), PW-3 (father of the prosecutrix), PW-4 (grandfather of the prosecutrix), PW-5 (guard), PW-8 (uncle of the prosecutrix) and PW-9 (aunt of the prosecutrix).

8. The appellant denied the allegations levelled against him in his statement under Section 313 of the CrPC. He asserted that he had been falsely implicated in the case due to ulterior motives. The appellant claimed that the present case is motivated and has been filed on the instructions of his ex-wife/bua of the prosecutrix who wanted to gain a



share in his father's property. He further claimed that the complaint had only been filed as a counterblast to the complaint filed by the appellant's father against the appellant's ex-wife/bua of the prosecutrix.

9. The learned ASJ, by the impugned judgment, convicted the appellant of the offences under Section 10 of the POCSO Act and Section 18 read with Section 6 of the POCSO Act and Section 506 of the IPC. It was noted that on being specifically asked, the prosecutrix stated that the appellant had tried to touch his penis to the victim's genitals. The prosecutrix deposed that the appellant had assaulted her on three occasions: once in her house, once in the appellant's house and once in the park. She further stated that the appellant had removed her undergarments when he tried to touch his genitals to her private parts. She further stated that since it was dark, she could not see if the appellant had removed his clothes or not. It was noted that the prosecutrix categorically deposed that she had not stated anything out of fear.

10. The learned ASJ noted that the mother of the prosecutrix/PW-1 corroborated the version of the prosecution and categorically stated that she found her daughter in some fear and upon questioning her daughter disclosed the acts committed by the appellant. It was noted that since the deposition of the mother of the prosecutrix/PW-1 threw light on the conduct of the prosecutrix, the same was relevant. It was noted that the prosecutrix had made specific allegations against the



appellant. It was further noted that the mother of the victim/PW-1 in her testimony chronologically narrated the events and that the same inspired confidence. It was noted that while the appellant, in his defence, had pointed towards the contradictions in the statements of the witnesses, and that the present case was motivated as his wife/bua of the prosecutrix had separated from the appellant barely a month ago, the same was discarded in light of the categorical allegations made by the prosecutrix against the appellant. The learned ASJ noted that the victim had made specific allegations against the appellant which was consistent with her statement under Section 164 of the CrPC. Consequently, the learned ASJ convicted the appellant of the offences under Section 10 of the POCSO Act and Section 18 read with Section 6 of the POCSO Act and Section 506 of the IPC.

11. The learned counsel for the appellant submitted that the learned ASJ erred in convicting the appellant for the offences under Section 10 of the POCSO Act and Section 18 read with Section 6 of the POCSO Act and Section 506 of the IPC. He submitted that the conviction of the appellant was sustained based on surmises and conjectures and ought to be set aside. He submitted that the learned ASJ failed to take into consideration the discrepancies in the statement of the prosecutrix. He submitted that the prosecutrix in her statement under Section 164 of the CrPC stated that the appellant had touched his genitals to the victim's private parts. He submitted that on the contrary, during the course of further examination, the prosecutrix herself stated that since it was dark, she could not tell whether the



appellant had removed his clothes or not. He submitted that same casts serious aspersions in the case of the prosecution.

12. He submitted that the testimony of the mother of the victim/PW-1 runs *inter se* contradictory to that of the prosecutrix. He submitted that PW-1, in her cross-examination stated that the prosecutrix used to sleep with her bua (wife of the appellant) and the appellant whenever they came to her house or whenever the prosecutrix went to their house. Contrarily, the prosecutrix stated that on the night of the incident, she was sleeping in the same room as the appellant and stated that “*on that night, I and my four sisters were also sleeping with us*”.

13. He submitted that while considering the testimony of PW-1/mother of the prosecutrix, the learned ASJ failed to consider that PW-1 herself deposed that no allegation was ever made by the prosecutrix’s bua (wife of the appellant) of any misconduct by the appellant. He submitted that the present dispute is motivated and arises out of the marital dispute between the appellant and his wife/the bua of the prosecutrix who barely separated a month before the present complaint was lodged. He submitted that on 14.09.2015, some marital dispute in relation to share in the property of appellant’s father arose between the appellant and his wife after which the appellant’s wife left the company of the appellant and went to reside in the prosecutrix’s house. He submitted that thereafter the appellant’s wife lodged a complaint against the appellant and his family members on



14.09.2015. He submitted that on that occasion the mother/PW-1 as well as the father/PW-3 of the prosecutrix were present at the Police Station, however, no complaint against the appellant in relation to commission of any sexual assault was made by the parents of the prosecutrix.

14. He submitted that thereafter on the following day, the father of the appellant lodged a complaint against the appellant's wife regarding her conduct and behavior in relation to demand of a share in the appellant's father's property. He submitted that it was only a week after the father of the appellant lodged a complaint against the appellant's wife that the subject complaint in relation to the alleged commission of sexual assault by the appellant was filed. He submitted that the delay in lodging the FIR aptly demonstrates that the complaint was driven by the intent to seek revenge.

15. He submitted that the allegations against the appellant in any event are improbable in nature. He submitted that even if the contradictions in the versions of PW-1/mother of the prosecutrix and PW-2/prosecutrix in regard to who was sleeping with the prosecutrix on the night when the alleged incident occurred was to be ignored and the testimony of the prosecutrix was to be given precedence, even then as per the prosecutrix's own case, on the night when the alleged incident had occurred, the prosecutrix along with her four sisters were sleeping in the same room. He submitted that it is the victim's own case that her four sisters were sleeping on one side of the appellant



and she herself was sleeping on the other side of the appellant. He submitted that given the alleged presence of four other children besides the prosecutrix and the appellant in the same room, it is highly improbable for the appellant to have committed the alleged incident and also threatened the prosecutrix of dire consequences without the same being noticed by any other person.

16. He submitted that it is the prosecutrix's case that the appellant had touched her "back" while she was playing in the park. He submitted that the same has not been corroborated by any other independent witness. He submitted that the guard room was situated close to the park, and the guard/PW-5 himself deposed that if any such incident would have occurred, the same would have been informed to RWA. He consequently submitted that considering the improbability of the allegations, the appellant be acquitted and the impugned judgement and impugned order on sentence be set aside.

17. *Per contra*, the learned Additional Public Prosecutor for the State and the learned counsel appearing on behalf of the prosecutrix submitted that the impugned judgment is reasoned and warrants no interference. They submitted that the prosecutrix consistently maintained that the appellant had touched his genitals to the victim's private parts. They submitted that the sole testimony of the prosecutrix alone is sufficient to sustain a conviction without the need of further corroboration. They further submitted that in view of the cogent and consistent testimony of the prosecutrix, the prosecution has been able



to prove its case beyond reasonable doubt.

Analysis

18. At the outset, it is relevant to note that while dealing with an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction, this Court is required to reappraise 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 Haryana* [(2013) 6 SCC 799], where the Court held:*

‘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 acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. 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.' ”

(emphasis supplied)

19. The criminal jurisprudence is premised on the principle that a conviction cannot be sustained on the basis of mere surmises or conjecture. It is thus for the prosecution to establish, by means of cogent and credible evidence, each element of the alleged offence that too beyond reasonable doubt. The standard is not a mere formality but rather serves as an indispensable safeguard against the risk of wrongful conviction. Consequently, where the story of the prosecution is marred with inconsistencies or evidentiary gaps, the benefit of such doubt ought to be extended to the accused.

20. A thorough examination of the material on record indicates that



the case of the prosecution is fraught with blemishes and fails to establish the case against the appellant beyond reasonable doubt. Further, a perusal of the impugned judgment reveals that several crucial aspects having direct bearing on the adjudication of the case were either insufficiently addressed or dealt with in a cursory manner.

21. In the present case, the conviction of the appellant was sustained essentially on the basis of the allegations made by the prosecutrix against the appellant. It is well established that an accused can be convicted solely on the basis of the evidence of the victim without the need of any further corroboration so long as the same inspires confidence. However, in instances where the evidence of the victim is fraught with gaps or flaws or fails to provide a sufficient account of the incident, the conviction of the accused cannot be sustained [Ref: *Nirmal Premkumar v. State* : 2024 SCC OnLine SC 260].

22. One of the primary grounds taken by the appellant to challenge the impugned judgment is the delay in lodging the FIR. It has been asserted that the present case finds its genesis in the matrimonial dispute that arose between the appellant and his wife and has been filed only as a counterblast to the case lodged by the appellant's father against his wife. It has been argued that the conviction of the appellant has been sustained only by considering the allegations on its face value. It has been argued that the complaint was filed barely within one month of the separation of the appellant and his wife, and that the



same casts doubt on the veracity of the case of the prosecution.

23. Before delving into an analysis of the contention raised by the appellant, it is pertinent to note that the Hon'ble Apex Court while considering the impact of delay in lodging an FIR in sexual offences and its consequential probability of embellishment or chance of false implication in the case of *Tulshidas Kanolkar v. State of Goa: (2003) 8 SCC 590* held as under:

“5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case....”

24. Upon a rigorous assessment of the material on record, it is apparent that the prosecution has failed to offer any plausible explanation for the delay in lodging the FIR. The inception of this case stemmed from a complaint given by the mother of the prosecutrix/PW-1 thereby alleging that her daughter PW-2/prosecutrix was repeatedly subjected to sexual assault by the appellant. It is pertinent to note that in her complaint as well as during the course of the trial, PW-1 maintained that the entire account of the incident was



narrated to her by her daughter way back on 17.10.2014. However, the FIR in the present case was registered way later on 22.09.2015. The only explanation offered by PW-1 for not lodging a complaint was that on that occasion, considering the future of the children and the matrimonial life of the appellant and his wife, no complaint was made.

25. Undisputedly, it is not uncommon for the adult members of the family including the parents of the victim to choose to not report such crimes for the fear of social stigma, isolation, discrimination and with a view to safeguard the interests of the child and protect the honour of the family [Ref: *Shankar Kisanrao Khade v. State of Maharashtra* : (2013) 5 SCC 546]. This Court is also aware that such fears are further exacerbated in circumstances where the alleged offender is a member of the family. The initial reluctance on the part of the family in reporting such crimes is therefore not *per se* reflective of the falsity of the allegations but reflects broader socio-psychological inhibitions that families face when reporting such crimes. At the same time, it is also pertinent to note that Courts have come across instances where the provisions of the POCSO Act have been used as a means to settle scores amongst family members when disputes between the parties, be it marital or otherwise, are already simmering [Ref: *Veerpal v. State* : 2024 SCC OnLine Del 2686]. In such scenarios, the possibility of false implication cannot entirely be ruled out. For this reason, when dealing with cases which involve allegations of sexual assault against family members where intra-family discords are already festering, Courts ought to proceed with caution while examining the merits of



the allegations and the credibility of the case of the prosecution.

26. In that backdrop, it is pertinent to note that as per the testimony of PW-1, while she had knowledge of the commission of the alleged offence way back on 17.10.2014, no complaint was lodged on that occasion considering the marital life of the appellant and the bua of the prosecutrix and the future of the children. Thereafter, it is the case of the prosecution that subsequently much later on 03.09.2015 when the prosecutrix was playing in the park situated near her house, the appellant touched her “back”. Strangely, on this occasion as well, no complaint was made against the appellant. Further, no explanation has been offered by the prosecution as to why on that occasion as well, no complaint was made. Contrarily, the learned counsel for the appellant has urged that the present complaint is motivated as the same has been filed barely within a period of one month of the separation of the appellant and his wife owing to a marital dispute. While this Court does not mean to suggest that a delay in lodging the complaint is *per se* fatal to the case of the prosecution, yet where the prosecution fails to provide a reasonable explanation for the delay, the same has the impact of casting serious aspersions on the veracity of the case of the prosecution. Consequently, considering the dearth of any plausible explanation to justify the delay in lodging the complaint, and the rival submissions of both the parties, this Court now deems it apposite to examine and decipher the events that transpired prior to the registration of the FIR.



27. As noted above, as per the case of the prosecution, while the commission of the alleged acts by the appellant were known to the mother/PW-1 and father/PW-3 of the prosecutrix, no complaint was made against the appellant regarding the commission of any such alleged act. A perusal of the record shows that on account of a dispute between the appellant and his wife (bua of the victim), the bua of the prosecutrix left the house of the appellant and started residing with the prosecutrix since 14.09.2015. The record further indicates that a complaint was filed by the prosecutrix's bua against the appellant and his family members on 14.09.2015. As per the testimony of the mother/PW-1 and the father/PW-3 of the prosecutrix, at the time when the complaint was being given by the prosecutrix's bua, they were present with her at the Police Station. What appears peculiar to this Court is that on that occasion as well, when the complaint was being lodged against the appellant and his family members, even on that occasion, no whisper of any alleged sexual assault committed by the appellant was made.

28. Even if this Court were to accept the narrative of the prosecution at face value that the complaint was not made initially considering the marital life of the appellant and his wife, however considering the fact that on such occasion the prosecutrix's bua had left the company of the appellant, it is dubious why no allegation or complaint was made against the appellant regarding the alleged commission of sexual assault. The complaint was thereafter only made on 22.09.2015, that is, a week after the appellant's wife had left his



company and had lodged a complaint against the appellant and his family members. At no point in time was it ever the case of the prosecution that the alleged acts committed by the appellant were unknown to the family members of the prosecutrix. Yet, the unexplained delay in lodging the complaint coupled with the fact that no complaint against the appellant was made even on 14.09.2015, that is, at the time when a complaint was being filed against the appellant and his family members by the appellant's wife despite the fact that the parents of the prosecutrix were present in the Police Station and had the knowledge of the alleged commission of the offence by the appellant, in the opinion of this Court, casts serious doubts on the veracity of the case of the prosecution.

29. A further complication arises from the inconsistency in the prosecution's narrative. In her initial statement under Section 164 of the CrPC, the prosecutrix alleged that the appellant had removed her clothes and touched his genitals to her private parts. However, during the course of her examination, she stated since it was dark, she could not tell whether the appellant had removed his clothes or not.

30. At this stage, this Court also deems to look into the improbability of the allegations made against the appellant. As per the testimony of the prosecutrix herself, the incident occurred in her room and she stated that "*On that night, I and my four sisters were also sleeping with us.*" She further voluntarily stated that "*My four sisters were sleeping on one side of accused and I was sleeping on other side*



of accused.” She further stated that the appellant had threatened her from disclosing about the events to anyone. From a perusal of the same, in the opinion of this Court, it is highly improbable for the appellant to have committed the alleged incident and also threatened the prosecutrix of dire consequences without the same being noticed by any other person present in the same room.

31. Another aspect that brings the case of the prosecution under a shadow is that as per the testimony of PW-1/mother of the prosecutrix, the prosecutrix used to sleep with her bua (wife of the appellant) and the appellant whenever they came to her house or whenever the prosecutrix went to their house. Contrarily, the prosecutrix stated that on the night of the incident, she was sleeping in the same room as the appellant and stated that “*on that night, I and my four sisters were also sleeping with us*”. Even if this Court were to give credence and primacy to the version of the victim and accept the allegations against the appellant at face value, it is peculiar why the prosecution failed to examine the children sleeping in the room along with the prosecutrix and appellant on the night when the alleged incident was committed. Further, even the wife of the appellant was never cited as a witness to corroborate the case of the prosecution. The same, in the opinion of this Court, impinges on the credibility of the case of the prosecution.

32. Much emphasis has been laid by the State on the presumption of commission of offence raised against the appellant in accordance with Section 29 of the POCSO Act. The same, in the opinion of this Court,



does not aid the case of the prosecution. It is pertinent to note that while Section 29 of the POCSO Act provides for a presumption as to the commission of certain offences, the said presumption is not absolute in nature and only comes into play once the prosecution establishes the foundational facts [Ref. *Altaf Ahmed v. State (GNCTD of Delhi)*: 2020 SCC OnLine Del 1938]. For this reason, in order to trigger the presumption, it is incumbent on the prosecution to lead evidence to prove the foundational facts. If the prosecution fails to do so, in the opinion of this Court, a negative burden cannot be thrust upon the shoulders of the accused to prove otherwise.

33. It is also relevant to note that the appellant has been convicted for the offences under Section 10 of the POCSO Act and Section 18 read with Section 6 of the POCSO Act and Section 506 of the IPC. The learned counsel for the appellant contended that the allegations even otherwise, at the highest, only relate to the offence under Section 7 of the POCSO Act which lays down the provision for sexual assault and not Sections 4/6 which deal with penetrative/aggravated penetrative sexual assault. Before dealing with the said contention, this Court deems it apposite to clarify that considering the discrepancies and infirmities in the prosecution's case, this Court is of the opinion that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. Without prejudice to the said finding, it is pertinent to note that the allegations against the appellant pertain to the appellant touching his genitals to the prosecutrix's private parts. While the prosecution has failed to establish its case



against the appellant beyond reasonable doubt, even if the allegations against the appellant were to be taken at the highest, the alleged act of merely touching the appellant's genitals to the prosecutrix's private part could not have amounted to penetrative/aggravated penetrative sexual assault within the meaning of Section 4/6 of the POCSO Act. For the offence of penetrative sexual assault to have been attracted, it is imperative for the accused to have penetrated his penis, inserted any object or a part of his body, manipulated any part of the body of the child so as to cause penetration or applied his mouth to the penis, vagina, anus or urethra of the child. However, as noted above the allegations against the appellant pertain to the appellant touching his genitals to the victim's private part which does not fall within the meaning of penetrative sexual assault under Section 4 of the POCSO Act.

Conclusion

34. The solemn duty of a criminal court is not to convict merely because an allegation is made, but to convict only when the allegation is proven beyond reasonable doubt.

35. It is a settled principle that when two views are possible— one pointing to the guilt of the accused and the other towards his innocence — the view favourable to the accused must be adopted. This principle is not a technical rule; it is rooted in the foundational notion that no person shall be deprived of liberty except through proof that satisfies the judicial conscience.



36. In the light of the foregoing, this Court is of the view that the conviction recorded by the learned Trial Court is unsustainable. The evidence led by the prosecution does not meet the standard of proof required in a case of this nature. The benefit of doubt must and does go to the appellant.

37. Accordingly, the impugned judgment and impugned order on sentence are set aside.

38. The appellant is acquitted of all charges. He shall be released forthwith, if not required in any other case. The bail bond, if furnished, stands discharged.

39. The appeal is allowed and disposed of in the aforesaid terms. Pending application also stands disposed of.

40. A copy of this order be sent to the concerned Jail Superintendent for necessary compliance.

AMIT MAHAJAN, J

JUNE 26, 2025