



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

Date of reserving Judgment: 13th July, 2026

Date of Decision: 16th July, 2026

IN THE MATTER OF:

+ CRL.A. 739/2012 & CRL.M.(BAIL) 1247/2012

PANKAJ KUMAR

.....Appellant

Through: Mr. M.K. Khanna, Mr. Aryan Kumar
and Ms. Khadija Khan, Advs.

versus

STATE

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for
the State with SI Sonia Gautam, PS
Defence Colony.
Ms. Astha (DHCLSC) with Ms.
Megha Singh, Adv. for prosecutrix.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Position and placement of an individual in the social and economic ladder primarily and with other parameters empowering and strengthening and conversely disempowering, weakening, undermining, belittling or restricting are the factors, which determine how vulnerable and susceptible one is to the excessive discrimination, exploitation and at times to the crimes prevalent in the society. The vulnerability and susceptibility of an individual may stem from different kinds of weaknesses. Age, gender and placement in the society are certain examples which may determine the extent of such vulnerability and susceptibility to various disadvantages. Education,



enlightenment and awareness are some of the tools through which this vulnerability could be contained, fought to a great extent, overcome. But the ground realities are very harsh and were historically also, loaded against the weak persons and more or less so is the factual position in the contemporary society notwithstanding the awareness and empowerment which has come due to education, awareness, democracy and the concept of Equality, Liberty and Fraternity, borrowed from the French Revolution and incorporated in most of the democratic societies, including India where the Constitution of India provides, upholds and secures all these concepts for its citizens without any discrimination. In the instant case, the vulnerability of the victim is evident on account of age, gender and economic condition of the family, apart from other factors stemming out of these factors.

2. It so happened that on 30.08.2010 at about 7:00 PM, a minor female child of about 7 years of age was sexually assaulted on the terrace in the vicinity of Servant Quarter No. 3-A, HUDCO Place, near Ansal Plaza, New Delhi. Infact, the children from the neighborhood were playing outside in the courtyard, but when the victim did not return, her mother living in the servant quarter went out to look for her and then it was revealed that the victim child was sexually assaulted by the Appellant herein. The matter was reported to the police and thereafter the registration of the FIR, arrest of the Appellant, medical examination and other incidentals of investigation were carried out. A chargesheet was filed against the Appellant herein containing allegations of offence U/s 376/511 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). To the charge under Section 376 read with Section 511 IPC, the Appellant pleaded not guilty. The case of the prosecution, with the aid of 9 witnesses, succeeded and the Appellant was held guilty, convicted and sentenced to Rigorous Imprisonment ('RI') for a



period of two years with fine of Rs. 5,000/- and in default of payment of fine, he was to further undergo Simple Imprisonment ('SI') for three months, under Section 376 read with Section 511 IPC.

3. Through the instant appeal, the judgment dated 30.05.2012 has been impugned and the Order on Sentence dated 08.06.2012 has also been consequently assailed.

4. Learned counsel for the Appellant has primarily focused his arguments to the testimony of the mother and maternal grandmother of the victim, who both have turned hostile and did not support the prosecution's case, coupled with the fact that the evidence on record does not clearly brings the offence into the realm and domain of even the attempt to commit rape as the so called acts fell short of even the attempt. And in any case, it is submitted that there is no corroboration as neither the MLC Ex. PW-8/A nor the FSL reports Ex. PW-9/K and Ex. PW-9/L are able to lend any credence or substantiate the allegations. It is submitted that the Appellant, at the most, can be held responsible for an offence under Section 354 IPC that too when the evidence is stretched beyond its potential and capacity. Learned counsel for the Appellant has further elaborated his contention that not only the mother and maternal grandmother have not supported the case of the prosecution, but the victim too has given three different versions and thus, rendered herself and her testimony unworthy of credit, doubtful and thus, not credible enough to record a finding against the Appellant.

5. Learned Additional Public Prosecutor, on the other hand, while countering the contentions raised on behalf of the Appellant, stood by the impugned judgment by asserting that the evidence is to be appreciated comprehensively and its totality in order to draw an inference, whatever it may be. And in the instant case, he emphasized that total and cumulative



effect of the evidence brought on record by the prosecution, unequivocally, unquestionably and unmistakably points out towards the complicity of the Appellant in the offence, notwithstanding the fact that mother and maternal grandmother of the victim have not come up to the expectations of the prosecution's case, the way it was expected from them. It is contended that the testimony of the victim and the admission of the Appellant himself under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), is potent enough to sustain the impugned judgment and the findings recorded against the Appellant.

6. Although, there is no term as '*hostile witness*' in the entire Criminal Procedure Code or in the Indian Evidence Act, nevertheless it definitely connotes and classifies a witness, which primarily means that the witness in question has not stood by the case of the prosecution that is why he or she has been considered a person, who is not supportive of the case of the prosecution, rather hostile to it. However, witness is a witness and the testimony can nevertheless be looked into even when the witness is a so called hostile witness whenever some corroborative part is there. In this context, reference can be made to the judgment in the case titled as ***K.P. Tamilmaran v. State by Deputy Superintendent of Police***, 2025 SCC OnLine SC 958:

*"36. It is though trite and much overstated but the maxim "*falsus in uno, falsus in omnibus*", is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record. This court in *Bhajju v. State of Madhya Pradesh*, (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:*

"36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it



supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence...”

If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given”

7. In view of these facts, it is clear that testimony of the mother of the victim examined as PW-2 and maternal grandmother of the victim examined as PW-5 cannot only be looked into but read and relied upon in evidence, so far as it has an element of truth and supported and corroborated by independent evidence. As such, the testimony of both these witnesses is not only admissible but acceptable as well on the aforesaid parameters.

8. The contention of learned counsel for the Appellant is correct to some extent that these two witnesses i.e. PW-2 and PW-5 have not come upto the expectations of the prosecution, but then needs to be analyzed, in the light of what was stated at the stage of investigation. Nevertheless both of them have at least stated about the incident in one way or the other. PW-5 has stated only two relevant facts that she came to know about the incident with her granddaughter and that the police had arrived on the fateful day at the scene and took away the Appellant, whom she had identified during her deposition before the Court.



9. Notwithstanding the cross-examination conducted by the learned Additional Public Prosecutor nothing much could be extracted from PW-5. However, testimony of PW-2 stands out on a different footing as compared to the testimony of her mother PW-5. The mother of the victim, after all being a mother, deposed, which has a clear indication that her daughter was subjected to sexual assault by the Appellant, albeit intricate details are not there, which otherwise should have been there as was there when her statement about the incident was recorded by the police on 30.08.2010.

10. The mother of the victim PW-2 has stood by her complaint/statement which formed the basis of registration of the FIR i.e. Ex. PW-2/A. However, she did not depose anything else except identifying the Appellant as the person against whom the complaint was lodged. Learned Additional Public Prosecutor tried to extract the truth, according to the prosecution, by putting leading questions to PW-2 and has been able to bring out certain important and relevant facts. Although, the substantial contents of her statement Ex. PW-2/A were disowned by her. If these things as were reported in terms of Ex. PW-2/A, were not there, then what for PW-2 accompanied the police to the hospital for medical examination of the victim. This brings the MLC in picture, which reflects that it was prepared on 30.08.2010 at about 9:50 PM. It is pertinent to mention here that the incident took place at about 7:00 PM on 30.08.2010. The history/particulars of injuries or symptoms, as told by the mother of the victim to the doctor and noted by the doctor, not only clearly reflects the time of incident, but the reason also why the victim was brought to the hospital and that leaves no doubt about involvement of the Appellant whose name has also come in the details recorded by the doctor. In addition to that, the observations made by the doctor in the MLC are very relevant. It reflects that multiple white stains i.e. seminal stains were seen on



the frock and the undergarments of the child victim. Hymen tear was not noticed nor any bleeding or any injury was noticed by the doctor, but then she found white discharge in labial folds and fourchette with mild moderate redness of labia majora. This clearly goes hand in hand with the complaint made by the victim to her mother and her mother in turn reporting it to the police in her complaint Ex. PW-2/A. In addition to that, the MLC also records that the undergarments, frock and clothes were kept for the examination and vulva smear was taken from labia for further forensic examination.

11. It clearly reflects that the witness i.e. PW-2 and for that matter PW-5 both have been won over and this could be nothing but stemming out of the vulnerability of the victim and her family. One can easily visualize this situation where a family is living in the servant quarter, belongs to a minority community and despite such an incident taking place, the father of victim is nowhere to be found or seen. All these reflect that these people were highly vulnerable to all kinds of influences.

12. In any case, the testimony of the victim is of utmost importance and it is to be appreciated by keeping in mind that the victim happens to be a seven year old female child, who has undergone a kind of trauma at the hands of a neighbour, with whom she was seemingly friendly and used to play with the other children of the vicinity. The impact of the alleged act on the child can be easily visualized as nothing but devastating, affecting her psychologically as well. And to talk about it again and again would be reliving the trauma. She was in a way guided or misguided by her own mother to not to reveal the truth further compounds her trauma and puzzles her with shame. The child also gets confused by the attempts to tutor her. Nevertheless, if the testimony is appreciated objectively and in conjunction with the other



material on record, then like oil comes on the surface of water, so emerges the truth from the shadows of adverse circumstances and influence, unfortunately created by victim's own mother. It is fully potent and capable to seal the fate of the Appellant. The victim PW-4 was examined by the learned Trial Court and after initially satisfying itself that the witness is in a comfortable, mental and psychological frame, proceeded to examine the witness. In the examination-in-chief and the cross-examination, the fact that the witness was under influence and won over, as can be seen in the initial part of the testimony, but when the court steps in with a Court Question then the testimony further proceeds, and the witness seemingly tells the correct fact, which initially were there in the complaint and form the genesis of the FIR. Again, in cross-examination, she gets influenced by the suggestions given by the learned counsel for the Appellant. This confusion gets clarified in the re-examination, carried out by learned Additional Public Prosecutor, which is reproduced herein below:

“At this stage, Ld. Addl. PP wants to re-examine the witness as she has admitted all the suggestions of the Ld. Counsel contrary to whatever she had stated in the chief. Heard allowed. XXXX by Sh. Manoj Chaudhary, Ld. Addl. PP for State.

*It is correct that I come with my mother every time and I have come with her today also. She had told me what I have to say in the court today. It is correct that she told me to say that my frock had spoilt as I had fallen in the keechad. It is correct that my mother had told me that I have to state in the court that Pankaj bhaiya had not done anything to me. What I had stated to the aunty inside the room on earlier occasion about Pankaj bhaiya about **taken off his underwear and jumping on me was a truth.**”*

13. The victim being a child of about 9 years when she was examined, was still innocent, untouched and unspoilt by the vices of the world and came up with the correct answer. It can be seen that she had deposed, as was



guided by her mother which all are in favour of the Appellant, but then in the concluding lines, she not only spilled the beans with regard to her, and most likely her mother and grandmother also, being won over, and deposed the truth also by standing alongwith the facts she deposed/stated before the learned Magistrate, who had recorded her statement under Section 164 Cr.P.C.

14. In view of these facts and circumstances, it can very well be inferred that the incident of sexual assault was there, which can be seen not only in the statement of the victim, but her mother and the grandmother also. The MLC corroborates it further and the FSL reports Ex. PW-9/K and Ex. PW-9/L may not conclusively connect the Appellant with the semen which was found on the frock/undergarments of the victim, but the circumstances unequivocally and un-flinchingly points out towards one and the only conclusion that it was none else than the Appellant whose semen it was. The simple reason is that the incident took place at around 7:00 PM and the medical examination of the victim took place at around 9:50 PM. The intervening period was under some or the other kind of police presence and investigation and the child was in the care and custody of her mother and grandmother, leaving no scope for any kind of intervention by anybody else.

In addition to that there is a sort of admission on the part of the Appellant, who in his statement under Section 313 Cr.P.C., has tried to scrape through the situation by attempting to explain the presence of semen on the frock of the child victim by stating that at the relevant time, he was alone on the terrace and was masturbating when the child suddenly appeared out of nowhere and the semen which was lying on the roof, soiled her frock. This attempt to wriggle out of the situation becomes counter productive. There is no explanation as to how something which was lying on the floor,



got on the frock of the child victim and to top it all how that semen reached to the labia majora of the child victim. Thus, the circumstances clearly reflect about the complicity of the Appellant in the offence.

15. The contentions raised on behalf of the learned counsel for the Appellant is that the act on the part of the Appellant, if at all was there, would have fallen short of the act of rape as not even the penultimate act concerning with the rape was there. As such, the same cannot be brought into the scope within the ambit of even the attempt to commit rape. According to him, at the most, an offence under Section 354 IPC could be attributed to the Appellant. However, the facts tell a story contrary to what he has been trying to portray. It has come in evidence that the undergarment of the child was removed, the presence of semen on the labia majora indicates that the Appellant had also exposed himself and was ready to penetrate, but for the fact that either the mother of the child came or something happened, which forced him to ejaculate before committing the actual act of rape. But otherwise, all that could have been done, was almost done by him. Therefore, his acts cannot be kept within the precincts and confines of Section 354 IPC, rather it goes beyond and just fall short of the actual rape and therefore, the conclusion arrived at by the learned Trial Court in holding him guilty under Section 375 read with Section 511 IPC is perfectly in consonance with the evidence on record.

16. As such, the appeal, being devoid of any substance, deserves to be dismissed and accordingly, stands dismissed.

17. The Appellant is called upon to surrender forthwith in order to undergo the remaining sentence. He shall be entitled to the benefit of set off under Section 428 Cr.P.C.

18. Appeal stands disposed of accordingly.



19. Copy of the judgment be transmitted to the learned Trial Court and the concerned Jail Superintendent for information and necessary compliance.

VIMAL KUMAR YADAV, J

JULY 16, 2026/akc/ah/ij