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

Date of decision: 04.03.2025

+ **CRL.A. 192/2020**

X

.....Appellant

Through: Pankaj Gupta, Adv.

versus

STATE & ANR.

.....Respondent

Through: Mr. Sunil Kumar Gautam, APP
SI Neelam, PS Swaroop Nagar
Mr. M.K. Srivastava, Adv. for R2

**CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**

: **JASMEET SINGH, J (ORAL)**

1. This is an appeal filed against impugned judgment dated 26.11.2019 passed in SC No. 57577/2016 by the learned ASJ(North)-06: Special Court: POCSO, Rohini Courts, Delhi, wherein the learned Trial Court acquitted the respondent No. 2 for the offences under section 354 of IPC and 8 POCSO Act.
2. Since the appellant was a minor at the time of the incident, it is directed that the name of the appellant appearing in the paper book be redacted.
3. Brief facts of the case are that the respondent No. 2 is the biological father of the appellant. It is alleged that her father used to do obscene acts with her daughter/victim that had not been reported by her to anyone.



Due to the said acts, she had shifted with her mother to her maternal grandparents house. In the morning of 19.10.2013, she along with her mother and her mama (maternal uncle) came to the house of her father and on that day also, respondent No. 2 touched her breast. Hence, the present FIR.

4. After completion of investigation, chargesheet was filed and charges were framed against the respondent No. 2 under section 8 of POCSO and section 354 of IPC.
5. The prosecution examined total 9 witnesses to prove their case and 1 witness by the respondent No. 2.
6. Learned Trial Court, after recording the evidence, vide impugned judgment dated 26.11.2019 acquitted the respondent No. 2 for the offences under section 8 of POCSO and section 354 of IPC.
7. Mr. Gupta, learned counsel appearing on behalf of the appellant states that the FIR should have been registered under Section 10 of POCSO Act instead of section 8 of POCSO Act in view of section 9(n) of the POCSO Act, 2012, which is punishable for “aggravated sexual assault” when the same has been committed as the victim is the real daughter of the respondent No. 2.
8. He further states that the learned Trial Court failed to appreciate the testimony of PW2 (victim) which is of sterling quality and is duly supported by the testimony of PW4 (mother). Thus, the respondent No. 2 should have been convicted for the offences alleged
9. It is true that in the cases of sexual offences, the sole testimony of the prosecutrix can form the basis of the conviction of the accused. However, the Courts have to be extremely careful while examining the



sole testimony of the prosecutrix as cautioned in the case of *Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92*. In this case, the Hon'ble Supreme Court has observed that the accused can be convicted solely on the testimony of the prosecutrix, if the same is inspiring confidence of the Court. Since both the prosecutrix as well as the accused have a right for a fair trial, thus, if the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence, such as, medical evidence or the surrounding circumstances. The relevant para is extracted below:-

“9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

10. On perusing the record, FIR was registered on 19.10.2013 and thereafter chargesheet was filed and learned Trial Court, *vide* order dated 20.02.2014 framed charges against the respondent No. 2, neither the appellant challenged the said order nor the appellant had taken the plea before the learned Trial Court. Even assuming that the charges were wrongly framed against the respondent No. 2 and it should have been under section 10 of POCSO Act, even then, the learned Trial Court has



categorically given a finding that the alleged incidents has never taken place.

11. The testimony of PW-2, i.e. the victim, reads as under:-

“During our stay at Najafgarh , my mother was pregnant and my father used to look after us. At that time, I was of about 7 years. While I was sleeping with my father, he did gandi harkat with me. He touched my private part i.e. vagina. It happened many times. Even while bathing me, he used to fondle my private parts.

After shifting to Swaroop Nagar, he often used to touch my breast in the morning hours. At that time I was in 3rd or 4th standard. I did not like this. When I objected the same, he told me that, every parent love their children in the same way. I tried to inform the same to my mother, but my father was able to prevail upon my mother saying that, how can he do this and that I was not learning the right things in school and my mother rather scolded me. Even thereafter my father used to do obscene acts with me.

Once, while my mother had gone to her parents house, my father tried to kiss me on my neck. This he had done many times. My mother was not knowing about the same. My father used to say that, I should not disclose about the same to anyone, as it is not to be told to anyone.

When I entered in teenage I learnt in school that this type of activities is not proper. I was ashamed that such type of things were going in our house and it was happening with me. Once he tried to hold my hand, but I warned him that I would inform mother. He left me and assured me that he would not repeat this act. For few days, he did not do any such act.

After some days, while we all were sleeping in one room, my father put his hand on my breast. I felt uneasy and when I got,



he immediately took turn towards the other side. Thereafter, I sat down as I was feeling uneasy and decided to inform to my mother.

On the next day, when I returned from my school, I was feeling depressed. My mother asked me the reason as to why I was not looking normal. When she insisted, I disclosed to her about all the acts of the father. When my mother confronted him about the same, he apologized for his acts. On this issue, there was lot of quarrel between my parents. Ultimately my mother decided to live separately from him. My father asked for one opportunity stating that he would not repeat these acts and hence, my mother decided to stay with him. For, some months, he was calm, but subsequently, he started mentally torturing me. I used to see my mother crying, when I used to come back from my school. He was torturing my mother on small issues and also on the issue of my telling about his acts to her. Repeatedly, he also quarreled with me on this issue. This came to this extent that my father, openly threatened us that, he would do the same things openly, which he has been doing all alone in a hidden manner. We were frightened very much. My mother took us i.e. the children to the house of her parents at Nangloi.

When my mother disclosed about the said acts of my father and the reason of her coming to their house, my maternal grand parents became furious. They spoke with my father in the presence of my grandparents. My father suggested that in such circumstances, I should be either married or asked to stay in the house of my maternal grandparents.

We have been staying at our maternal grand parents house for about more than a month and hence, my mother decided to speak with my father on this issue and we went to his house one day, but he was not available.

On 19th October 2013, we i.e. my mother and her children



including me again went to Swaroop Nagar house of my father with my maternal grand parents and maternal uncle, my father started threatening us and stated that he would not allow us to stay there. On that day also, my father tried to do misbehave with me. Then, I made a call to the police. Police came there. We went to the police station and I was taken to the hospital for medical examination.”

12. Further, the relevant portion of the testimony of PW-4 is also extracted below:-

“About one year back, my husband had committed indecent act i.e. sexual harassment with my daughter Gargi and when my daughter Gargi informed me, I talked to my husband and he apologized his mistake and assured me he will not commit said act in future. But, the behaviour of my husband has changed after the complaint towards me and my children. As a result I alongwith my all children went to my parental house situated at Inder Enclave, Nangloi, Delhi. I resided there for about one month and one day when my husband made a call to me and told me that, he has no objection even if I live separately.

Thereafter, on 19.10.2013, I alongwith my parents, two brother and my daughter Gargi came to Swaroop Nagar to talk to my husband. On that day also my husband misbehaved with Gargi. He touched the chest of Gargi. Gargi informed the matter to the police. Police came there and took all of us to the police station. Police recorded statement of my daughter Gargi in the presence of an NGO official, and registered the case. Gargi was counselled by the NGO official. My daughter was medically examined from BJRM Hospital, Jahangirpuri, Police arrested my husband i.e. accused Akhilesh Kumar Tiwari. Police also got statement recorded of my daughter before the Magistrate u/s. 164 Cr.P.C. Police investigated me and my statement was also



recorded at the police station.....

On previous occasions I had not reported the matter to the police or to any other authority because we are afraid of defamation and I realised that my husband would mend his ways. When my daughter was studying in 3rd or 4th class, she tried to inform me about the indecent act of her father, but at the same time, my husband had counter attacked upon Gargi and inspite of saying anything to my husband, I pacified my daughter thinking that she was under wrong impression.

On one occasion, I had gone to my parents house as my brother met with an accident and I remained there for few days and during that period my daughter requested me to come back and when I returned , I came to know that in my absence, my husband has sexually assaulted my daughter Gargi. Hence, I came to know that, my daughter Gargi was correct and my husband was sexually assaulting her. ”

13. Learned Trial Court, in the impugned judgment, concluded as under:-

“16) This court has to first ensure that the evidence of the victim and her mother is reliable or not. In her deposition, the victim narrated about many incidents of inappropriate touching right from the age of 7 years. She also deposed that on an earlier occasion, she informed about the said act to her mother when she was in 3rd and 4th standard but her mother in turn scolded her. PW4 deposed about a subsequent incident when the accused allegedly apologized his mistake. It is pertinent to note that the mother of the victim conclusively came to know about the alleged acts of the accused and after 3-4 months thereof, she shifted to her maternal home. Not only this, all the facts were informed by the mother of the victim to her parents and brother. Despite this, no complaint was made to the police. After more than one month of stay at Nangloi, the alleged incident of 19.10.2013 occurred. I am of the view that there is a delay in reporting the matter to the



police. Such delay could not be satisfactorily explained by the prosecution.

17) Now I will examine the incident of 19.10.2013. On the said day, the victim was accompanied by her mother, maternal grand parents and maternal uncle. She stated in her complaint that on that day also, accused touched her breast. It seems highly improbable that in presence of so many persons and in such acrimonious atmosphere, the accused would dare to much less want to touch the breast of the victim. The allegations suffer from embellishment & exaggerations and the incident of 19.10.2013 seems doubtful.

18) It is also pertinent to note that for more than one month, the victim party had been residing at Nangloi. There was no occasion or urgency to come to the house of the accused at Swaroop Nagar before sunrise. Such facts embolden the arguments of the accused that the victim party deliberately chose the early hours of the day to rule out the presence of any neighbour in order to give them a chance to make false allegations against the accused. The incident of 19.10.2013 has become all the more shrouded with suspicion.

19) In the complaint Ex. DW 1/A, the accused alleged that on 02.10.2013, his wife and his in-laws came to his house and started quarreling. They also stated that the accused should send his parents to the village and they also demanded that the accused should transfer the Swaroop Nagar house in the name of PWA. The accused expressed his threat from the victim party. This complaint shows that problems had started boiling between the husband -wife. It cannot be ruled out that the husband-wife dispute has been given a different spin. Further doubts have been created in the prosecution story.”

- 14.** The foremost question for me to consider is whether the testimony of PW-2 reproduced above can be solely relied upon to convict the respondent No. 2 for the alleged offences. In the present case, what has



weighed with the learned Trial Court and in my view correctly, is that the alleged incident of inappropriate touching is alleged to have started when the victim was aged about 7 years, i.e. about 3rd and 4th standard. Despite the prosecutrix telling about the incident to her mother, the mother did not initiate any action against the respondent No. 2 at that point of time.

- 15.** In fact, the victim alongwith her mother shifted to her toher maternal grandparents house but no complaint was made to the police. On 19.10.2023, the victim accompanied by her mother, maternal grandparent and maternal uncle visited the house of the respondent No. 2 wherein respondent No. 2 has been alleged to touch the victim inappropriately. Learned Trial Court has correctly come to a finding that it would be highly improbable that in the presence of so many people, the respondent No. 2 would try and touch the victim inappropriately.
- 16.** Additionally, the atmosphere between the petitioner, the mother of the petitioner and respondent No. 2 was already strained and acrimonious. Further, the learned Trial Court also came to the conclusion that the mother of the petitioner was staying with the petitioner at her maternal house in Nangloi and there was no occasion for her as well as the petitioner to come to the house of the respondent No. 2 before sunrise. No satisfactory reason has been given as to why the petitioner or her mother along with her relatives would visit the house of the respondent No. 2 during early hours of the day. The fact that the mother of the petitioner and the respondent No. 2 are having strained matrimonial relationship and proceedings are pending in the matrimonial Court is also an admitted fact.



17. For the said reasons, I am of the view that the testimony of the petitioner as well as her mother do not inspire confidence and are not of sterling quality.
18. In order to bring home the guilt of the accused/respondent No. 2, the evidence should be free from all discrepancies and the prosecution is required to prove its case beyond reasonable doubt. In the present case, the same has not been done and to my mind, the learned Trial Court has correctly granted the benefit of doubt to the respondent No. 2.
19. In view of the foregoing reasons, I find no infirmity in the impugned judgment dated 26.11.2019 passed in SC No. 57577/2016 by the learned ASJ (North)-06: Special Court: POCSO, Rohini Courts, Delhi. Hence, the present appeal is dismissed accordingly.

JASMEET SINGH, J

MARCH 4, 2025/sp

(Corrected and released on 11.03.2025)

Click here to check corrigendum, if any