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

**Date of decision: 11.03.2025**

+ **CRL.L.P. 446/2022 & CRL.M.A. 18500/2022**  
STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP

versus

FIRASUL NABI

.....Respondent

Through:

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

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

1. This is a petition seeking leave to appeal against the judgment dated 10.01.2020 passed by learned ASJ-06, (POCSO Act), South-East, Saket, New Delhi in SC 1883/16 titled as "*State vs. Firasul Nabi*" arising out of FIR No. 151/13 wherein the learned Trial Court acquitted the respondent for the offences under section 341/392/354/506 of IPC and section 12 of POCSO Act.

2. Brief facts are that on 18.04.2013 at about 06.00 AM on way to school Sarvodya Kanya Vidyalaya, Sarita Vihar, respondent wrongfully restrained prosecutrix (a minor girl aged around 15 years) by stopping her from proceeding and thereafter the respondent committed robbery of gold ear-ring which she was wearing after giving threats to the prosecutrix. It is



further alleged that the respondent also committed sexual harassment with sexual intent with the prosecutrix by catching hold of her hand, making obscene gestures and passing obscene comments. The allegations against the respondent are also that on the above-said date at about 10.00 PM in the night at B-500 Makki Masjid, Madanpur Khadar, New Delhi, the respondent criminally intimidated the prosecutrix with dire consequences if she would report the matter to the police. Hence the FIR.

3. After completion of investigation, a chargesheet was filed against the respondent and the charges were framed under section 341/392/354/506 of IPC and section 12 of POCSO Act on 17.07.2015.

4. The prosecution examined total 6 witnesses to prove their case and the respondent examined 2 witnesses.

5. Learned Trial Court, after analysing the evidence and material placed on record, acquitted the respondent for the said offences.

6. Mr. Singh, learned APP states that in the present case the testimony of the prosecutrix is of sterling quality and the same has not been appreciated by the learned Trial Court in its true perspective. He further states that the statement of the prosecutrix was recorded on 30.07.2016 i.e. after a gap of 3 years and minor discrepancies needed to be ignored. The testimony of PW1 is further corroborated with the testimony of the father of the prosecutrix who was examined as PW2 as well as PW3 i.e. mother of the prosecutrix.

7. Lastly, he states that the prosecutrix was a minor and the offences under POCSO Act needs to be strictly dealt with. The presumption under section 29 of POCSO has not been discharged by the respondent.

8. 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.”*

9. For the sake of perusal, the testimony of the prosecutrix i.e. PW1 is extracted below:-

*“When I was studying in class 10<sup>th</sup> on 18.04.2013 I made a complaint to the police. One boy namely Firasul Nabi was harassing me for the last one month of day, of my complaint. He used to meet me in the way of my school with*



*his friends and asked me to do as he desires otherwise he will eliminate my family members. On 18.04.2013 at about 06.00AM when I was going to my school. The said boy came on motorcycle with his friend and misbehaved me asking to sit in Gaadi otherwise he will kill me. The accused removed my gold kundals from my ears while his friend caught hold my hands. He kissed me on my cheeks and pressed my breasts. I started crying they fled from there in the gaadi stating that if I say something to anybody he will kill me. I returned to my home but did not tell the incident to anyone under the fear. On the same day in the night at 10:00 PM Firasul came with his brother Saddam came to our home and started beatings with me and my father. I was slapped and my father was pushed. They threatened that if we make the complaint to the police they will kill my father. On the next day my father made complaint to the police but police did not pay any heed on the complaint. Then we made call to Women Help Line upon which our case was registered.... After registration of the case someone came to our house and put pressure on my father to take back the case and to compromise the matter we have to face the consequences. I was constantly pressurized on behalf of accused.....”*

**(Emphasis added)**

**10.** In cross examination, the prosecutrix stated as under:-

*“The distance between the place of incident dated 18.04.2013 and the house of accused is about 15/20 minutes*



*of walking. The distance between my house and the house of accused was three/four street. I was knowing Firasul since my class 9<sup>th</sup> when we came to that area to live. I do not know the name of village of Firasul so I cannot tell whether his village is situated near to my village or not. In the month of January, 2013 I was not having any mobile. I did not send any Happy New year Message to Firasul on 01.01.2013. I never talked with Firasul on telephone. I can identify my voice after hearing the recording if any. It is correct that there were visiting terms between my parents and the parents of Firasul. It Is wrong to suggest that there was quarrel between my sister Shabnam and sister of accused 15 days prior to 18.04.2013. I do not know whether there was a meeting of residence of locality in relation to any quarrel. (Vol. A meeting was held prior to registration of this case in respect of this incident). That meeting was held at the premises of a dealer Kapil. I do not know who were present in that meeting as I was not present in that meeting. My father told me about that meeting. As my father was asked to take a decision by the meeting members which was not acceptable to my father and thereafter complaint was made. I have never visited village Sagarpur District Rampur U.P. It is wrong to suggest that I had visited Sagarpur District Rampur U.P and I photographed myself by standing in front of house of Firasul.*



*My school was situated at about 50 minutes walking distance from my house. No girl from that locality was studying in my school. (Vol. I used to go with my father on his bike to the school but on the day of incident there was a fault in the bike so I was going by foot). Sometimes I used to go to the school through auto. The auto fare from jalebi chowk to my school was Rs.10/- on sharing basis. On the left side of way to school from my house many houses were built up. PS Jaitpur is also situated in that way. Jungle is also on that way. The place of incident is before Makki Masjid and now is known as Madanpur Khadar III. Near the place of incident now house was constructed at that time and it was plane field. I did not point out the place of incident by visiting along with Police. (Vol. I was asked to make Nisandehi of the place at my house after two month of registration of the case). I did not disclose the incident of harassment made by accused for one month prior to 18.04.2013 to anybody in my family as the accused threatened me not to disclose it to anybody. I disclosed this fact to the police: The statement recorded by the police was not read over to me. Out of the document which were got signed from me by the police one was blank. I told about the kiss and pressing of breasts by the accused to SI Priyanka. (Confronted with the statement Ex.PWI/A wherein it is no so recorded). I told in my statement to the police that place of incident is a forest/jungle area. I told the police in my*



*statement that Firasul asked me to sit in the gaadi otherwise he will kill me. (Confronted with the statement Ex.PW/A wherein it is no so recorded). I told the police in my statement that Firasul came there in a gaadi. I cannot tell the make of that gaadi but it was like a motorcycle. I told to the police in my statement that Firasul came there on the motorcycle. (Confronted with the statement Ex.PW/A wherein it is no so recorded).*

*For the first time I disclosed the incident of harassment to my parents on the night of 18.04.2013 when Firasul came our house with his brother. It was disclosed when he went from our house after slapping me. In the night no report was made to the police. At that time we all the family members were present in the house. My father and mother have mobile phones. On the next day in noon time we went to the police to lodge the complaint. I was accompanied by my parents, my bua and one neighbourer to the police station. I made oral complaint to the police and it was written by a male police official. I cannot tell the name of that police official. It was 19.04.2013.”*

**11.** In the present case, when the complaint was made to the police by the prosecutrix, it was stated that the respondent had taken away her gold earrings whereas in the statement recorded under section 164, the prosecutrix stated that her earrings were snatched by the friend of the respondent whom she did not know. During the testimony, the prosecutrix improved her statement and stated that the respondent came on motorcycle



with his friend and misbehaved by asking to sit on the bike. She further deposed that it was the respondent who removed the gold earrings while his friend caught hold of her hands. She also stated that the respondent kissed her on her cheeks and pressed her breasts. However, the said facts are not mentioned in her complaint (Ex. PW1/A) or in her statement recorded under Section 164.

**12.** Furthermore, the prosecutrix in her testimony has stated that her school is situated at about 50 minutes walking distance from her house. She further states that she used to go with her father on his bike to the school, and on the day of the incident, she was walking to the school whereas the PW2 i.e. father of the prosecutrix has categorically stated that the distance from his house to school is 5 KM and by walking, it takes 15 mins.

**13.** The prosecutrix in her testimony has also stated that the harassment was caused by the respondent one month prior to 18.04.2013, but on account of his threats, she did not disclose it to anybody. However there is nothing in her complaint (Ex. PW1/A) or in her statement recorded under Section 164 to this effect.

**14.** On perusing the cross examination of the prosecutrix, the prosecutrix told about the kiss and pressing of breasts by the respondent to SI Priyanka but the same has not mentioned in the original complaint. The prosecutrix also told to the police that place of incident is a forest/jungle area and the respondent asked her to sit in the gaadi otherwise he will kill her also does not find mention in the original complaint. Further, the respondent coming on motorcycle is also not mentioned in the complaint.

**15.** PW2 in his testimony has stated that on the date of incident, his daughter came back to house at around 7/7:30 AM and narrated the incident



to her mother whereas the prosecutrix has nowhere stated that she returned home after the alleged incident. PW3 i.e. mother of the prosecutrix in her testimony has stated that her daughter was going to school at around 7 AM but she returned to home at around 8:30 AM and went to bed without telling anything despite her questioning.

**16.** There are also statements of the respondent witnesses who state that there was a money dispute between the father of the respondent and the father of the prosecutrix, wherein the father of the prosecutrix owed money to the respondent's father. The said dispute was also taken up before the Panchayat, wherein the father of the prosecutrix had assured that he would return the money in two-three days.

**17.** To my mind, the testimony of the prosecutrix suffers from various contradictions and improvements when compared with the original complaint, statement recorded under section 164, testimonies of PW2 and PW3. With these contradictions and improvements in the testimony of the prosecutrix, the allegations of harassing the prosecutrix one month prior to the date of incident on 18.04.2013 or the respondent making obscene gestures and passing obscene comments or holding the hand of prosecutrix on 18.04. 2013 as well as in respect of snatching of the gold earrings by the respondent or his friend or of stopping the prosecutrix from proceeding are not proved beyond reasonable doubt.

**18.** The said contradictions and improvements have been duly appreciated by the learned Trial Court in the impugned judgment and the relevant portion of the impugned judgment is extracted below:-

*“31. As noticed earlier, the prosecutrix had not stated in her complaint, Ex. PW~1/A as well as in her statement recorded*



*under section 164 Cr.P.C. about the fact of the accused having kissed her on her cheeks and pressed her breasts or that she started crying and they fled from there in the gaadi stating that if she would say something to anybody, they would kill her. In her cross examination she again said that she had told about the kiss and pressing of breast by the accused to IO but when she was confronted with her complaint Ex. PW-1/A, it was not so recorded. Further prosecutrix also stated that she had told in her statement to the police that place of incident is a forest/jungle area and that accused told her and that she also told to the police that accused asked her to sit in the gaadi otherwise he would kill her. When she was confronted with the complaint Ex. PW-1/A, it was not so recorded. The prosecutrix herself admitted that she was going to her school generally with her father by his motorcycle. She had also admitted that on the left side of way to school from her house, many houses were built up and that PS Jaitpur is also located in that way. Thus if any such alleged incident would have taken place that could not been possible for a period of one month and the prosecutrix had the opportunity to report the matter of the alleged incident of 18.04.2013 in the police station falling on her way or could have raised an alarm while passing by foot on her way where many houses were built up.*



32. *Father of the prosecutrix was examined as PW-2 and he had deposed that in the year 2013, his daughter was going to her school at around 6 AM however she came back to house at around 7/7:30 AM. She narrated about the incident to her mother. However the prosecutrix has nowhere stated that she had returned to her home after the said alleged incident. Further she had specifically deposed that she did not tell anyone about the incident after she returned back to home while PW-2 has stated that she narrated about the incident to her mother.*

33. *The mother of the prosecutrix has been examined as PW-3. She has deposed that around 4 years back her daughter was going to school at around 7 AM, however returned to home at around 8:30 AM and went to bed without saying anything despite her questioning. She further deposed that in the evening after the accused and his 2 brothers had come to their house and had quarrelled with them, her daughter thereafter told her about her earrings having been taken away by the accused besides the incident of misbehaving with her by the brother of the accused Guffam. However in her deposition, PW-1 has nowhere stated that at the time of alleged incident of snatching of her earrings, the brother of accused Gulfam had accompanied the accused or had misbehaved with prosecutrix. The said submissions of PW-3 are again at variance with the deposition of PW-1 and PW-2.”*



**19.** For the said reasons, I am of the view that the statement of the prosecutrix is not of sterling quality and the prosecution has failed to prove its case beyond reasonable doubt and the learned Trial Court has correctly granted benefit of doubt to the respondent.

**20.** In view of the above, I find no reason to interfere in the impugned judgement, hence, the petition seeking leave to appeal is dismissed.

**21.** Consequently, the appeal has become infructuous and the same is disposed of.

**JASMEET SINGH, J**

**MARCH 11, 2025/PU**

*(corrected and released on 26.03.2025)*