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

% Reserved on : 30.07.2025
Pronounced on : 06.10.2025

\+ **CRL.A. 539/2022**

BANIYA@RAJU .....Petitioner
Through: Mr. Archit Upadhyay, Advocate (DHCLSC)

versus

STATE (GNCT OF DELHI .....Respondent
Through: Mr. Pradeep Gahalot, APP for State with Inspector Satbir Singh PS Jaitpur, Delhi
Mr. Faraz Maqbool, Ms. Sana Juneja, Ms. A. Sahitya Veena, Ms.Deepshikha, Advocates for prosecutrix

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted against the judgement of conviction dated 16.03.2022 and order on sentence dated 05.05.2022 passed by Additional Sessions Judge-06 (POCSO Court, South-East) Saket, New Delhi in the case arising out of FIR No. 516/2016 registered under Sections 376 IPC and Sections 4/6/8 of the POCSO Act at P.S. Jaitpur, Delhi.

Vide the impugned judgement, the appellant was convicted for the offence under Section 366/376 (2) (i) & (l) of IPC and under section 5 (k) & (m)/ 6 of POCSO Act.

Vide the order on sentence, the appellant was directed to undergo rigorous imprisonment for a period of 12 years for the offence punishable under Section 376 IPC, along with payment of a fine of Rs.1,000, in default of payment, he was directed to undergo simple imprisonment for a period of 1 month. He was further directed to undergo rigorous imprisonment for a period of 12 years for the offence punishable under Section 6 of POCSO, along with payment of a fine of Rs.1,000, in default of payment, he was directed to undergo simple imprisonment for a period of 1 month. Additionally, he was sentenced to undergo rigorous imprisonment for a period of 5 years for the offence punishable under Section 366 IPC, with a fine of Rs.1,000, in default thereof, to undergo simple imprisonment for 1 month. All the sentences were to run concurrently. The benefit of Section 428 Cr.P.C. was also to be given to the appellant.

2. The facts, in a nutshell as narrated in the complaint to the SHO, P.S. Jaitpur, Delhi by the victim's younger sister *'P'* (PW5), are that on 09.09.2016, around 6:00 PM, the victim *'K'* had left her home statedly to look for her father. When she did not return for some time, *'P'* sister (PW5), who was in seventh grade, became concerned and began searching for her. While looking around, she came upon a crowd gathered outside the appellant's house. Upon inquiring about her sister, she was told that the victim was locked inside the appellant's residence. *'P'* looked through the window and witnessed the appellant committing *'galat kaam'* with her sister whose clothes had been removed. She alongwith the other neighbours forced the door open and took the child victim and the appellant out of the room. The child victim narrated to her that when she had gone outside to search her father, the appellant took her from the street to his room, removed her

clothes and committed *'galat kaam'* with her. The appellant attempted to escape but was apprehended and beaten by the public. PW5 then helped her sister put on clothes. The FIR was lodged in the early hours of 10.09.2016 around 2.50 A.M.

3. The statement of child victim was recorded under Section 161 CrPC on 10.09.2016 wherein she stated that on 09.09.2016 her mother was not at home and her father had gone somewhere. When she went outside to look for him, she found the appellant standing in a *gali* around 6.00 pm. She asked him if her dad was at his home, to which the appellant said yes and took her there, holding her hand. He removed her and his clothes, laid down on her, pressed her chest and committed rape on her. He also put his penis in her mouth and put his spit on her vagina. Though she resisted, he did not let go. Then her sister 'P' got the door opened with help of public, whereafter the appellant was apprehended.

The statement of the child victim under Section 164 of the Cr.P.C. was recorded on 16.09.2016 which was on similar lines. She deposed as to the appellant taking her to his house, removing both their clothes, kissing her, laying down on top of her, pressing her chest, putting his spit on her vagina.

4. Charges were framed on 09.04.2018 under Sections 366/376(2)(i)(l) IPC and Section 5(k)(m) read with Section 6 of POCSO Act. In trial, a total of 17 witnesses were examined by the prosecution to prove its case. The child victim *'K'* was examined as PW-4. The sister of the victim *'P'* who was the complainant was examined as PW5. The rest of the witnesses were formal in nature who deposed as to the various aspects of investigation. In his statement recorded under Section 313 CrPC, the appellant claimed false

implication.

5. Learned Counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. He contends that there are material contradictions and improvements in the statements of the child victim, her mother and her sister. He submits that though the incident occurred at 6 pm, the PCR call was made at 8.23 pm. There is a delay of 2 and a half hours which has not been explained. He further submits that even though the witnesses stated as to the presence of public witnesses, they were not examined. Learned Counsel also objects to the age of the child victim. He submits that as per the *rukka* and the statement under Section 164 CrPC, the age of the victim was recorded as 13 years and it is not 11 years 8 months as was recorded by the Trial Court. It is further submitted that in FSL report, no semen was found on any of victim's clothes. Moreover, the MLC also does not record any injuries or torn hymen and is thus not supportive of the prosecution case.

6. The appeal has been vehemently opposed by the learned APP for the State who submits that the appellant has been rightly convicted by the Trial Court and the statements of the child victim and her sister have been consistent throughout the proceedings. In terms of MLC and FSL not being conclusive, it is submitted that the same may be due to the appellant being caught red handed in the middle of the act. It is further submitted that the age of the child victim was not disputed before the Trial Court.

7. The age of the child victim was proved through Sh. *Som Dutt Sharma*, Secondary Teacher in the school attended by the child victim, who was examined as PW-1. He exhibited the attested copy of the attendance register, transfer certificate, admission form of the child victim as Ex.PW-1/B,

Ex.PW-1/C and Ex.PW-1/D respectively. As per the school records, the date of birth of the child victim is 25.12.2004, putting her age at the time of incident to be less than 12 years. No suggestion was given to him in the cross-examination that the date recorded was wrong. No objection was taken by the appellant to the age of the child victim during the trial. Neither the child victim, nor her mother or sister were cross examined on this aspect. Hence, no ground is made to interfere with the finding on this aspect rendered by the trial court.

8. Some doubts were raised as to the mental soundness of the child victim. Dr. A K Mishra, Principal Consultant, Medicine, G B Pant Hospital, (GIPMER) New Delhi was examined as PW-3. He deposed as to verifying the disability certificate issued to the child victim. He further stated that the child victim had febrile illness at the age of 05 years and was admitted in Safdarjung Hospital New Delhi for 15 days due to Encephalitis. Thereafter, she developed right side hemi-paresis with facial nerve paralysis. He further deposed that she is also a case of mental retardation as per IQ report of NIMH dated 26.10.2015 as she had IQ 50 suggestive of mild mental retardation. He deposed that her total disability was 72.2%, including physical and mental disability.

9. Dr. (Professor) Sheffali Gulati, Chief Child Neurology Division, Department of Pediatrics, AIIMS, New Delhi was examined as PW-7. She deposed that the police had approached her for her opinion on the disability certificate of the child victim. The victim was examined under her supervision on 06.01.2017. Her IQ was found to be 62.6, which in the normal case is more than 80. She had mild intellectual disability and paralysis of right arm and right leg. PW-7 further deposed that the child

victim was also examined by the Disability Board of Department of Pediatrics AIIMS, New Delhi comprising of her, Dr. Bishwaroop Chakrabarty (PW-8) and one Senior Resident. The report was exhibited as PW-7/C. In the Board's opinion, the victim was found to have 80% disability (right Hemiplegia 75%, mild intellectual disability 50%) meaning thereby she has low intelligence but could have been able to perform her daily routine needs with difficulty because of paralysis. In her cross-examination, PW-7 stated that the victim could have been capable to understand the right and wrong things done to her.

10. Dr. Biswaroop Chakrabarty, Assistant Professor, Department of Pediatrics AIIMS, Delhi was examined as PW-8 and deposed on similar lines as PW-7. In his cross-examination, he deposed that the child victim K could have understood mild right and wrong happening with her but she may not understand the severe act of cheating or deception to her. It may be possible that victim *'K'* may not be able to explain properly everything of minute nature.

11. The child victim was examined as PW-4. She was asked certain questions by Court to understand the maturity of the child and whether she was a competent witness. Upon satisfaction that the child could understand the questions and answer them appropriately, the Court proceed to examine her, though without oath, considering her tender age of 14 years and her 72.2% physical and mental disability.

She deposed that the appellant used to live in her *gali*. On the date of the incident, her mother had gone to the market and her sister had fever. She left home to search for her father, and she saw the appellant in the street. When she asked him if her father was at his house, the appellant replied in

the affirmative and took her to his house by holding her hand. He bolted the door, turned off the lights and tried to scare her. He told her that she was his wife, he would not let her go to home and she would have to sleep with him. When the child victim resisted, the appellant forced himself upon her. The child victim, in her deposition, described the act in the following manner :-

> *"Q: Phir kya hua?*
> *A: Usney mere hoonth per poochi di thi, mere breasts dabane ki koshish ki thi aur usney mere toilet wale jagah per usne thook laaya aur phir usney mere saarey kapade utar diye, mujhey nanga ker diya aur mujhey neeche leta diya aur apna toilet kerne wala mere toilet kerne wali jagah mein daal diya tha, wo mere uper late gaya tha aur phir mere andar daal diya tha.*
> *Q: Usney aur bhi kuch kiya tha?*
> *A: Haan usney apne toilet kerne wala mere mooh mein dala tha.*
> *Q: Phir kya hua?*
> *A: Phir meri behan Ms. P waha aa gayi, log bhi ikathay ho gaye aur unhoney darwaza khulwa diya.*
> *Q: Phir kya hua?*
> *A: Meri behan andar aa gayi aur usney mujhey nanga dekh ker kapde pehna diye.*
> *Q: Phir baniya@Raju kaha gaya?*
> *A: Wo khidki se bhagane ki koshish ker raha tha per logon ne usay pakad liya aur usko mara, uska chehra kharab ker diya.*
> *Q: Jab wo apke saath galat kaam ker raha tha to kya aapne shor machaya tha?*
> *A: Haan mein royi bhi thi tez-tez."*

The appellant was shown to the child victim through V.C. link, who correctly identified him. She was asked by the Court if her deposition as to what the appellant did to her, she was narrating at the behest of Ms. 'P', to which she gave a categorical reply that what she was deposing actually happened with her. She denied that she was deposing falsely. A suggestion

was given by the defence that the appellant used to work with her father, who was a *Mistri*, the suggestion was denied. A further suggestion that the appellant was implicated by the victim at the instance of her sister was also denied.

12. The sister of the child victim *'P'* was examined as PW-5. She deposed that on the day of the incident, her sister had gone out to look for her father. When she did not return after a long time, PW-5 went to look for her and she saw a gathering outside the appellant's house. When she enquired from the crowd about her sister, they told her that the appellant had taken her sister inside his house. She peeped inside the window, to find the appellant as well as her sister in a naked condition and that the appellant was doing *'galat kaam'* with her. She stated that the appellant was lying on top of her sister and was inserting his penis insider her vagina. She raised alarm and with the help of public persons got the door opened. The appellant tried to escape but was apprehended. She made her sister wear clothes who told her that the appellant had done oral sex, inserted his penis into her vagina as well as pressed her breast. She also correctly identified the appellant in the Court. In her cross-examination, she was confronted with her earlier statement wherein it was not recorded that she told the police that the accused was also not wearing clothes, or he had put his private part in her private part, or that he had kisser her sister on lips and had performed oral sex upon her.

She denied the suggestion that her sister, on account of her disability, at time forgot certain things and facts. She deposed that her sister only had problem with her hands and was otherwise normal. She denied that the appellant was working with her father or that he was not paid three months salary and was being falsely implicated because of that. She clarified that

though the light of the room was off, light was coming from outside. She also denied deposing falsely.

13. The mother of the child victim was examined as PW6. She deposed that on the date of the incident, when she returned back at home around 7.00 pm, she came to know that something wrong had happened with her daughter 'K'. She rushed to the next *gali* where she found a crowd of persons. Her daughter was taken out of a room and one boy was apprehended by the public. She stated that her daughter told her that the appellant had taken her to his house, removed her clothes and inserted his penis in her mouth and raped her. In cross-examination, she was confronted with her earlier statement where it was not so recorded.

14. The MLC, exhibited as Ex. P-4, noted that the hymen appeared intact and there were no injuries or bleeding recorded. The FSL report, exhibited as Ex. PW17/C, records that no seminal stains were detected on any of the exhibits.

15. The appreciation of testimony of a child victim needs to be carried out with a greater scrutiny. In a recent decision of State of Madhya Pradesh vs. Balveer Singh[1], the Supreme Court has examined the principles governing the testimony of a child-witness and summarized the legal position in the following manner:

> *"58. We summarize our conclusion as under:-*
>
> *...*
>
> *(VII) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence*

[1] 2025 SCC OnLine SC 390

of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.."

Some other aspects which are to be looked at while considering the testimony of a child witness such as their competence, effect of non-administration of oath, rule of corroboration were enumerated by the Supreme Court recently in State of Rajasthan v. Chatra,[2] in the following manner:-

"4. *The principles that can be adduced from an overview of the aforesaid decisions, are:*

a. No hard and fast rule can be laid down qua testing the competency of a child witness to testify at trial.

b. Whether or not a given child witness will testify is a matter of the Trial Judge being satisfied as to the ability and competence of said witness. To determine the same the Judge is to look to the manner of the witness, intelligence, or lack thereof, as may be apparent; an understanding of the distinction between truth and falsehood etc.

c. The non-administration of oath to a child witness will not render their testimony doubtful or unusable.

[2] 2025 SCC OnLine SC 566

d. The trial Judge must be alive to the possibility of the child witness being swayed, influenced and tutored, for in their innocence, such matters are of ease for those who may wish to influence the outcome of the trial, in one direction or another.

e. Seeking corroboration, therefore, of the testimony of a child witness, is well-placed practical wisdom.

f. There is no bar to cross-examination of a child witness. If said witness has withstood the cross-examination, the prosecution would be entirely within their rights to seek conviction even solely relying thereon."

16. In the present case, despite suffering from mild intellectual disability, the child victim's narration has been clear, cogent and reliable. In her testimony, she has clearly described the act of penetration. She has also stated that the appellant committed oral sex with her as well. She correctly identified the appellant in Court. She also testified as to the presence of her sister who rescued her. There are no material improvements in her deposition and it is on the similar lines as her statement under Section 161 and 164 IPC. Her version is corroborated by the deposition of her sister. Though there are some improvements in her testimony, her searching for the child victim, witnessing the crowd outside appellant's house, peeping from the window to witness that the child victim's clothes were removed and the appellant committing '*galat kaam'* with her and her breaking open the doors with the help of public persons and rescuing her sister finds mention in her initial statement (PW5/A) as well as her deposition in Court. Thus, the statements of the two sisters are *inter se* corroborative on material aspects. In any case, it is trite law that a conviction can be based on the sole testimony of the prosecutrix, provided that it is cogent and reliable. In the present case, nothing has been elicited which would make the testimony of the child victim appear tutored or otherwise suspect. On the aspect of public

witnesses, it is settled law that their non-examination is not fatal to the prosecution case, where the evidence of prosecution witnesses is found to be cogent, convincing, creditworthy and reliable. (cf: Gian Chand v. State of Haryana, [3])

17. The MLC and the FSL in the present case do not corroborate the testimony of the child victim. Since the appellant was caught in the act midway, it could explain the non-detection of semen on the exhibits. Furthermore, it is trite law that to establish the offence of rape, penetration, no matter how slight, is sufficient. (cf: Wahid Khan v. State of M.P.[4]) It is not a given that in every case of rape, there would be injuries on the private part of the victim. There is no requirement in law that if the victim's testimony is not corroborated by the medical opinion, the same has to be discarded. Corroboration is not a rule of law but a mere rule of prudence. In cases where the testimony is credible and reliable and does not suffer from any fatal contradiction, it alone can also be sufficient for conviction. Gainful reference is made to the decision of the Supreme Court in Ranjit Hazarika vs. State of Assam, [5] wherein it was held that:-

> *"5. The argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us.* ***The mere fact that no injury was found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled per vagina as a result of the penetration of the penis in her vagina.*** *She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient.* ***The prosecutrix deposed about the performance of sexual intercourse by the appellant and her statement has remained unchallenged in the cross-examination.***

[3] (2013) 14 SCC 420
[4] 2010) 2 SCC 9
[5] (1998) 8 SCC 635

> ***Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix, nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake.*** *The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This d opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".*
>
> *6. The evidence of the prosecutrix in this case inspires confidence. Nothing has been suggested by the defence as to why she should not be believed or why she would falsely implicate the appellant.* ***We are unable to agree with the learned counsel for the appellant that in the absence of corroboration of the statement of the prosecutrix by the medical opinion, the conviction of the appellant is bad. The prosecutrix of a sex offence is a victim of a crime and there is no requirement of law which requires that her testimony cannot be accepted unless corroborated****...*
>
> *(emphasis added)*

18. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts. [Ref: *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat.*[6]]

19. In view of the clear and categorical testimony of the child victim that the appellant, who she duly identified in Court, removed her and his clothes, laid down on her, kissed her, pressed her chest, and committed oral as well as vaginal rape, corroborated by the testimony of her sister who found the appellant committing *galat kaam* with the child, the apprehension of the appellant from spot, it is held that the prosecution has been able to lay the foundation of the facts and thus brought into play Section 29 of the POCSO

Act, and that presumption the appellant has miserably failed to rebut. He has been unable to shake the credibility of any of the witnesses who supported the prosecution case by thorough examination or pointed any fatal gaps in the prosecution case.

20. In view of the above, no ground is made out to interfere with the impugned judgment. The appeal is accordingly dismissed and the impugned judgment convicting the appellant as well as the order on sentence are upheld.

21. A copy of this judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.

22. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 06, 2025/ry

[6] (2025) 2 SCC 399