



2025:DHC:8854



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

% Reserved on : 12.08.2025  
Pronounced on : 06.10.2025

+ **CRL.A.6/2020**

SANJAY MUNIYAN .....Appellant  
Through: Mr. Yogesh Saini, Advocate.

*versus*

STATE ....Respondent  
Through: Mr. Pradeep Gahalot, APP for State  
with SI Ajay, P.S. Saket.  
Ms. Aishwarya Rao and Ms. Mansi  
Rao, Advocates for prosecutrix.

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. The present appeal has been instituted under Section 374(2) read with Section 383 Cr.P.C., seeking setting aside of the impugned judgment dated 26.09.2019 and the order on sentence dated 14.10.2019 passed by the learned ASJ-01, Special Court (POCSO), South District, Saket Court Complex, New Delhi in SC No. 237/2017, arising out of FIR No. 88/2017 registered at P.S. Saket, Delhi, initially for the offence punishable under Section 363 IPC.

Vide the impugned judgment, the appellant was convicted for the offences under Sections 363/366/376(2) IPC, as well as Section 4 read with Section 3 POCSO. Vide the impugned order on sentence, the appellant was



sentenced to RI for a period of 3 years alongwith fine of Rs.10,000/-, in default thereof to undergo SI for 1 month, for the offence punishable under Section 363 IPC; RI for a period of 5 years alongwith fine of Rs.20,000/-, in default thereof to undergo SI for 2 months, for the offence punishable under Section 366 IPC; and RI for a period of 14 years alongwith fine of Rs.30,000/-, in default thereof to undergo SI for 3 months, for the offence punishable under Section 376(2) IPC.

2. The complainant (father of the victim) lodged a complaint stating that on 28.02.2017 at about 8:30 AM, he had dropped his daughter, i.e., the victim, at the gate of her school. At about 12:00 noon, he received a phone call from a teacher of the school informing him that his daughter had not come to school despite it being an examination day. In view of these circumstances, the police machinery was set into motion. During the course of investigation, the complainant suspected that the appellant, who was working in the neighbourhood, had taken away his daughter. On putting the appellant's mobile phone under surveillance, his location was traced to his house in West Bengal, from where the victim was recovered on 04.03.2017 and the appellant was arrested.

3. The statement of the victim was recorded under Section 161 Cr.P.C., wherein she stated that after her father dropped her at the school gate, the appellant took her away from the gate of the school to a hotel in Maharani Bagh where physical relations were established. Thereafter, he took her to his house in West Bengal, where he again established physical relations. She remained in the said house for four days.

4. The medical examination of the prosecutrix was conducted and her statement was recorded under Section 164 Cr.P.C. In the said statement, the



prosecutrix did not allege that the appellant had forcibly established physical relations with her, though she stated that she had stayed in the appellant's house in West Bengal for four days.

5. The documents regarding the prosecutrix's age were collected during investigation, and she was found to be a minor. Consequently, the chargesheet was filed under Sections 376/363 IPC and Section 6 POCSO. The Trial Court thereafter framed charges under Sections 363/366/376(2) IPC and Section 6 POCSO, to which the appellant pleaded not guilty and claimed trial.

6. Learned counsel for the appellant has raised multi-fold contentions. It is contended that the testimony of the victim does not inspire confidence, inasmuch as at the time of recording of her statement under Section 164 Cr.P.C., she stated truthfully and made no allegation of forcible physical relations or rape. The appellant's innocence is further reflected in the first MLC prepared upon the prosecutrix's medical examination in West Bengal, which recorded no external injuries. It is stated that even the second MLC recorded only an old hymenal tear, and the FSL report did not note the presence of any semen on the oral and vaginal swabs of the prosecutrix. It is next contended that though the victim alleged commission of offence at a hotel in Maharani Bagh, no investigation was conducted in that regard. Lastly, it is contended that although the prosecutrix alleged recovery of some intoxicating substance, the personal search memo prepared upon the apprehension of the appellant does not show any such recovery. On the strength of these contentions, learned counsel prays for setting aside of the impugned judgment.

7. The contentions made on behalf of the appellant are sought to be



repelled by the learned APP for the State, who submitted that the victim was a minor and, in her statement recorded under Section 161 Cr.P.C. as well as in her Court deposition during trial, she categorically stated about the establishment of sexual relations. Though there is some variance as to whether any offence was committed at a hotel in Maharani Bagh, her allegation that sexual relations were established in the appellant's house in West Bengal has remained consistent.

### **AGE OF THE PROSECUTRIX**

8. Documentary evidence collected during investigation shows that at the relevant time, the age of the prosecutrix was 13 years. During trial, both the prosecutrix and her father stated that she was 13 years old on the date of the incident. The appellant did not dispute her age and, in this regard, the Trial Court in proceedings dated 03.07.2019 recorded no objection under Section 294 Cr.P.C. Even in the present appeal, no contest has been made on this aspect, and the prosecutrix is therefore held to be a "child" within the meaning of Section 2(1)(d) POCSO Act.

### **MATERIAL WITNESSES**

9. The child victim was examined as PW-1. She deposed that on 28.02.2017, her father had dropped her outside the school gate. As it was an examination day, she had reached a little earlier and found the main gate closed. At that time, the appellant, who was already known to her, came and started talking to her. On his insistence, she went to a nearby shop and ate *dosa*. Meanwhile, the appellant brought a cold drink for her, on consuming which she felt giddy and intoxicated. She stated that the appellant perhaps took her to NOIDA and thereafter took her by train to his native village in West Bengal. After 2–3 days, the appellant committed *galat kaam*. She



clarified that by *galat kaam* she meant that the appellant forcibly performed sexual intercourse with her without her consent. After some time, her father came with the police, recovered her, and the appellant was also arrested.

10. The child victim was cross-examined by the learned APP for the State as to whether any offence had been committed at a hotel in Maharani Bagh, to which she initially admitted the suggestion. However, in her cross-examination by learned counsel for the appellant, she confined her version to sexual intercourse having taken place only in West Bengal. She was thereafter re-examined by the learned APP, wherein she clarified that while no physical relations had been established at the hotel in Maharani Bagh, the appellant had established physical relations with her in West Bengal.

11. In her cross-examination by the learned counsel for the appellant, a suggestion was put to her that sexual relations had been established with her consent, which she denied. Another suggestion was put to her that she had implicated the accused at the behest of her parents, which also she denied.

12. The father of the child victim was examined as PW-2. He deposed that he had dropped his daughter at the gate of the school on 28.02.2017 and thereafter received a call from a school teacher at about 12:00 noon informing him that his daughter had not appeared for the examination. He informed the police and later accompanied them to West Bengal, where his daughter was recovered from the house of the appellant.

### **MLC**

13. The medical examination of the child victim was conducted at AIIMS, Delhi, and the MLC was exhibited through Dr. *Swati* (PW-6). The MLC recorded an old hymenal tear at the 7 o'clock position. In her cross-examination, PW-6 stated that the timing of the hymenal tear cannot be



assessed.

**FSL**

14. The FSL remained inconclusive.

The other witnesses deposed as to various aspects of the investigation carried out in Delhi and West Bengal.

15. Coming to the appellant's contention that the first MLC points to his innocence as it does not record any external injury, it is noted that the said MLC mentions that no expert gynaecologist was available. The contention that the second MLC loses its evidentiary value as it was prepared after a significant delay is also found to be specious, since the first medical examination had already been conducted and the corresponding MLC prepared at West Bengal on 04.03.2017. Thereafter, both the appellant and prosecutrix were brought to Delhi where the 2<sup>nd</sup> medical examination was conducted on 07.03.2017.

16. According to SI *Durga Dass* (PW-9), who was part of the police team that had gone to West Bengal, the appellant, on being apprehended, was produced before the local Court on 05.03.2017, whereafter both the child victim and the appellant were brought back to Delhi. Upon reaching Delhi on 07.03.2017, the prosecutrix was medically examined at AIIMS and the second MLC prepared, wherein the genital examination revealed that the hymen was torn at the 7 o'clock position. Though samples were collected and sent to the FSL, the same did not yield any result as no semen was detected on the oral and vaginal swabs of the child victim.

Notably, the samples for FSL analysis were collected only at the time of the medical examination conducted at Delhi more than 72 hours after the incident, on the basis of which the second MLC was prepared.



17. The other contention is that, although the victim had stated that some intoxicating substance was found in the possession of the appellant at the time of his apprehension, no such recovery was recorded in the search memo. However, this omission is not of such significance as to materially affect the prosecution case.

18. Insofar as the contention that no investigation was conducted at the hotel in Maharani Bagh is concerned, it is noted that the child victim has clarified that forcible sexual acts were committed only in West Bengal.

19. At this stage, it is appropriate to state the position of law regarding the appreciation of the testimony of a child victim, as recently analysed by the Supreme Court in State of Rajasthan vs. Chatra, reported as **2025 SCC OnLine SC 566**:

*“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.*

*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.”*

20. In State of Punjab Vs. Gurmit Singh, reported as **(1996) 2 SCC 384**, the Supreme Court, while dealing with the case of rape of a minor, had held



that the evidence of the victim of sexual assault is sufficient for conviction and does not require any corroboration unless there are compelling reasons for seeking the same.

21. In Ganesan Vs. State, reported as **(2020) 10 SCC 573**, the Supreme Court, dealing with a case of sexual assault of a minor, held that the sole testimony of the victim, if found worthy of credence and reliable, requires no corroboration and may be sufficient to invite conviction of the accused.

22. In view of the above, the settled position of law is that even if the victim is the sole witness to the incident, a conviction can be sustained if her testimony is found to be credible and reliable. Further, Section 29 POCSO creates a presumption of guilt against the accused once the foundational facts of the case stand established. [Ref: Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, reported as **(2025) 2 SCC 399**]

23. From the foregoing discussion, it is clear that if the testimony of the child victim inspires confidence, the conviction can rest upon it. In the present case, this Court is of the considered view that even if there exists some inconsistency in the child victim's version as to whether any sexual act was committed at Maharani Bagh, her testimony with respect to the commission of the offence in West Bengal remains consistent, cogent, and credible. In light of the child victim's deposition and her recovery from the appellant's house in West Bengal, the foundational facts of the prosecution case stand established, thereby attracting the presumption under Section 29 POCSO. None of the contentions raised on behalf of the appellant have any merit, and this Court accordingly concurs with the judgment of conviction rendered by the Trial Court.

24. The learned counsel for the appellant, in the alternative, had submitted





that the appellant's case be considered for release on the minimum sentence prescribed under the Act. Section 376(2) IPC provides for a minimum sentence of 10 years rigorous imprisonment. Keeping in view that the appellant has been in continuous custody since March 2017 and has already undergone a little more than 10 years, and further considering that he belongs to a poor family comprising his elder brother, the brother's family, and aged parents, and that he is a young man aged about 30 years at present and 24 years at the time of the offence, deserving of an opportunity to reform and reintegrate into society, the substantive sentence of the appellant is modified to the period already undergone.

However, the sentence of fine is maintained. In case of default in payment of fine, the appellant shall undergo the sentence in default of payment as directed by the Trial Court.

25. The present appeal is partly allowed in the above terms.

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

**MANOJ KUMAR OHRI**  
**(JUDGE)**

**OCTOBER 06, 2025/pmc**