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

Reserved on : 28.08.2025
% Pronounced on : 09.10.2025

\+ **CRL.A. 713/2018**

MUKESH .....Appellant
Through: Mr. Nikhil Pillai, Advocate (DHCLSC) with Ms. Malvi Dedhia, Mr. Abhiroop Saha and Ms. Muskaan Garg, Advocates.

versus

STATE NCT OF DELHI .....Respondent
Through: Mr Pradeep Gahalot, APP for State with SI Priyanshi Ms. Gayatri Nandwani, Ms. Dudita Sharda and Mr. Adrian Abbi, Advocates for prosecutrix.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred to assail and set aside the impugned judgment of conviction dated 06.01.2018 and order on sentence dated 11.01.2018. *Vide* the impugned judgment, the appellant stands convicted for the offence punishable under Section 6 of POCSO Act, 2012 and Section 376(2)(f)(i) IPC. He was sentenced to undergo Rigorous Imprisonment (RI) for 10 years and fine of Rs.15,000/- for offence punishable under Section 376 (2)(f)(i) IPC and in default whereof, he was to undergo Simple Imprisonment (SI) for a period 3 months. The benefit of Section 428 Cr.P.C. was given to the convict.

2. Pertinently, the appellant has already undergone the entire sentence and is stated to be not traceable.

3. The criminal investigation was initiated when on 15.11.2013 at 11.35 P.M., the complainant Mandeep, alongwith one Dilip Singh brought the appellant and his minor daughter, aged around 5 years to the police station stating that the appellant used to drink and commit '*galat kaam'* with his own daughter. DD No. 36A was recorded and investigation entrusted to SI Vijay Kumar and W/Ct. Pooja. After the child's medical examination was conducted, she was produced before Child Welfare Commission and her counselling was conducted by one Ms. Kiran Bala from the NGO and written statement was produced. Due to no one taking her custody, the child victim was kept at Sanskar Ashram. The counsellor reported that the child victim told her that the appellant, after drinking, took off his pant and underwear, and after removing the pant of the child victim, put his finger in (the child victim had pointed at her vagina.) The child victim's statement under Section 161 CrPC was on similar lines.

4. The child victim's statement was recorded under Section 164 CrPC on 18.11.2013. Therein, she stated that her father, after drinking did '*gandi baat*' with her. He removed both their underwear and put his '*peshab karne wali jagah'* into her '*peshab karne wali jagah'* and when she would protest, he would make her sleep by slapping her.

5. On chargesheet being filed, charges were framed against the appellant under Section 6 of POCSO Act read with Section 376(2) IPC to which he pleaded not guilty and claimed trial.

6. The prosecution, in support of its case, examined 14 witnesses. The child victim was examined as PW6. The complainant and Dilip Singh who

had brought the child victim to police were examined as PW4 and PW3 respectively. Kiran Bala, who conducted the counselling of the child victim was examined as PW2. The rest of the witnesses were formal in nature and deposed as to various aspects of investigation. In his statement under Section 313 CrPC, he claimed that he was falsely implicated by his employer/complainant Mandeep *@ Monty* because he had some dispute with him regarding wages. He however, did not lead any evidence in his defence.

7. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. It is submitted that the testimony of the child victim is riddled with contradictions and not reliable. While in her statement to police, the counsellor informed that the child had stated that the appellant inserted his finger in her private parts, in her statement under Section 164 CrPC the child victim stated that the appellant put his penis in her vagina. However, in her deposition in Court, she stated for the first time that the appellant kissed her and licked her private parts. It is further submitted that the MLC is not supportive of the prosecution case. Wife of the landlord was not examined despite the IO deposing that she told him about the wrong act committed by the appellant. No semen was detected on the child's underwear.

8. Learned APP for the state, duly assisted by learned counsel for the child victim, have supported the impugned judgment and contend that the child victim has clearly and categorically alleged the act of penetration and her deposition has to be read in its entirety, including her cross examination by the APP, keeping in view that she was only around 6 years old at the time of her testimony. It is submitted that FSL would show that semen of the appellant was detected in the vaginal secretion of the child victim.

9. The age of the child victim was determined by bone ossification test. Dr. Sushma Kumari, DMS, GTB Hospital, examined as PW11, deposed that the child victim was brought to the hospital on 19.11.2013 for bone age estimation. As per Ex.PW-13/B, which is the X-Ray for bone age determination, age of the victim girl was opined to be in between 2-4 years.

10. The child victim was examined as PW6. She was asked certain questions by the Court to ascertain her competency. Due to her tender age, she was examined without oath. She stated that her mother had expired and she lived with the appellant, who is her father. He used to make jewelry boxes and they stayed in the same place where the factory was situated. The appellant used to drink liquor. She deposed that the appellant removed his and her underwear did *galat kaam* with her. He was licking on her private part from where she urinated. He also kissed her on lips. He did not do anything else. He did the same for about four days continuously. The last incident happened one day prior to registration the present case. With permission of court, Ld. APP put some leading questions to her. She answered the same in the following manner :-

> *"It is correct that my father used to drink liquor but he never beaten me. It is correct that the date of incident was 14.11.2013. It is correct that I had told the police that my father (accused) had put his finger in my private part and that actually had happened with me. It is correct that I had told the magistrate that my father removed his underwear as well as also removed my underwear and put his susu wali jagah in my susu wali jagah and that actually had happened with me. It is correct that I had told the magistrate that my when I protested my father slapped me and that is a correct statement. It is correct that I had told the magistrate that I had disclosed the same incident to Monti Uncle on the next day."*

In her cross examination, she was confronted with her earlier statements

wherein she had not stated that the accused kissed her and licked her private parts. She deposed that no blood came when the appellant committed wrong act with her. She refuted the suggestions that she was falsely implicating the appellant at the behest of the complainant.

11. The complainant Mandeep @ Monty was examined as PW4. He deposed that he was the employer of the appellant who was working and living in his factory where he used to make jewellery boxes. In 2013, the child victim one day told him that the appellant after taking drinks used to remove his pant and her underwear and committed *galat kaam* with her. He confronted the appellant who admitted his guilt and thereafter PW4 alongwith the landlord, the appellant and the child victim went to the police station. In his cross examination, he denied the suggestion that he tutored the child victim and was falsely implicating the appellant to escape his liability of paying wages to the appellant.

12. Mr. Dilip Singh, the landlord of the premises out of which the factory operated was examined as PW3. He stated as to PW4 telling him that the appellant used to commit *galat kaam* with the child victim and also showed her obscene films. He accompanied PW4 in taking the appellant to the police station. Though questions were put to him regarding the tenancy of PW4, nothing material was elicited out which shed any light on the incident in question.

13. Ms. Kiran Bala, the counsellor working with an NGO who had initially interacted with the child victim, deposed as PW2. She deposed that the child victim told her that 2 days ago, the appellant had removed the lower clothes of the child and his clothes, laid down with her on a wooden *takht*, and inserted his finger in her private part.

14. The MLC of the child victim was proved by Dr. Rekha, SR, Obs and Gynae, Rose Walk Hospital, who deposed as PW12. As per the MLC (Ex. PW12/A), the hymen was found intact and there were no external injuries found.

15. The FSL report (PW14/A) was proved through Dr. Monika Chakravarthy, Senior Scientific Assistant (Biology), FSL Rohini. As per the report, human semen was detected on the cotton wool swab and microslides of the vaginal secretion of the child victim. Upon DNA examination and comparison of the above samples alongwith the blood sample of the accused, it was found that DNA profiles from the blood on gauze of the appellant was similar to DNA profile generated from the vaginal secretion of the child victim.

16. 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:-*
>
> *...*
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> *(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 of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.*
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> *(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the*

[1] 2025 SCC OnLine SC 390

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.

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.

[2] 2025 SCC OnLine SC 566

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."

17. In the present case, PW1, the counsellor has deposed that the child victim told him that the appellant had inserted his finger in her private parts. She also stated so in her statement under Section 161 CrPC (Ex. PW6/D-1). The child victim in her statement under Section 164 CrPC stated that the appellant had put his penis in her vagina. In her deposition, initially she stated that he kissed her and licked her private parts. Since the child victim was only six years old, Ld APP was allowed to put some leading questions to her to elicit the material facts. She admitted telling earlier that the appellant had put his finger in her private part and put his '*susu wali jagah'* in her '*susu wali jagah'* and these things had actually occurred with her. In cross examination, she denied the suggestion that these incidents never occurred with her. It is to be kept in mind that the child victim was only aged around 4 years at the time of the incident which pertained to 2013 and she deposed in Court in 2015. It is natural that there would be some variations in her statement. Still, this Court will proceed to look at other evidence on record.

18. The MLC records that the hymen was intact and there were no external injuries. 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.[3]) It is not a given that in every case of rape, there would be injuries on the private part of

[3] 2010) 2 SCC 9

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. (cf: Ranjit Hazarika vs. State of Assam.[4]) In so far as FSL is concerned, the same records that human semen was detected in the vaginal secretions of the child victim and DNA profile from the blood on gauze of the appellant was similar to DNA profile generated from the vaginal secretion of the child victim. The appellant has failed to explain this finding. Though suggestions were given in cross examination to the IO (PW13) that she manipulated the exhibits, however the same were denied and nothing further was brought on record to substantiate the said allegation. The FSL report records that the samples were received in a sealed condition. The Supreme Court in Rahul v State[5] has held that the DNA evidence is in nature of opinion evidence as envisaged under Section 45 of the evidence act and its probative value varies from case to case. In Manoj v State of M.P.[6], the Supreme Court held that the value of such evidence was corroborative.

19. 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*.[7]]

20. In view of the testimony of the child victim, when read as a whole, as well as the FSL report detecting appellant's semen in her vaginal secretion, it is held that the prosecution has been able to lay the foundation of the facts

[4] (1998) 8 SCC 635
[5] (2023) 1 SCC 83
[6] (2023) 2 SCC 353
[7] (2025) 2 SCC 399

and thus brought into play Section 29 of the POCSO Act, and that presumption the appellant has miserably failed to rebut. The child's mother had expired, and she was living alone with her father. The contention that she would falsely implicate her own father on the asking of the factory owner appears to be far-fetched. The appellant's defence that the complainant owed him wages and hence falsely implicated him by tutoring the child victim appears to be improbable, especially when viewed in light of the testimony of the child victim corroborated by the scientific evidence.

21. 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.

22. A copy of this judgment be communicated to the concerned Trial Court.

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

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 09, 2025
pmc