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

% Reserved on : 28.07.2025
Pronounced on : 10.09.2025

\+ **CRL.A. 603/2022**

GAGANDEEP .....Appellant
Through: Mr. Jatin Rajput, Mr. Rajesh Kumar Jha, Mr. Varun Panwar and Mr. Vinmar, Advocates

versus

STATE .....Respondent
Through: Mr. Pradeep Gahalot, APP for State with SI Ravi Kumar, P.S. Ashok Vihar
Ms. Gunjan Sinha Jain, Advocate for respondent No.2

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgement of conviction dated 09.03.2022 vide which he has been convicted for offences punishable under Sections 363 IPC and Section 6 of the POCSO Act and order on sentence dated 19.05.2022 vide which he has been directed to undergo rigorous imprisonment for a period of 10 years for the offence punishable under Sections 6 POCSO Act along with payment of fine of Rs.10,000/-, in default whereof he was directed to further undergo simple imprisonment for a period of 6 months and rigorous imprisonment for a period of 3 years for the offence punishable under Sections 363 IPC alongwith payment of fine of Rs.5,000/- in default whereof, he was directed

to further undergo simple imprisonment for a period of 3 months. The benefit of Section 428 Cr.P.C. was provided to the appellant and all the sentences were directed to run concurrently.

2. The investigation commenced on 10.03.2017 when on the complaint of mother of the prosecutrix, an FIR was registered with the allegations that on 09.03.2017, the complainant had gone to work, and upon returning home, she was informed by her daughter that in complainant's absence, the appellant, who was living in neighborhood, had come to their house and forcibly took her to his place where, after removing her underwear and his own clothes had committed the offence of rape. The complainant further stated that her husband had gone to work at night and on his return in the morning, the complaint was lodged. During the investigation, the statements of the child victim as well as her mother were recorded under Section 164 Cr.P.C. The child victim stated that while she was playing with her brother, the appellant came in their house and when they tried to force him out, he gagged her mouth and took her to his own room where he removed her underwear and committed the offence of rape. Her brother followed, and when he kicked open the door, she managed to run away. On framing of charge, the appellant pleaded not guilty and claimed trial.

3. In total, the prosecution examined 8 witnesses, with the child victim and her parents being examined as PW-1, PW-2 and PW-3 respectively. Dr. *Seema*, CMO, Babu Jagjeevan Ram Hospital, who proved the MLC of the child victim, was examined as PW-4. The I.O. of the case W/SI *Sujata* was examined as PW-7. The rest of the witnesses were formal in nature who deposed as to various aspects of investigation. The statement of learned counsel for the appellant was recorded on 09.01.2019, where he admitted the

registration of the FIR, proceedings of recording of the statement of the child victim under Section 164 Cr.P.C., as well as her age.

4. In his statement recorded under Section 313 Cr.P.C., the appellant denied the prosecution's case and further claimed that he was falsely implicated, as there was a quarrel between him along with his sister and the parents of the child victim on the issue of throwing of garbage. He also examined his sister as DW-1 in support of the above defense.

5. Learned counsel for the appellant seeks to assail the credibility of the complainant i.e., the mother of the child victim, by contending that her conduct after being informed of the incident by her daughter is not mature. Instead of calling her husband or visiting him in the factory or reporting the incident, she rather waited the whole night. In fact, father of the child victim in his cross-examination stated that his factory was only 5 minutes away from the house. The reliability of the testimony of child victim as well as her parents is also doubted on the strength of DD No.014A lodged on 10.03.2017, which is the first information where only a quarrel was reported. The said DD entry does not mention about any incident of rape having occurred with the child victim, the previous night. He further refers to the MLC of the child victim to submit that no injury was noted on the child victim which would lend support to the allegation of rape. Lastly, it is contended that both MLC (Ex.PW4/A) and FSL report have not lent any support to the prosecution case as neither any injuries were noted in MLC nor any samples collected during investigation matched in the forensic examination.

6. The appellant's contentions are refuted by learned APP for the State and learned counsel for the complainant. It is contended that the appellant

was a resident of nearby *jhuggi* and his identity was not unknown. It is further submitted that the prosecutrix has consistently and categorically described the act of penetration accompanied by occurrence of pain in her statement under Section 161 CrPC as well as her deposition in Court. The child victim has also duly identified the appellant during trial.

7. I have heard learned counsels for the parties and have also gone through the material placed on record. The incident occurred in the evening of 09.03.2017. The FIR was lodged on 10.03.2017. First and foremost, the contention on delay and whether it is material, needs to be examined. This would need to be seen with other attending circumstances viz. the competence, credibility and reliability of the statement of child victim as well as the medical and forensic evidence.

Notably, the child victim was 9 years of age and as per case of prosecution, after the incident, came home and went to sleep. It is only when her mother woke her up for the purpose of dinner, that she narrated the incident. The mother also claimed that she found some sticky substance in the child's underwear. In her deposition, the mother claimed that as she had insufficient balance left in her mobile and her husband was also not home, the incident could not be reported immediately. Next morning, when her husband came back, the incident was reported. In the opinion of this Court, the reasons given for delay in reporting, appears plausible. Interestingly, as strenuously argued and also noted above, the first information about the incident through DD 014A on 10.03.2017 was only about quarrel. Before delving further, it is deemed apposite to have a quick brush up of the law on the aspect of appreciating the testimony of a child victim.

8. The competence of a child witness and its evaluation by the Court has

been the subject matter of many decisions. The Supreme Court in Dattu Ramrao Sakhare v. State of Maharashtra[1], observed as under:

> *"5. ...A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."*

The evidence of a child witness for being credible needs to be reliable. In Ranjeet Kumar Ram v. State of Bihar,[2] the Supreme Court held that:

> *"14. ...Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one."*

9. In a recent decision of State of Madhya Pradesh vs. Balveer Singh[3], 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:-*
> *...*
> *(V) The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*
> *(VI) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*
> *(VII) There is no requirement or condition that the evidence of a child*

[1] (1997) 5 SCC 341
[2] 2015 SCC OnLine SC 500
[3] 2025 SCC OnLine SC 390

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.

(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.."

10. The child victim (PW1), who was around 10 years old at the time of her testimony, deposed that one evening, when she was playing with her brother inside her house, the appellant picked her in his lap and took her to some other *jhuggi*. At that time her younger brother had tried to stop him. The door of the *jhuggi* did not have a latch, so the appellant shut it tightly. Inside the *jhuggi*, the appellant removed both his and her underwear, made her lie down on the cot and put his penis in her private parts, due to which she felt lot of pain and screamed. Her brother, who was banging on the door, upon hearing her cries, kicked the door open whereafter the appellant slapped him. However, she managed to run away along with the brother. She further deposed that she fell asleep crying and when she was woken up by her mother for dinner, her father had already left for night duty. She narrated

the entire incident to her mother who in the next morning, informed her father about the incident whereafter the police came. She correctly identified the appellant in Court.

In her cross examination, she stated that the appellant used to sleep in a different jhuggi from his sister's, and it is there where he took her. Although she said that the sister of the appellant, *Sarita* (DW1) used to throw garbage in front of their Jhuggi, however she denied that there used to be fights between her mother and DW1 on this account. She was given the suggestion that her mother had tutored her on what to say in the deposition, however she categorically denied the same.

11. The mother of child victim, examined by the prosecution as PW2, corroborated the testimony of PW1 as to child victim telling her about the incident at night after she woke her up for dinner. She deposed as to informing about the incident to her husband in the morning, who called the PCR at the spot. She stated that the police took her, her husband, and the child victim to the police station as they did not want to disclose about the incident to the neighbours. In her cross examination, she also categorically denied the suggestion that quarrel used to take place between her and DW1 due to throwing of garbage. She further explained that the reason that the PCR call was made only regarding quarrel and not sexual assault due to shame and they made the call from Jailerwala Bagh and not the Jhuggi. She denied the suggestion that she was falsely implicating the appellant on account of enmity with his sister. She also stated that they vacated the said Jhuggi because the appellant and his sister always used to live there. Nothing has come out in her cross examination which would shake or discredit her testimony.

12. The father of the Child Victim (PW3) also deposed that he was informed about the incident by his wife in the morning of 10.03.2017 when he came back from work. In his cross examination, it came out that he did not mention about the incident to the PCR on the phone and just stated that there was some emergency. He further stated that he made the call from *Jailorwala Bagh* and not their house as he did not want any person of the area to know about the incident due to shame. He denied that any quarrel occurred between PW2 and DW1 on account of throwing of garbage.

13. DW1, the sister of the appellant deposed that in the morning of 20.03.2016, a quarrel took place between the mother of victim and herself over the issue of dumping garbage outside her Jhuggi due to which PW3 called the police and all of them were taken to the police station. In her cross examination, she admitted that prior to 10.03.2017, no quarrel ever took place between her and PW2.

14. The prosecution version has remained consistent regarding the details of the incident. No major contradiction or omission has been pointed out which would vitiate the testimony of the child victim or her parents. As discussed above, the conduct of the mother in waiting till the next morning for her husband to come back from work and then informing him about the incident seems plausible. She stated that she didn't have enough balance in her phone. The admission of PW3 that his factory was at a distance of five minutes from the jhuggi does not discredit the entire prosecution story. In so far as DD No.014A recording only allegations of quarrel is concerned, the same has been explained by both PW2 and PW3 who have stated that they did not initially mention sexual assault in the PCR call due to shame.

15. Insofar as the MLC dated 10.03.2017 of the victim is concerned, the

same records that the hymen is absent and there is no bleeding, swelling or external injury. It notes that there was a 1cm x 0.5 cm abrasion over the right side of the right eye on face. Notably, a later opinion in the MLC records that '*penile penetration is a possibility as observed on examination*.' It is trite law that to establish the offence of rape, penetration, no matter how slight, is sufficient. 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.

16. Gainful reference is made to the decision of the Supreme Court in Ranjit Hazarika vs. State of Assam, [4] 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. 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*

[4] (1998) 8 SCC 635

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)

17. The Supreme Court in Satyapal v. State of Haryana[5] was faced with similar facts as the present case. The doctor who examined the prosecutrix therein had found that there was no bleeding or discharge on thigh or labia majora. Labia majora and minora were not properly developed. Hymen was found absent. In the FSL, no semen was detected on any exhibits. The Supreme Court, noting the aforesaid fact, while upholding the conviction, had proceeded to discuss the medical jurisprudence in the following manner:-

17. The evidence of the doctor appears to be wholly insufficient. Even she could not complete the medical examination. Despite passage of a long time, an injury on the private parts of the prosecutrix was found. The doctor at least testified that there had been an attempt to commit rape. ***While saying so, she found the hymen absent which having regard to the medical jurisprudence is of some significance.***

18. In Modi's Medical Jurisprudence, 23rd Edn., at pp. 897 and 928, it is stated:

> *"****To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with the emission of semen and the rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda, with or without the emission of semen, or even an attempt at penetration is quite***

[5] (2009) 6 SCC 635

sufficient for the purpose of law. It is, therefore, quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains.

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In small children, the hymen is not usually ruptured, but may become red and congested along with the inflammation and bruising of the labia. If considerable violence is used, there is often laceration of the fourchette and the perineum."

(emphasis added)

Thereafter, the Supreme Court eventually held that the medical evidence was a part of evidence and the same was required to be appreciated in the context of ocular evidence and other surrounding circumstances.

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. A three Judge Bench of the Supreme Court in *Sambhubhai Raisangbhai Padhiyar v. State of Gujarat*[6] has held that section 29 of the POCSO Act comes into play once the foundational facts are established. It holds as follows:-

35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the POCSO Act. Section 5 of the POCSO Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the POCSO Act defines what penetrative sexual assault is.

19. Gainful reference in this regard may also be made to the decision of a Co-ordinate Bench of this Court in *Veerpal v. State*[7], wherein it was held as under:-

[6] (2025) 2 SCC 399

> *20. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability.*

20. In the present case, the victim has, in her initial statement as well as her deposition in Court, categorically and in detail described that the appellant put his penis in her private parts, which caused her pain. The appellant has been correctly identified. MLC notes that the penile penetration is a possibility. Merely because there were no injuries on the genitals or the FSL report was negative, would not be sufficient to conclude that the offense was not committed, especially in view of the clear and categorical deposition of the child victim. The prosecution has been able to lay the foundation of the facts and under 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. He has taken the stand that he was falsely implicated in the present case on account of the dispute between his sister and child victim's mother over throwing of garbage. However, the child victim, her mother as well as father have denied the occurrence of any such dispute. It was on the appellant to put forth some more evidence, perhaps in the form of public witnesses, who could attest to the occurrence

[7] 2024 SCC OnLine Del 2686

of such dispute on the date of the complaint. However, nothing more was brought forth to substantiate his defence.

21. This Court has thoroughly examined the records and finds no reason to differ with the conclusion arrived at by the trial court. Consequently, the appeal is 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 as well as to the concerned Jail Superintendent.

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

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 10, 2025
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