



2025:DHC:8033



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

% Reserved on : 07.08.2024  
Pronounced on : 12.09.2024

+ **CRL.A. 423/2024**

JITENDER @ RAJU

.....Appellant

Through: Mr. Rohan J. Alva and Mr. Anant Sanghi, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State  
Mr. Yogendra Mishra, Advocates for complainant.

**CORAM:**

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

### **JUDGMENT**

1. The present appeal has been preferred under Section 374(2) of the Code of Criminal Procedure, 1973 by the appellant challenging the judgment of conviction dated 29.08.2023 and the order on sentence dated 13.12.2023 passed by, ASJ-06 (East), Special Judge (POCSO), Karkardooma Courts, Delhi, in S.C. No. 2973/2018, arising out of FIR No. 85/2018 registered at P.S. Krishna Nagar, Delhi under Section 354 IPC and Section 8/12 of the POCSO Act.

Vide the impugned judgment, the appellant was convicted for the offence under Section 10 read with Section 9(m) of the POCSO Act as well



as under Section 354 IPC. By the order on sentence, for conviction under Section 10 read with Section 9(m) of POCSO Act, the appellant was directed to undergo Rigorous Imprisonment (R.I.) for a period of 6 years with fine of Rs.5,000/-, in default whereof he was directed to further undergo Simple Imprisonment (S.I.) for a period of one month. For the offence under Section 354 IPC, he was sentenced to undergo RI for a period of 5 years with fine of Rs.2,000/-, in default whereof he was directed to further undergo S.I. for a period of 15 days. Both the sentences were directed to run concurrently. The benefit of Section 428 Cr.P.C. was extended to the appellant.

2. The investigation commenced on 16.04.2018, when a PCR call was received at the police station regarding a wrong act committed on a minor girl aged six years. The same was recorded as DD No. 27A and assigned to SI *Anugrah* who, alongwith Ct. *Tanveer* and W/Ct. *Monika* went to the place of incident and met father of the child victim (complainant). He alleged that his daughter had gone to play on the terrace and when she returned around 5.00 p.m., she disclosed that the appellant, who was their neighbour, had caught hold of her and licked her on her body parts. The appellant was apprehended at the instance and on identification of the complainant from the spot. The victim was medically examined on the same date and her statement under Section 164 Cr.P.C. was recorded on 19.04.2018 wherein she stated that one day when she was playing with 'A', the appellant who was her neighbor took her downstairs. She said '*raju mujhe chaatne lag gaya.*' The Court has observed that the child victim had pointed out that the appellant had kissed her cheeks and chest. After investigation, a charge-sheet was filed against the accused under Section 354 IPC read with



Sections 8 and 12 of the POCSO Act.

3. Vide order dated 22.04.2019, charges were framed against the accused for the offences punishable under Section 10 read with Section 9(m) of the POCSO Act and Section 354 IPC, to which he pleaded not guilty and claimed trial. In support of its case, the prosecution examined seven witnesses, including the child victim who was examined as PW1. The father of the victim, who is also the complainant, was examined as PW2. Dr. Yamini, SR (Gynae), SDN Hospital, who proved the MLC of the victim, was examined as PW5. The rest of the witnesses were formal in nature and deposed about the various aspects of investigation.

In defence, the statement of the accused was recorded under Section 313 Cr.P.C., wherein he denied all allegations and claimed false implication owing to enmity between the complainant and his landlord. He did not lead any defence evidence.

4. Learned counsel for the appellant contends that the appellant is innocent and has been falsely implicated in the present manner. It is submitted that the victim's testimony is tutored and is contradictory to the deposition of her father as to the time of the incident. It was further urged that the prosecution failed to examine material witnesses, namely the mother of the victim. though she was the first person to whom the incident was disclosed and the child "A" who was allegedly present with the victim at the time of occurrence. The non-examination of these material witnesses has adversely affected the case of the prosecution. Reliance in this regard is placed on the decision of the Supreme Court in Parminder Kaur v. State of



Punjab.<sup>1</sup> Further it was contended that, Dr. Yamini deposed that there were no external fresh injuries on the victim, and that the mother had refused internal medical examination of the child victim. The prosecution witness W/Ct. *Monika* (PW4) who was part of the team of police officials which arrested the appellant did not even remember the name of the appellant and other material facts till she refreshed her memory. It is further submitted that the family of the child victim had prior enmity with the appellant due to him taking side of his landlord in a dispute between the said landlord and the child victim's family.

5. On the other hand, learned APP for the State, assisted by learned counsel for the complainant, supported the impugned judgment. It was submitted that the testimony of the victim, recorded after a competency assessment, is cogent and trustworthy. PW-2, the father of the victim, corroborated her version by deposing that the child returned crying and narrated the incident immediately. The FIR was lodged promptly, the accused was apprehended from the spot, and the medical examination recorded the history of molestation. It was submitted that minor inconsistencies are natural given the tender age of the victim, but the core of the prosecution case remains unshaken. Further he submitted that the victim was cross-examined about 5 years from the date of the incident.

6. The prosecution case primarily hinges around the testimony of the child victim. 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<sup>2</sup>, observed as under:

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<sup>1</sup> (2020) 8 SCC 811

<sup>2</sup> (1997) 5 SCC 341



*"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,<sup>3</sup> 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."*

7. In a recent decision of State of Madhya Pradesh vs. Balveer Singh<sup>4</sup>, 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 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*

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<sup>3</sup> 2015 SCC OnLine SC 500

<sup>4</sup> 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 desirable 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..”*

8. The child victim was examined as PW1. She was aged about 7 years at the time of the testimony. On account of her tender age, she was examined without oath. She identified the appellant by name and deposed that he was her neighbour and had licked her. She deposed that while she was playing with another child “A” around noon time, the accused took her downstairs into his room, licked her face and body parts, asked her to open her mouth, and cautioned her not to disclose the incident. She further stated that with great difficulty she managed to escape, whereafter she washed her face after returning home and narrated the incident to her mother. She stated that she had not gone to any hospital.

In cross-examination, she denied having been tutored by her parents. She stated that her parents were present at home at the time of incident and she had gone to play with permission of her mother. The victim was recalled for further cross-examination on 18.03.2023, after about 03 years and 08



months from her initial deposition. Therein, she stated that on the day of the incident, she had school and she had gone to play after returning from school. On the day of incident, her mother and father had returned from work early. She stated that there was a room on the roof of the appellant's house on which one child 'A' used to live with his family. She again reiterated that she was deposing on her own and not at any one's instance.

9. The complainant, who is the father of the child victim, was examined as PW-2. He deposed that on 16.04.2018 he returned home at around 3:00 p.m. and at about 4:00 p.m., his daughter went to play on the terrace. After an hour, she returned weeping and informed him that the appellant had caught hold of her and kissed her on the lips, face, and body parts. He called the police, who arrived within 10 minutes and apprehended the appellant. He correctly identified the appellant in Court.

In cross-examination, he stated that he and his wife are both teachers and the child victim is their only child, though the family of his elder brother as well as his parents also reside with them. The appellant used to reside in the adjacent house on the second floor of the three storied building. There was a small wall admeasuring approximately 2.5 - 3 feet between the terraces of the two houses. He was given a suggestion that the appellant was falsely implicated because he used to take the side of his landlord in the quarrel between the landlord and the complainant over spitting of gutka and because the complainant and his wife had quarreled with the appellant on the Holi eve over him playing music at the roof. PW2 categorically denied both these suggestions.

10. The MLC (Ex. PW5/A) was proved by Dr. Yamini, SDN Hospital,



examined as PW5. The same was prepared on the day of the incident, i.e., 16.04.2018 at 7.05 PM. It records history of molestation by the neighbour (*Raju*). No fresh injuries were found, and the mother of the victim declined internal examination.

11. The IO of the case, SI *Anugrah* was examined as PW7. He deposed about receipt of DD No. 27A (Ex. PW3/C) regarding wrong act with a girl aged about 6 years, reaching the spot at Kanti Nagar Extension along with PW4 and PW6, meeting the complainant and recording his statement. He also deposed as to arrest of the appellant, who he correctly identified in Court. He stated that he left the appellant in the supervision of PW6 and himself along with PW4 went to hospital with the child victim and her mother to the hospital for her medical examination. The child victim was scared at the time and not speaking. He recorded the statement of the complainant under Section 161 CrPC and the statement of the victim was recorded under Section 164 CrPC (Ex. PWI/A) on 19.04.2018.

In his cross examination, he was confronted with the fact that the DD No.27A stated Bihari Colony and not Kanti Nagar Area. He explained that he had confirmed the address from the caller and then reached the spot. He further stated that he did not examine the other child 'A' as his parents were not inclined to join him in the investigation.

12. Ct. Tanveer, who accompanied the IO was examined as PW6 and deposed on similar lines. W/Ct. Monika deposed as PW4. She deposed as to accompanying the child victim and her mother to the hospital for medical examination. She handed over the MLC to the IO. However, she did not remember if she went to the house of the victim or the name of the accused.





She was cross examined by the Ld. APP, wherein she stated that she visited the spot at Kanti Nagar. Then she was shown her statement under Section 161 CrPC dated 16.04.2018 which she identified, including all the details mentioned therein, which supported the prosecution version. She deposed that she only talked to the mother of the victim.

13. In the present case, the child victim's testimony has been cogent, consistent and reliable. Her deposition in Court is consistent with her statement given under Section 164 CrPC in that the appellant took her downstairs and licked her face and body parts. Her father has also corroborated the factum of her going to the roof to play, coming back weeping and narrating the incident to him. Though the victim stated that the incident occurred around noon time and the complainant said that the incident occurred around 4-5 PM, however the said contradiction is not material. The child victim had confirmed the presence of her parents at home at the time of the incident as she stated that they had come home early and she had gone to play on the terrace with the permission of her mother. The complainant was also aware that her daughter had gone to the terrace to play. It cannot be lost sight of that the victim was only 7 years old at the time of her initial testimony and her further cross examination was conducted on 18.03.2023, after about 03 years and 08 months from her initial deposition, which itself was more than a year after the date of the incident. She cannot be expected to remember every minute detail. Her narration has never wavered in any material term and the contradictions in timing etc. are immaterial to the prosecution case.

14. Though the mother of the child victim was not examined, the same is



not fatal to the prosecution case. It is not essential that both parents should be examined in every case. The father of the child victim has been duly examined and has supported the prosecution case. The appellant has failed to highlight what essential fact has not come on record as a result or how the non-examination of the mother weakened the prosecution case in any way. The father was present at the house at the same time as the mother was. Neither is it the prosecution case that the mother was witness to something more than the child victim narrating the incident to her.

In so far as the child 'A' is concerned, the IO has deposed that his parents were not keen on the child participating in the examination. In any case, the child was not an eye witness to the incident as the prosecution case is that the appellant had taken the child victim downstairs to his room. Thus, no such material witnesses have been left out which would adversely affect the case of the prosecution and as such, the decision in Parminder Kaur (Supra) is inapplicable to the facts of the present case.

15. In so far as the MLC is concerned, the allegations are of licking and the child victim also stated that she had washed her face, so the lack of any fresh injuries in the MLC or refusal of internal medical examination is of no consequence. In fact, the MLC is a contemporaneous document which also records the allegation against the appellant. In so far as PW4 is concerned, her not remembering the name of the accused or whether she went to the house of the victim is again, inconsequential as PW6 and PW7 have given categorical and detailed depositions to establish the sequence of events post receipt of DD No. 27A. Even PW4 has corroborated the prosecution version of her going to the hospital with the child victim and her mother. She was



also shown her statement under Section 161 Cr.P.C. to refresh her memory which she duly identified.

16. 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*<sup>5</sup> 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.”*

17. Gainful reference in this regard may also be made to the decision of a Co-ordinate Bench of this Court in *Veerpal v. State*<sup>6</sup>, wherein it was held as under:-

*: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.”*

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<sup>5</sup> (2025) 2 SCC 399

<sup>6</sup> 2024 SCC OnLine Del 2686



In the present case, in view of the clear and categorical deposition of the child victim which was similar to her statement under Section 164 CrPC and her identification of the appellant, the complainant supporting her version and same being recorded in the MLC, 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. The angle of prior enmity is weak and unsubstantiated by any material evidence. The landlord who is said to have a dispute with the complainant was never examined. The child victim and the complainant have both denied the occurrence of any such dispute with either the landlord or the appellant. Hence this defense put forth by the appellant has no legs.

18. 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.

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

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

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

**SEPTEMBER 12, 2025**

kb/ry