



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

% Date of Decision: 14.08.2025

+ **CRL.A. 207/2020**

STATE (N.C.T OF DELHI)

.....Appellant

Through: Mr. Pradeep Gahalot, APP for State.

versus

GAURAV GOSWAMI

.....Respondent

Through: Ms. Shradha Karol, Advocate  
(Through V.C.).

**CORAM:**

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

**JUDGMENT (ORAL)**

1. By way of the present appeal, the State has assailed the judgment dated 06.06.2015 and the order on sentence of even date passed by the learned ASJ-01, North-East District, Karkardooma Courts, Delhi in SC No. 51/2014, arising out of FIR No. 554/2014 registered under Sections 354/354-A/354-B IPC and Section 10 of the POCSO Act at P.S. Bhajanpura. Vide the impugned judgment, the respondent/accused was acquitted of all charges.

2. The case of the prosecution, briefly put, is that on the intervening night of 01.05.2014, the accused, father of the prosecutrix aged about 11 years, allegedly offered her Rs.10 to sleep with him, touched her chest, and asked her not to disclose the same to her mother. The prosecutrix thereafter



approached her mother (PW-6), who lodged the complaint. On this basis, FIR No. 554/2014 was registered on 02.05.2014. The prosecutrix's statements were recorded under Sections 161 and 164 Cr.P.C., and her age was verified through school records proved by PW-4, the Principal of E\* Girls School. A chargesheet was filed under Sections 354/354-A/354-B IPC and Section 10 of the POCSO Act.

3. At trial, the prosecution examined 10 witnesses. The prosecutrix was examined as PW-2. Her mother was examined as PW-6. PW-4, the school principal, proved the date of birth. PW-7, Dr. *Keya Vaid*, proved the MLC. The rest were formal witnesses who deposed as to various aspects of the investigation. In his statement recorded under Section 313 Cr.P.C, the respondent alleged false implication at the instance of his wife, citing frequent quarrels over his drinking habit. He further alleged that the child was tutored by her mother. No defence evidence was led.

4. Learned counsel for the State argued that the trial court erred in acquitting the accused despite the consistent core of the prosecutrix's testimony, corroborated by her mother, and that the statutory presumption under Sections 29 and 30 of the POCSO Act had not been applied in its true spirit.

5. *Per contra*, learned *Amicus Curiae* submitted that the appeal was filed with a delay of 218 days, which itself had not been satisfactorily explained. On merits, it was urged that the testimonies of PW-2 and PW-6 were inconsistent and improved upon at each stage, whether in the FIR, Section 161 and Section 164 statements, the medical history, or depositions before court. It was also contended that the admitted discordial relationship



between the accused and PW-6 created a genuine possibility of false implication.

6. A perusal of the trial court record shows that material inconsistencies emerged in the testimonies of the prosecutrix (PW-2) and her mother (PW-6). The prosecutrix, though only 11 years old at the time, gave differing versions of the incident at every stage. In her Section 161 Cr.P.C. statement, the prosecutrix alleged that the accused touched her chest and offered her Rs.10. In her statement under Section 164 Cr.P.C., the prosecutrix reiterated the allegations and added that the accused attempted to pull her frock and underwear. Before the doctor, she gave history that her trousers were undressed while she was sleeping. In court, she stated that she was sleeping with her siblings when the accused touched her chest and offered her money.

7. PW-6 too gave varying versions. In her initial complaint she spoke only of touching of the chest, whereas in her Section 164 Cr.P.C. statement she alleged pulling of frock and underwear. In her deposition before court, she admitted that the accused was heavily drunk on the night of the incident and also acknowledged frequent quarrels between them. In cross-examination, PW-6 admitted that her elder daughter was sleeping with the prosecutrix at the time of the incident, contrary to PW-2's deposition that the elder sister was sleeping beside her brother. PW-6 further expressed ignorance about the whereabouts of her son that night. Importantly, the siblings of the prosecutrix, though allegedly present, were never examined. Both PW-2 and PW-6 stated that the accused was a habitual drinker and frequently quarrelled with PW-6.



8. Having perused the record, I find that the versions of the prosecutrix varied materially across different stages of investigation and trial. The mother's testimony too was inconsistent. Both witnesses admitted that the accused was heavily drunk on the night of the incident, and the admitted strained relations between PW-6 and the accused lend further doubt. The other siblings of the prosecutrix, who could have corroborated the incident, were never examined. There is some strength in submission of Learned Amicus that the tutoring of child cannot be ruled out as the marital relations between her mother and father (the accused) have been admitted to be strained not only by the mother but by the child herself.

9. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Trial Court is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as (2022) 8 SCC 536, wherein it was observed, as hereunder:

*“8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)*

*“25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.””*



10. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as (2020) 10 SCC 166, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

*“14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179], this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)*

*“...*

*13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)], the Privy Council observed as under: (SCC Online PC: IA p. 404)*

*‘... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.’*

*...*

*(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.’*

11. In the absence of any recovery or corroborative material, the case of



the prosecution rests entirely on these inconsistent testimonies. While the presumption under Section 29 of the POCSO Act is a statutory safeguard, it is rebuttable. 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>1</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.*

In the present case, the inconsistencies and contradictions in the depositions of PW-2 and PW-6, coupled with the surrounding circumstances, are sufficient to rebut the presumption even without independent defence evidence.

12. I find no illegality in the appreciation of evidence by the trial court. The inconsistencies in the testimonies of PW-2 and PW-6, along with the admitted strained relationship between PW-6 and the accused, create sufficient doubt as to the veracity of the allegations.

13. In view thereof, the appeal is dismissed.

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<sup>1</sup> 2024 SCC OnLine Del 2686



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14. The Court records its appreciation of the valuable assistance provided by learned *Amicus Curiae*.

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

**MANOJ KUMAR OHRI  
(JUDGE)**

**AUGUST 14, 2025**  
*k/ry*