



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

% Reserved on : 19.08.2025
Pronounced on : 22.08.2025

+ **CRL.A. 813/2023**

DEEPAK

.....Appellant

Through: Mr Manoj Kumar Duggal, Advocate

Versus

THE STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr Pradeep Gahalot, APP for State
with SI Jyoti and SI Satyawati.

Mr Himanshu Anand Gupta,
Advocate for DSLSA with Mr
Sidharth Barva, Mr Shekhar, Ms
Navneet and Mr.Mike Desai,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 374(2) CrPC seeking to set aside the judgment of conviction dated 11.08.2023 and order on sentence dated 22.08.2023 passed by the ASJ-07(POCSO)/West Tis Hazari Courts, Delhi arising out of FIR No.392/2015 registered under Sections 376/506 IPC and Section 6 POCSO Act at P.S. Hari Nagar, Delhi.

Vide the impugned judgement, the appellant was convicted for the offence under Sections 376/506(II) IPC and Section 6 POCSO Act and vide the order on sentence, the appellant has been directed to undergo rigorous imprisonment for a period of 10 years for the offence punishable under Section 376(2) IPC alongwith payment of fine of Rs.10,000/- in default



whereof he has been directed to further undergo simple imprisonment for a period of 1 month and rigorous imprisonment for a period of 3 years for the offence punishable under Section 506(II) IPC alongwith payment of fine of Rs.4,000/- in default whereof he has been directed to further undergo simple imprisonment for a period of 1 month. The benefit of Section 428 Cr.P.C. has also been provided to the appellant and all the sentences have been directed to run concurrently.

2. The facts, as noted by the trial court are reproduced here under:-

On 13.03.2015, DD No. 16A was received by SI Ramphal regarding sexual assault with a 7 years old female child at her school by a school peon and he went to the spot and mother of the victim had alleged that her daughter, aged 7 years, was quite for the last few days and refused to go to school and told that one sweeper, Deepak used to follow her whenever she used to go to bathroom and on the pretext of cleaning the bathroom, he used to bolt the door and touch the breast of victim girl, kiss her and used to show his private part to her and insert his finger in her vagina and also threatened that if she disclosed the same to anyone, then he would kill her parents with a knife and would also break victim's hands and legs.

3. On completion of investigation, charges were framed under Sections 354/376/506 IPC and 6/10/12 POCSO Act to which the appellant claimed not guilty and claimed trial.

4. The prosecution examined 9 witnesses to prove its case. The mother of the victim was examined as PW1. The child victim was examined as PW2. The Principal of the school where the incident occurred deposed as PW3. PW8, Dr. Sunita Seth proved the MLC. W/SI Satyawati who was the IO was examined as PW9. The rest of the witnesses were formal who deposed as to various aspects of investigation.

On the other hand, statement of the appellant was recorded under Section 313 Cr.P.C., wherein he denied all evidence and claimed that he was



falsely implicated.

5. Learned counsel for the appellant submits that the testimony of the prosecutrix is inconsistent and suffers from material contradictions. The father of the child victim was never examined and the child victim has failed to give any specific date of incident and in fact was not attending school regularly for this incident to have occurred. The MLC does not disclose any injury on the private parts of the victim and the hymen was found to be intact. The Principal of the school has not supported the prosecution's case. The place of appellant's arrest is doubtful and that he was handed over by the public persons and not by school staff. Lastly, it is contended that the appellant is being falsely implicated due to the parents having a grudge against him.

6. Learned APP for the state submitted that the testimony of the child victim as well as the mother has been consistent as well as reliable and the same does not suffer from any embellishment. It is further submitted that the appellant has been identified in court. While referring to the attendance register, it is submitted that the same would show that the victim and the appellant were both present in school at the time when the alleged incidents occurred. MLC records that there is a slight erythema (redness) on the labia minora and tenderness is noted on the breast.

7. In rejoinder, learned counsel for the appellant refers to the attendance register and the same does not record his presence in the school on the date of the arrest. Moreover, he was arrested at 11AM, even though the DD 16A came to be registered at 10:45 AM.

8. The child victim was aged around 7 years at the time of the incident, her age has not been disputed. In her testimony, she deposed that whenever



she went to the washroom in her school, the appellant working as a sweeper, would bolt the door from inside. He would then ask her to show her *susu*. He also used to insert his finger inside her *susu*, press her breast, expose his *susu* to her, and rub his finger on her lips. She clarified that when she said *susu* she meant ‘through which urine is passed.’ This happened for many days. She further stated that even when she tried to resist, the appellant would not stop, and she used to feel pain in her body. When the victim told the appellant that she would tell her parents, he threatened her by saying that he would kill her and her parents. She correctly identified the appellant in court.

In her cross examination, she was given the suggestion that she had stopped going to school because she was depressed in view of stress of examination. However, she categorically rejected the same, and instead stated that she stopped going to school due to fear of the appellant. She further stated that the cameras and the lady sweeper were introduced in the school after the said incident occurred with her. She further clarified that she came to know the name of the accused from the principal and that too after the incident. She denied the suggestion of false implication.

On overall conspectus, no material contradictions came out in her testimony which would render it untrustworthy.

9. The mother of the victim/complainant was examined as PW1. She deposed that in March 2015, she noticed that the child victim was scared and repeatedly refused to attend school. The child victim said to her that “*Aap ko maar denge, Papa ko maar denge, main school nahi jaungi*”. The victim then narrated the incident that whenever she went to the washroom, the school sweeper would come inside after her, she did not disclose his name.



Later, it was revealed that the sweeper was *Deepak*. The prosecutrix further said that after doing so, the accused threatened her that if she disclosed the incident to anyone, he would kill her and her parents with a knife. She further testified that because of these incidents, the victim was in depression. The next morning, she, along with her husband, the prosecutrix, and other relatives, went to the school and narrated the incident to the school principal. The principal called all the sweepers, and the prosecutrix pointed out the appellant and it was at that time, his name was revealed as Deepak. She also correctly identified the appellant in court. At the instance of the Principal, the appellant was locked in a room, and the police were called, after which the appellant was taken into custody.

During cross-examination, she stated that the victim's examinations were going on since 02/03.03.2015, and therefore, she had holidays in between the examination days. She had further stated that the victim had appeared in her exams. She stated that the child victim did not disclose exact dates and times of the incidents.

10. The principal of the school at the time of the incident deposed as PW3. She turned hostile. In her cross-examination, she stated that neither the victim nor her parents and her class teacher ever made complaint against the appellant regarding this alleged incident. She further deposed that the appellant worked at the school for about 4 years, he did his work diligently all the time and had a good moral character.

11. The MLC of the victim is exhibited as PW5/A. It records a slight erythema and tenderness around the labia minora. Additionally, tenderness was also observed on the breasts. The hymen was recorded to be intact and there were no fresh injuries. On this aspect, Dr. Sunita Seth (PW8) deposed



that its tearing would depend on the finger, force used and depth of insertion.

12. The attendance register of the child victim for the month of February, 2015 has been exhibited as Ex. PW3/C and for the month of March, 2015 as Ex. PW3/D. The record reflects that the child victim remained present on all days in both months, except on 26.02.2015. The attendance register of the appellant for the month of March, 2015 has been exhibited as Ex. 9/G, which shows that the appellant's attendance during the month of March was continuous till the 12th March, whereafter he came to be arrested on the 13th March. The copy of the invoice for the month of February 2015 of appellant's contractor who deployed him at the school has been exhibited as Ex. 9/F. The same shows that he was also present on duty for 27 days in February.

13. Indeed, the testimony of the child victim requires deeper scrutiny as the child being prone to tutoring. The testimony is to be evaluated in the light of attending circumstances to see the same inspires confidence. The Court is required to see as to whether the child victim is wholly reliable, wholly unreliable or partly reliable. The Supreme Court in Dattu Ramrao Sakhare v. State of Maharashtra¹, 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."

¹ (1997) 5 SCC 341



In a recent decision of State of Madhya Pradesh vs. Balveer Singh², 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.

(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...

xxx”

14. The testimony of the child victim in the present case is cogent, consistent and reliable. Her deposition in court is in line with her statement given under Section 164 Cr.P.C. She has deposed in clear terms as to how

² 2025 SCC OnLine SC 390



the appellant used to come inside when she went to use the washroom, and he used to force her to show him her private parts which he used to touch and put his fingers inside. She also deposed as to how he used to press her breasts despite resistance and how these incidents have occurred repeatedly. Though she has not given a specific date of the incident, the fact that she was just seven years old at the time of incident cannot be lost sight of. There has been no material improvement or omission which would give even a slight impression of tutoring. Though the appellant has made a bald averment that the parents of the victim held a grudge against him and that is why he was falsely implicated, he has failed to give any specifics which would lend even an iota of believability to this defence. The mother of child victim has deposed as to observing changes in her behavior, the victim narrating the incident and them going to the school to identify the appellant. Her testimony also does not suffer from any infirmity. In view of the same, the non-examination of the father of the child victim does not weaken the case of the prosecution in any way, shape or form.

15. Though there is some discrepancy as to the timings of school around the time of the incident between her and the child victim, the same is not material or fatal to the prosecution case. Especially since the attendance register for both the appellant as well as victim recording consistent presence in the month of March. In fact, the child victim took only one holiday in the month of February as well and as per the invoice of his contractor, the appellant was also on duty for 27 days during February. Thus, both the appellant as well as the child victim were regularly present in the school at the same time.



16. Though the principal of the school has not supported the prosecution case, however nothing has come out in her testimony which by itself would render the occurrence of the incident improbable. Indisputably, the complaint of the child victim led to arrest of the appellant. As a result, her deposition has failed to weaken the prosecution case. Curiously, though a suggestion was given to the child victim that there were cameras and women sweepers in the school at the time of incident, which was denied, however no such clarification was sought by the defence from the school principal.

17. The MLC has recorded slight erythema and tenderness around the labia minora. Additionally, mild tenderness was also observed on the breasts which is consistent with the child victim's deposition that the appellant used to press her breasts. Though the hymen was found to be intact, the same does not weaken the prosecution case. It is trite law that to establish the offence of rape, penetration, no matter how slight, is sufficient. It is not given that in every case of rape, there would be injuries on the private part of the victim. In the recent decision of Lok Mal alias Loku vs. State of Uttar Pradesh,³ the Supreme Court has held as under:-

“Merely because in the medical evidence, there are no major injury marks, this merely cannot be a reason to discard the otherwise reliable evidence of the prosecutrix. It is not necessary that in each and every case where rape is alleged there has to be an injury to the private parts of the victim and it depends on the facts and circumstances of a particular case. We reiterate that absence of injuries on the private parts of the victim is not always fatal to the case of the prosecution.

Further, 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

³ (2025) 4 SCC 470



where the testimony is credible and reliable and does not suffer from any fatal contradiction, it alone can also be sufficient for conviction. In State of Himachal Pradesh vs. Manga Singh,⁴ it was held as under : -

11..It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.

18. Though the appellant has raised questions on the manner of his arrest, he has been squarely identified by child victim in Court. The mother of the child victim also identified him as the person who was pointed out by the child victim in the school.

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. A three-Judge Bench of the Supreme Court in Sambhubhai Raisangbhai Padhiyar v. State of Gujarat⁵ 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.

⁴ (2019) 16 SCC 759

⁵ (2025) 2 SCC 399



20. Gainful reference in this regard may also be made to the decision of a Co-ordinate Bench of this Court in *Veerpal v. State*⁶, 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, on account of the consistent testimony of child victim, identification of the appellant, supporting documents in the form of attendance registers, 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 the appellant has miserably failed to rebut. He has been unable to shake the credibility of any of the prosecution witnesses by thorough examination or pointed any fatal gaps in the prosecution case. The defence taken by the appellant is untenable and rightly discredited by the Trial Court.

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.

⁶ 2024 SCC OnLine Del 2686



2025:DHC:7260



22. Accordingly, the present appeal is dismissed.
23. A copy of this judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.
24. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 22, 2025

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