



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

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+ **CRL.A. 951/2017 and CRL. M. (BAIL) 218/2025**

SHANKAR

.....Appellant

Through: Ms. Manika Tripathy, Advocate
(DHCLSC) with Mr.Nishchaya Nigam,
Ms.Komal Narual and Ms.Vagmi Singh,
Advocates.
Appellant through VC from Jail

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State with
SI Dilbag Singh, P.S.
Ms. Urvi Kuthiala, Amicus Curae (*Pro
bono*) for victim.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant assails the judgment dated 30.03.2017 passed by the Court of Special Judge (POCSO Act), Central District, Tis Hazari Courts, Delhi in SC No. 74/14 (New Case No. 27564/2016), arising from FIR No. 261/14 registered at Police Station Kashmere Gate under sections 363/376D IPC and sections 4/6/10 of POCSO Act.



2. Vide order on sentence dated 15.04.2017, the appellant was directed to undergo Rigorous Imprisonment for 20 years along with a fine of ₹5,000/- , and in default of payment of fine, to further undergo Simple Imprisonment for 2 months, for the offence punishable under Section 376D IPC. He was also sentenced to Rigorous Imprisonment for 3 years with a fine of ₹1,000/-, and in default thereof, to undergo Simple Imprisonment for 1 month, under Section 363/34 IPC. For the offence under Section 4 of the POCSO Act, he was awarded Rigorous Imprisonment for 7 years with a fine of ₹2,000/-, and in default of payment, to further undergo Simple Imprisonment for 2 months. Additionally, under Section 6 of the POCSO Act, he was sentenced to Rigorous Imprisonment for 10 years with a fine of ₹2,000/-, and in default thereof, to undergo Simple Imprisonment for 2 months. All substantive sentences were directed to run concurrently, with the benefit of Section 428 Cr.P.C. being extended to the appellant.

3. The case was set in motion on receipt of information at 4:00 A.M on 15.07.2014 when the child victim along with her mother came to the police station and the mother said that 2-3 persons had committed *galat kaam* with her daughter. DD No.7A came to be recorded and marked to SI *Uday Pal Singh* who went to the spot along with lady Ct. *Santosh* and complainant. The statement of the victim was recorded at the hospital at around 8.30 A.M. She stated that around 2.00 am, she went to the park to get water from the tap for her mother. 3 persons, who used to work around *Hanuman Mandir*, of which she knew 2 names, 'S' and 'V', were there. The third person shut her mouth and took her behind the stage and threatened her not to shout. 'V' held her hands, 'S' removed her upper clothes, and the third person removed



her lower clothes. All of them touched her over the body , forcibly. Then the third person, followed by ‘S’ and ‘V’, put their private parts in her private part and forcibly committed ‘*galat kaam*’ with her. Afterwards, they ran away, leaving her behind. She went to her mother and disclosed the incident to her. The third person was middle aged and worked near the *hanuman mandir* only and she could recognise him if she saw him. W/SI Sushila, went to the spot with child victim and her mother, where they found one old man i.e. the appellant, sleeping in the park. The child victim pointed at him and said that he had committed rape upon her. As per the arrest memo, (Ex. PW8/A), he came to be arrested on 15.07.2014 at 7.30 P.M. The other two accused, ‘S’ and ‘V’ were also arrested, but they were found to be juveniles.

4. The statement of the victim under Section 164 CrPC came to be recorded on 16.07.2014. She reiterated that on tuesday night, around 1.00 am, she went out to fill water where 3 people where there, 2 of who were named *Ramesh@ Shankar* and ‘V’ and she didn’t know the name of the third one. ‘V’ put a cloth on her mouth and the 3 of them took her behind the park. ‘V’ removed her upper clothes and ‘R’ removed her lower clothes. Then all 3 accused committed *galat kaam* with her.

A supplementary statement of the child victim came to be recorded under Section 161 CrPC on 31.07.2014 (wrongly recorded as 31.08.2014) wherein she stated that when she first gave her statement, she was scared and got confused while naming the accused. The names were *Shankar* (appellant), JCL ‘S’ and ‘V’ who were arrested at her behest.



5. The Trial Court framed charges on 11.09.2014 under Sections 363/376D IPC and Sections 6 and 10 POCSO Act read with Section 34 IPC. The appellant pleaded not guilty and claimed trial.

6. The prosecution, in support of its case, examined fifteen witnesses. The child victim was examined as PW7, Her mother as PW6. Her MLC was proved by Dr. Surendra Kumar, Causality Medical Officer, Aruna Asaf Ali Hospital and Dr, Sony Sohanee, SR, Gynaecologist, examined as PW3 and PW4 respectively. The child victim's bone ossification test was proved by Dr. Tarun Sareen (PW-13). The IO W/SI Sushila was examined as PW15. Rest of the witnesses were formal in nature and deposed as to various aspects of investigation.

7. In his statement under Section 313 Cr.P.C., the appellant denied the allegations and claimed false implication on account of a quarrel with the victim's mother over exchange of coins and notes. No defence evidence was led.

8. 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 MLC does not support allegations of gang-rape as there are no injuries recorded on the private parts of the child victim. Reliance is placed on the decision of Bombay High Court in Pravin Ruprao Harde v. State of Maharashtra.¹ It is further submitted that the testimony of the child is contradictory with her mother as to how to mother got to know of the incident. It is further contended that the appellant was not named in the FIR

¹ 2024 SCC OnLine Bom 2475



and has been implicated later. The FSL also does not support the prosecution case *qua* him. There are material contradictions and improvements in the various statements of the child victim.

9. The appeal is opposed by the learned APP for the State, as well as Ms. Kuthiala, learned Amicus Curiae (pro bono). Learned Amicus submits that the testimony of the child victim, is consistent, natural, and trustworthy. The medical findings support the allegation of rape and the FSL report which the involvement of the juvenile co-accused, establishes that she was subjected to gang rape. No specific details of the prior dispute with the victim's mother have been given, the inconsistencies in the victim's statements are minor, and the appellant was arrested within a few hours of reporting the incident and there has been no delay in his identification.

10. In absence of any proof of age, the age of the child victim was determined by ossification test. The same was exhibited as Ex. PW13/A and proved by Dr. Tarun Sareen, Medical Officer, Department of Radiology, Hindu Rao hospital. The bone age was determined to between 14-15 years. No contention has been raised on the age of victim by learned counsel for the appellant.

11. The child victim was examined as PW-7. She deposed that at about 1:00 a.m., her mother had sent her to fetch water from the tank in the park. While she was fetching water, three persons i.e., the appellant, and two juveniles 'V' and 'R', came there, caught hold of her, dragged her behind a stage in the park and committed rape upon her turn by turn. They beat her with fists, slippers and shoes. Her mother, who was searching for her, met her at the gate of the park. The victim disclosed the incident to her mother,



who took her to police chowki. The 3 accused were arrested at her instance. She correctly identified the appellant in Court.

In her cross examination, she stated that she knew the name of the appellant. She denied the suggestion that she could not see the faces of the accused due to darkness. She stated that 'R' gagged her mouth, and removed her salwar. She was confronted with her initial statement to the police (Ex. PW7/B) wherein she had not stated the appellant's name to the police. She stated that the appellant used to sell flowers near Hanuman mandir and her mother also knew him, but denied that there was any quarrel between them prior to date of incident. She stated that the accused had thrown her underwear. She told her mother that 3 persons committed *galat kaam* with her and her mother told the police. The IO had asked her to depose regarding the incident at park and asked her to state truth before Court.

12. The mother of the victim was examined as PW6. She deposed that she was living near Hanuman Mandir, Yamuna Bazar, in a *Rain Basera* (night shelter) with her daughter. On the relevant night, at about 2:00 a.m., she had sent her daughter to fetch water. She did not return for a long time. When she returned, weeping, she narrated that three persons had lifted and raped her. PW-6 then took her to the police station and reported the matter. The police accompanied them to the spot, i.e., behind a stage in the park, and thereafter took the victim to the hospital for medical examination, where her clothes were also seized. PW-6 stated that all three accused were apprehended at the instance of her daughter, and she identified the appellant in Court as one of them.



In cross-examination, PW-6 stated that she knew the appellant from before as he used to work in a shoe shop at Yamuna Bazar. She denied suggestions that any dispute had taken place between her and the appellant before the incident, or that she was deposing falsely at the instance of the police. She also stated that no statement of hers was recorded by the police, though she had accompanied them to the spot. She denied the defence suggestion that she was falsely implicating the appellant.

13. Dr. Surendra Kumar (PW-3), Casualty Medical Officer at Aruna Asaf Ali Government Hospital, Delhi, first examined the victim and thereafter she was examined by Dr. Sony Sohanee (PW-4), SR Gynaecologist at the same hospital. The history given by the child victim was of forcible sexual intercourse by three known males in the early hours of 15.07.2014 when she had gone to fetch water. There was no fresh external injury. Genital inspection revealed a torn hymen, accompanied by mild bleeding from vaginal wall and presence of white discharge. In cross examination, she said that she could not say whether the hymen was old torn or freshly torn and there was no fresh injury/abrasion on genital of victim.

14. The exhibits from medical examination were sent for FSL Examination. The FSL report, exhibited as Mark Px, showed that semen was detected on salwar, cervical mucus collection and vaginal secretion and washing. The alleles of JCL 'V' and 'S' were accounted for in the cervical mucus collection and the vaginal secretion of the child victim. However, the appellant's alleles were not accounted for.

15. 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 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:-

...

(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..”

16. Section 376D IPC defines gang rape as when a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons is deemed to have committed the offence of rape. It is not necessary for the prosecution to provide evidence for the completed act of rape for each accused. There should be the

² 2025 SCC OnLine SC 390



existence of common intention to commit rape and they should have acted in furtherance of it. Reference may be made to the recent decision of Supreme Court in Raju v. State of M.P.,³ wherein it was held as under:

“21. This aspect has also come up for judicial consideration before this Court in Pramod Mahto v. State of Bihar [Pramod Mahto v. State of Bihar, 1989 Supp (2) SCC 672 : 1990 SCC (Cri) 206] wherein this Court held that the Explanation has been introduced with a view to effectively deal with the growing menace of gang rape and in such circumstances, it was not necessary that the prosecution should adduce clinching proof of complete act of rape by each one of the accused on the victim or on each one of the victims where there are more than one.

22. Further, in Ashok Kumar v. State of Haryana [Ashok Kumar v. State of Haryana, (2003) 2 SCC 143 : 2003 SCC (Cri) 446] , it was held as under: (SCC p. 146, para 8)

“8. Charge against the appellant is under Section 376(2)(g)IPC. In order to establish an offence under Section 376(2)(g)IPC, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds. It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence.”

(emphasis supplied)

23. In view of this, it is very clear that in a case of gang rape under Section 376(2)(g), an act by one is enough to render all in the gang for punishment as long as they have acted in furtherance of the common intention. Further, common intention is implicit in the charge of Section 376(2)(g) itself and all that is needed is evidence to show the existence of common intention.”

³ (2025) 8 SCC 281



17. In the present case, the child victim has consistently stated that when she went to the park at night to fill water, 3 persons, who were known to her, took her behind the stage and all of them committed rape upon her. In her 1st statement under Section 161 CrPC on 15.07.2014, she clearly describes the act of penetration. Although she does not name the appellant, she does state that the third person was middle aged and worked near the hanuman mandir and that she could recognise him if she saw him. The appellant came to be arrested on the same day, at the instance of the child victim. In her statement under Section 164 CrPC, recorded on the next day i.e. 16.07.2014, she has taken the appellant's name and again repeated the allegation that 3 men committed *galat kaam* with her. She also gave a supplementary statement under Section 161 CrPC clearing the confusion about the names of the other co-accused, however, the name of the appellant was again taken. Lastly, in her testimony, she again reiterated the allegation of gang rape and identified the appellant as one of the perpetrators. She denied the suggestion that she couldn't see his face due to dark. She said that the appellant used to sell flowers near *Hanuman Mandir*. Though her mother also knew him, she denied suggestions of any previous quarrel. Thus, the child victim has always been clear and consistent about the identity of the appellant and his involvement in the present case and it is not a subsequent improvement.

18. Her version is also corroborated by the testimony of her mother, who deposed as to sending the child victim to fetch water, her coming back and stating that three persons had lifted and raped her. Though there is some variance in her deposition with that of her daughter as to how they came to meet after the incident, the same is not material and in light of testimony of victim, does not affect the prosecution case.



19. The allegation of gang rape also finds support from the MLC of the child victim, prepared within hours of the incident, records allegation of forcible sexual intercourse by 3 known persons. Her hymen was found torn, with mild bleeding from vaginal wall and white discharge. The appellant has contended that since no external injury was recorded, the allegations of gang rape are not supported. 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.⁴) 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 (cf: Ranjit Hazarika vs. State of Assam.⁵) Thus, in lieu of the law laid down by the Supreme Court, the decision of Bombay High Court in Pravin Ruprao Harde (Supra) is of no avail to the appellant. The FSL also confirms the involvement of the other two JCL's in the incident, and even though it does not have any positive finding *qua* the appellant, it corroborates the child victim's account of occurrence of gang rape.

20. 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.⁶]

21. Considering the consistent testimony of the child victim, corroborated by the *res gestae* evidence of her mother, the quick identification and arrest of the appellant, medical and scientific evidence which are supportive of

⁴ 2010) 2 SCC 9

⁵ (1998) 8 SCC 635



gang rape, it is held that 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 claimed previous quarrel with the mother of the child victim due to some money dispute. however, the suggestions *qua* the same were denied by both the child victim and her mother. No specific suggestions were given about the dispute to elicit any details. Thus, the defence remained unsubstantiated.

22. 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. As a necessary sequitur, CRL. M. (BAIL)-218/2025 seeking suspension of sentence is also dismissed.

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

24. This Court also appreciates the remarkable assistance provided by the learned Amicus Curiae.

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

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 26, 2025

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⁶ (2025) 2 SCC 399