



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

% Reserved on : 25.07.2025  
Pronounced on : 29.07.2025

+ **CRL.A. 500/2024**

MUKESH .....Appellant

Through: Mr. Sunil Kr. Ojha, Advocate.

versus

STATE OF NCT OF DELHI & ANR .....Respondents

Through: Ms. Shubhi Gupta, APP for State

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

**JUDGMENT**

1. The appellant, through the present appeal filed under Section 374(2) Cr.P.C. impugns the judgment on conviction dated 14.07.2023 and order on sentence dated 16.12.2023 in SC No.98/2018 arising out of FIR No. 1032/2016 registered under Section 363 IPC and Section 10 of POCSO at P.S. *Mangolpuri*. On conclusion of investigation, the chargesheet came to be filed under section 363/354A/366 IPC and Section 10 POCSO Act.

Vide the impugned judgment, the appellant has been convicted under Sections 363/354B/323 IPC and Section 10 of the POCSO Act and vide order on sentence, he has been sentenced to undergo rigorous imprisonment (RI) for 7 years for the offence under Section 363 and Section 10 of POCSO Act and further sentenced to RI for 1 year for the offence under Section 323



IPC. All the sentences were directed to run concurrently. Benefit of Section 428 Cr.P.C. was also given to the appellant.

2. Wheels of the investigation were put in motion on receipt of a complaint that the prosecutrix/child victim aged about 9 years was kidnapped on 13.11.2016 at about 10 am from Navariya Park, R Block, *Mongolpuri*, Delhi. It was alleged that the appellant after removing the pant of the prosecutrix, touched her with sexual intent and on her resistance, slapped her many times.

3. Post completion of investigation, charge for the offence under Sections 363/354B/323 IPC and Section 9(m) POCSO read with section 10 POCSO was framed against the appellant, who pleaded being not guilty and claimed trial. Besides examining the prosecutrix (PW-1), her father (PW2) and her mother (PW3), the prosecution also examined the Principal of the school (PW6), where the prosecutrix was studying as well as Dr. Sudhir (PW8), who proved the MLC. IO of the case namely, SI *Krishna* appeared as PW-6. Statement of the accused was recorded under section 313 Cr.P.C wherein he denied the prosecution case and claimed innocence and false implication. He, however, did not examine any defence witness. The statements of Lady Ct. *Manju* and HC *Laxman* under Section 164 Cr.P.C, who joined the investigation with the I.O and were witness to registration of the FIR, arrest of the accused and medical examination of the prosecutrix, were admitted by the counsel for the accused and as such the aforesaid witnesses were not called for formal proof during the trial.

4 While assailing the conviction, it was contended on behalf of the appellant that the FIR was registered against the unknown persons as the identity of the accused was not known to the prosecutrix. Not only there is



doubt with respect to the identity of the accused as the prosecutrix during her examination-in-chief, did not identify the appellant, but also there is a doubt as to how and where the appellant was arrested.

5. Learned APP who is duly assisted by learned counsel for the prosecutrix, defended the impugned judgment and stated that identity of the appellant was established during the cross-examination of the prosecutrix as well as through the testimony of her father. The injuries on the prosecutrix were also proved through the MLC (Ex.PW8/A).

6. Indisputably, the age of the prosecutrix, being 9 years, is not under challenge. No submissions were advanced on this account by the appellant.

7. As noted above, the incident was reported on 13.11.2016 through a written complaint (Ex.PW1/A) wherein it was alleged that on 13.11.2016 at about 10.00 A.M. when the child victim was playing at Navariya Park, R Block, one boy aged 17-18 years asked her to bring 'Center Fresh', which was brought by her. She was again asked to bring another thing for which she went to a 'kiosk' when she was followed by that boy who asked her to come to petrol pump where his bike was parked. When she declined, he forcibly took her to the petrol pump where another person met him. Thereafter, the accused had taken her in an old factory near the railway station where she was thrown in a pit and accused started lowering her *pajami*. She raised alarm at which somebody came and the accused ran away. Later, in her statement under Section 164 CrPC, she reiterated her above-stated version. In the meantime, the accused was arrested on 16.11.2016. The child victim in her testimony deposed that when the accused ran away, she came back to her house, and when her parents returned, she informed about the incident to them.



8. Pertinently, the prosecutrix failed to identify the appellant during her testimony. The relevant extract of her deposition is as under:

*“I cannot identify the said uncle who took me to the railway station and threw me in the pit and committed sexual assault upon me as it is a matter of three years ago.”*

On this ground, she was cross-examined by Ld.APP and was asked to again identify the appellant from the persons who were sitting in Court, on which she said *“ye uncle bilkul waise hi hain”*.

9. During her cross-examination by the defence, she stated that one day while she was in school, her father came and took her to the police station to identify the person who had committed the alleged offence upon her. On this aspect, the testimony of father bears contradictions, who stated that on 16.11.2016 while they were searching for the accused, they had reached Navariya Park, D Block, where his daughter pointed towards the boy sitting in the park as the person who had kidnapped and sexually assaulted her. In his cross-examination, he however, stated that he had seen the appellant coming and going outside his shop and also knew that the accused was working as *halwai* with *“Mota Halwai @ Pahalwan”*. He was also aware that accused was resident of *Mongolpuri* but claimed that he did not know the house number. He further, deposed that the shop of *Mota Halwai @ Pahalwan* was situated in R Block and his own shop was also in the same very block. He rather stated that the accused was apprehended from his house after 3-4 days of the incident. He again said that the appellant had already been apprehended by the police and he was asked to bring the prosecutrix at the police post where the prosecutrix identified the accused. The investigation officer, SI *Krishna* deposed that on 16.11.2016, he



received a phone call that the father of the prosecutrix had reached the police post and the prosecutrix knew about the whereabouts of the accused. Thereafter, they all left the police post and reached the Navariya Park from where the appellant was arrested.

10. From the above, it appears that there are different contradictory versions on the manner and arrest of the accused. At this stage, it is noteworthy to take into account that the appellant has given a suggestion of prior enmity to the prosecutrix as well as to her father.

11. Insofar as competency and reliability of statement of the prosecutrix is concerned, this Court takes note of the decisions in Dattu Ramrao Sakhare & Ors. v. State of Maharashtra, (1997) 5 SCC 341 and Pradeep v. State of Haryana, (2023) 19 SCC 221 wherein it has been held that once the child victim is found competent and reliable such evidence could become the basis of conviction. The only precaution that the Court has to bear in mind while assessing the evidence of the child witness, the witness must be a reliable one, and his/her version must be like any other competent witness, and there is no likelihood of the witness being tutored. In the present case, there is no doubt on the competency of the prosecutrix, however, her failure to identify the appellant in court as well as the manner of arrest being shrouded in mystery, casts a shadow of doubt on the reliability of the prosecutrix as well as of her father. None of them have stated as to whether they were aware of the identity of the appellant or were known to them at the time of the incident.

12. Accordingly, appeal is allowed and the impugned judgment as well as order on sentence are set aside and appellant is directed to be released forthwith, if not required in any other case.



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13. Copy of the judgment be communicated to the Trial Court alongwith the records as well as to the concerned Jail Superintendent for information, and necessary compliance.
14. Copy of this judgement be also uploaded on the website forthwith.

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

**JULY 29, 2025**  
*ga*