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

% Reserved on : 28.10.2025
Pronounced on : 29.10.2025

\+ **CRL.A. 1201/2024**

STATE (GNCT OF DELHI) .....Appellant
Through: Ms. Shubhi Gupta. APP for State with SI Kavita Bhardwaj, PS Shalimar Bagh

versus

BAL CHAND .....Respondent
Through: Mr. Neeraj Kumar, (DHCLSC), Mr. Samarth Vikram Singh and Mr. Harsh Saini, Advs.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred by the State against the judgment dated 01.12.2018 passed by the learned ASJ-01, Special Court, POCSO, North-West, Rohini District Courts, Delhi in proceedings arising out of FIR No. 388/16, P.S. Shalimar Bagh registered under Sections 376/506 IPC and section 6 POCSO Act, whereby the respondent was acquitted.

This Court, vide order dated 11.12.2024, while allowing the leave to appeal petition of the State, directed the respondent to furnish fresh bail bond with surety.

2. Learned APP for the State, submits that the Trial Court has erred in

acquitting the respondent. It is contended that the respondent dragged the victim into his jhuggi and thereafter inserted his finger in her vagina. The prosecutrix reiterated allegations made in the F.I.R when her statement under Section 164 CrPC was recorded as well as at the time of the deposition. It is submitted that the contradictions, if any, in the testimonies of the witnesses are trivial in nature and do not weaken the prosecution case.

3. Learned counsel for the respondent, on the other hand, supports the impugned judgment and contends that the testimony of the child victim and her father differs on numerous material aspects. It is further submitted that there were quarrels between the respondent and the father of the child victim just prior to registration of the present FIR and on account of quarrel which took place day(s) prior, the false case came to be lodged after a delay of two days.

4. The case of the prosecution was that on 01.06.2016, the respondent, who was the neighbour of the prosecutrix, dragged her in his *jhuggi*, made her sit in his lap and inserted his finger in her vagina. On 03.06.2016, upon receipt of DD No. 7-A at 2:30 am, the IO reached the BJRM Hospital where the child victim was present along with her father. The F.I.R. was registered on the basis of her statement and the accused was arrested at the instance of the father of the victim. Charges were framed under Section 5(m) read with Section 6 of the POCSO Act and Section 506 IPC.

5. The prosecution examined eight witnesses to substantiate its case. The most material of them being the child victim herself, examined as PW2. Dr. R. Kappu, Medical Officer, BJRM, was examined as PW1. The father of the victim was examined as PW5 and one Smt. Chinta, who was the wife of a friend of PW5, was examined as PW4. The remaining witnesses were formal

in nature, who deposed as to the various aspects of investigation. In his statement recorded under Section 313 CrPC, the respondent claimed false implication at the behest of the father of the child victim, with whom he had a previous quarrel.

6. Pertinently, besides the oral testimony of child victim and her father, there is no supporting evidence in form of medical or forensic examination reports. The law pertaining to appreciation of oral testimony of child victim is settled and recently reiterated in State of Madhya Pradesh vs. Balveer Singh[1], wherein 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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> *...*
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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.*
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> *(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 desirous or required, and would depend upon the peculiar facts and circumstances of each case.*
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> *(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*

[1] 2025 SCC OnLine SC 390

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..”

In light of contentions regarding false implication and tutoring on account of frequent quarrels between the victim’s father and the accused/respondent, the testimonies have to be examined with greater caution and stringent scrutiny.

7. The child victim ‘A’, examined as PW2, was the key witness for the prosecution case. She deposed that on 01.06.2016, she was playing outside the *jhuggi* of the respondent, who was her neighbour. The respondent called her inside, made her sit on his lap, put his hand in her underwear and inserted his finger inside her private part. He also threatened to kill her, if she disclosed the incident. As per her version, one aunty witnessed the incident and called her mother, who was in her native village. Her father returned home from work around 9.00 p.m., but she did not disclose anything to her father and it was this aunty who had told him about the incident. Thereafter, her father called Smt. Chinta/PW4 and also informed the Police. In her cross-examination, she stated that she was playing with the grand children of the respondent and that she had not mentioned this in any previous statement. She further stated that when the respondent took her inside the Jhuggi, his grand-daughter was also present inside the *Jhuggi*. She was given a suggestion that a quarrel had occurred between the respondent and the father of the child victim on account of which the victim had falsely implicated the respondent, which was denied.

8. The testimony of father of the victim, examined as PW-5, however paints the canvas differently. He had an entirely different account of how he

came to know about the incident. As per him, on 03.06.2016, when he came back from work, his daughter informed him that the respondent committed *Chhed Chhad* with her, by inserting his finger in her private part. Thereafter he, along with his daughter and one Smt. *Chinta*, who was the wife of his friend, went to the Police Station to report the incident. In his cross-examination, he deposed that he called *Chinta*, and the child victim informed about the alleged incident to *Chinta*. He further stated that none of his neighbours had informed him of any such incident. He also deposed that the child victim had told her that the granddaughter of the respondent, as well as his daughter-in-law, were both present on the ground floor of the Jhuggi and the respondent called her on the first floor. He was also given a suggestion of prior quarrel with the respondent, which he denied.

9. Adding further variation to the prosecution case, is Smt. *Chinta*, examined as PW4. She stated that though she was called by the father of the child victim, upon which she reached their house, she did not make any conversation with the child victim. The father of the child victim did not inform her of any incident either. She came to know of the incident when the child victim gave her statement to the Police. Thus, she did not support the testimony of the father of the child victim.

10. Due to these material contradictions, it was for the prosecution to rely on other witnesses and evidence to establish its case. Interestingly, though the child victim had stated that one aunty had witnessed the incident who had also informed her father, the said aunty was neither questioned by the IO nor examined in Court.

11. As noted above, the medical examination of the victim, proved through Dr. R. Kappu, Medical Officer, BJRM, also sheds no light on the

alleged incident. It is noted in the MLC, that internal examination of the victim was refused and further, no fresh injury was seen the time of the examination. There is no FSL report as neither any samples were collected or sent for the forensic examination.

12. The respondent had also examined two defence witnesses, both neighbours. One of the neighbours, *Roshan*, examined as DW1, deposed that on 02.06.2016, at about 7/7.30 PM, he saw the father of the child victim, who appeared to be drunk, starting a quarrel with the respondent. They had a fight and were separated by intervention of neighbours. He stated that the Police had come on spot and taken both of them to the Police Station. He also stated that the child victim was not at home for the last 2-3 days as she had gone to a relative's house. DW2, Smt. *Runjhun Devi*, another neighbour, also deposed that on 01.06.2016, the father of the child victim in a drunken state had quarrelled with the victim. This quarrel happened again on the next day and they had to be separated by the public.

13. The Trial Court, upon a detailed analysis of the evidence, extended the benefit of the doubt to the respondent and acquitted him of the offence under Section 6 POCSO Act and Section 506 IPC. It was noted that there was an admitted delay in reporting the matter since as per the victim, the incident happened on 01.06.2016. However, as per the FIR, the incident was reported on the intervening night of 02.06.2016 and 03.06.2016. The Trial Court held that the prosecution was unable to explain that if one Aunty, who was the alleged eye witness, had immediately raised alarm, leading to the gathering of the public, then why the complaint was made on 03.06.2016. The Trial Court was also cognizant of the fact that there were no external injuries on the child victim and internal examination was also refused. The

alleged eye witness of the incident was not even enquired by the I.O. The Trial Court also considered the above discussed contradictions in the testimony of the child victim and her father. As per the child victim, she did not inform her father and he was actually informed due to alarm being raised by one aunty. On the other hand, the father deposed that the child victim herself had informed him of the incident and no other neighbour had informed her. The victim had stated that none other than the grand daughter was present in the Jhuggi, however, as per the father, the child victim had informed her that the daughter in-law was also present in the Jhuggi at that time. The father's deposition was also contradictory to the deposition of Smt. *Chinta,* since as per him, he informed her about the incident, however, she stated that she only came to know about the incident at the Police Station. Moreover, the father has not uttered anything about calling Smt. *Chinta* in his statement to the police under Section 161 CrPC.

14. 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)*
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> > *"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.""

15. 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.'

16. This Court has carefully examined the impugned judgment and the evidence on record and concurs with the findings of the Trial Court and proceeds to elaborate that material contradictions in the testimonies of key prosecution witnesses, such as the child victim, her father and Smt. *Chinta*, the lack of any medical or scientific evidence and non-examination of material eye-witness, accompanied by defence witnesses deposing as to the occurrence of a quarrel between the respondent and the father of the child victim, materially affect the prosecution case against the respondent and the same cannot be said to have been established beyond reasonable doubt.

17. In view of the above, this Court finds no reason to interfere with the finding of acquittal recorded by the Trial Court. The appeal filed by the State is accordingly dismissed. The bail bonds furnished are cancelled, and sureties discharged.

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

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 29, 2025/*ry*