



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

%

Reserved on: 10th February, 2025

Pronounced on: 22nd May, 2025

+

CRL.A.197/2025

STATE (G.N.C.T. of DELHI)

....Appellant

Through: Mr. Shoaib Haider, APP for the State
with HC Sunita, Traffic Dwarka
Circle and SI Darshna, PS Nangloi.

versus

NARENDER SINGH
S/o Sh. Phalwan Singh
R/o H.No. 8, Gulshan Park,
Nangloi, Delhi

....Respondent

Through: Mr. Uttam Dutt, Advocate (*Amicus Curiae*)

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Appeal under Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the Appellant/State against the Judgment dated 11.02.2020, whereby the learned ASJ-06 (West), Tis Hazari Courts, Delhi, has acquitted the Respondent, Narender Singh for the offence under Section 354/354B of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) and Section 10 of The Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as 'POCSO Act'*), in FIR No. 311/2014 registered at Police Station Nangloi.



2. The *case of the Prosecution* was that one Ms. 'X', a child of about seven years, made a Complaint against the Respondent that on 27.07.2017, at about 10:00 p.m., while she was playing on the staircase of the House No. 8, Gulshan Park, Nangloi, Delhi, the Respondent started eve teasing her and started to remove her *payjami*, which was seen by one 'Ms. S', who shouted and called the public.
3. The Respondent was apprehended by the Police and FIR under Section 354/354B IPC and Section 10 of POCSO Act, was registered on 28.07.2017. On completion of investigations, the Charge Sheet under Section 354/354A/354B IPC and Sections 8 and 10 of POCSO Act, was filed.
4. *The Charges under* Section 354/354B IPC were framed on 05.12.2017 or in the alternative under Section 10 of POCSO Act, to which the Respondent pleaded not guilty.
5. The Prosecution in support of its case, examined six witnesses in all. PW-1, Ms. 'X' was the Prosecutrix while her mother was examined as PW-2; PW-3, Ms. 'S' was the other eye witness and PW-4. Ms. Rajni, was the neighbour.
6. Learned ASJ acquitted the Respondent by noting material improvements, inconsistencies and omissions in the testimony of the Prosecutrix, in regard to the time and place of occurrence, nature of assault allegedly committed by the Respondent, as well as, the contradiction in her testimony with that of her mother in regard to the place of incident. Learned ASJ also noted that the public witness, Veerpal was not examined. The medical evidence also did not corroborate any force allegedly used by the



Respondent on the Prosecutrix. The benefit of doubt was given to the Respondent, who was acquitted.

7. *The acquittal is challenged by the State on the ground* that there was essentially no material contradiction in the testimony of the Prosecutrix, her mother and the support witnesses. The testimony of the Prosecutrix was specific in describing the act of sexual assault, which was corroborated by PW-3/Ms. 'S' as well as by PW-4/Rajni Sharma, the neighbour/the landlady.

8. It has been erroneously held that the Prosecutrix had not given the specific month and time of the incident.

9. Reliance has been placed on the case of *T. Manikandan vs. The State (Govt. of NCT of Delhi)*, decided on 10.01.2017 by the Co-ordinate Bench of this Court wherein it was observed that assault under Section 354 IPC can be by *mere gesture or preparation intending or knowing that it is likely that such gesture or preparation would cause any person present to apprehend use of criminal force*. It was further observed that though in the certain cases, there may be an overlap between under Section 354 and 354A IPC, but there may be cases which fall exclusively either under Section 354 or Section 354A IPC.

10. Reliance has been placed on *Ajaha Ali vs. State of West Bengal*, MANU/SC/1016/2013 wherein the Supreme Court referred to *State of Punjab vs. Major Singh*, AIR 1967 SC 63, to state that modesty is the quality of being modest which means in regard to a woman, decent in manner and conduct, scrupulously chaste, though the word 'modesty' has not been defined in the Code.



11. Reference is made to *Aman Kumar vs. State of Haryana*, AIR, (2004) CrI L.J.1399 SC, where the learned Supreme Court of India observed that the offence under Section 354 IPC is certainly one of indecent assault upon the woman. Similar observations have been made in *Prem Rai vs. State of Sikkim*, MANU/SI/0031/2019 by the High Court of Sikkim.

12. It is submitted that the testimonies of the Prosecution witnesses corroborate each other. It cannot be overlooked that the Prosecutrix was barely seven years old and the eye witness, PW-3/Ms. 'S' was a small child of 12 years. Minor contradictions in the testimony, which are inevitable, should not have been over exaggerated to give the benefit to the Respondent.

13. The Respondent was represented through *Amicus Curiae*, who submitted that the learned ASJ has rightly appreciated the evidence of all the Prosecution witnesses and the Respondent has been rightly acquitted.

14. **Submissions heard and the record perused.**

15. The *first aspect* for consideration is to determine the exact nature of alleged assault committed upon the Prosecutrix. The incident took place on 27.07.2017 at about 10 PM about which a report was made by the mother of Prosecutrix in the wee hours of the morning, which resulted in registration of FIR No. 311/2017.

16. It was stated in the Complaint Ex.2/B, which was proved by the mother that she was told by her daughter that at about 10 PM on 27.07.2017, while she was playing in the staircase, the Respondent started pulling down her *payjama* and doing "*chher-chhar*". The child felt discomfort and when she confronted the Respondent, he caught hold of her and started forcibly doing "*chherkhani*" because of which, she got scared. In the meanwhile, Ms.



S, who also resided in the same building, raised an alarm and the public gathered.

17. The statement of the Prosecutrix under Section 164 Cr.P.C. was recorded before the learned MM on 28.07.2017 i.e. on the next date of the incident. She stated that-

‘मैं जहाँ पर रहती हूँ वहाँ पर एक नरेन्द्र अंकल ने मेरे कपड़े उतार दिये और छेड़खानी करने लगे, मैंने कहा अंकल ऐसे मत करो, तो पास की शीतल आंटी ने देख लिया और शोर मचा दिया, सब ने इकट्ठे होके अंकल को मारा ।

18. This child in her testimony as PW-1 recorded on 06.02.2018 (when she was seven years old), deposed that she was standing in the staircase in the night “*wo aadmi*” took her inside the house and removed her clothes. He then caught hold of her “*susu wali jagah*”. ‘Ms. S didi’ came and raised an alarm, after which, the neighbours gathered. The landlady also came and they gave beatings to that man. ‘Rajni Aunty’ called the Police and she narrated the entire incident to her mother.

19. **The mother as PW-2** essentially narrated about the incident on similar lines as PW-1 the Prosecutrix wherein she stated that, as informed by her daughter while she was playing, Respondent snatched her into his room, removed her clothes but Ms. S saw and raised an alarm.

20. From the various versions of the incidents as stated above, there is inherent contradiction. While as per the Complaint, the incident happened while she was standing in the staircase, but in her statement under Section 164 Cr.P.C., she does not specify the place where the incident happened and she stated that the Respondent removed her clothes. In her testimony as PW-1, she stated that while she was standing on the staircase, she was taken



inside the room by the man and her clothes were removed and thereafter, she was molested.

21. There is clearly a contradiction of exact manner of incident. While it cannot be overlooked that a child of seven years, who is allegedly sexually molested, would be traumatised and may not be able to narrate the incident with graphic precision, but it cannot be overlooked that the incident changed from endeavour to remove her underpants and got magnified to an actual act of sexual assault. This marked improvement thus, makes it imperative to look for independent corroboration and consistency to consider whether it would be safe to rely on the testimony of the child in the light of these contradictions.

22. **PW-2/Ms. 'M', mother of the Prosecutrix** deposed that on 27.07.2017, in the late evening hours, she had gone to Kamuddin Nagar for purchasing some medicines. After purchasing them, she came back to her house and when she was opening the lock of the door, one Ms. 'S' from the neighbourhood informed her that the Respondent had removed the clothes of her daughter and that she was watching from the gate and shouted, on which the landlord and other people gathered. PW-2 further narrated that she made enquiries from her daughter, who told her that when she was playing, the Respondent snatched her into his room and removed her clothes and Ms. 'S' saw and raised an alarm. She proved her Complaint to the Police as Ex.PW-2/B.

23. In her cross-examination, she clarified that they had been living in House No. 8, Gulshan Park, Nangloi as tenants and had thereafter, shifted to her present house, which was at a distance of about 10 meters. She denied



that the distance was about half a kilometre. She further explained that she had gone to purchase the medicines from Kamuddin Nagar at about 4:00 p.m. and again, said at 4:30 p.m. She explained that her daughter goes for tuition at 4:30 p.m. till 06:30 p.m. On the day of incident also, she had gone for tuition and the distance between the place of tuition and their house, is about 15 minutes walk. She further stated that she left the daughter at about 4:00 p.m. for purchasing the medicines. She came back at about 7:00 p.m. thereafter.

24. According to the testimony of PW-1, the Prosecutrix, the incident occurred at about 10:00 p.m. while she was standing on the staircase of the house.

25. Likewise, **PW-4/Smt. Rajni Sharma**, the landlady deposed that the Respondent was a tenant in the ground floor of House No. 8, Gulshan Park, Nangloi, New Delhi. On the date of incident, at about 8:00 p.m., she heard noise from the ground floor at her second floor premises. She came down and found a huge gathering and saw that Veerpal along with 2-3 persons were beating accused, Narender. On enquiry, she was told by Veerpal that the Respondent had taken the Prosecutrix to his room by showing her some eating material and had tried to do something wrong, but the scene was noticed by Ms. 'S', the daughter of previous tenant, who raised an alarm and the Respondent was caught by the neighbours. She also clarified in her cross-examination that the family of the victim had left the tenanted premises about 4-5 months prior to the incident. Their new tenanted premises are about two streets away.



26. Thus, the aspect, which has emerged from the testimony of the Prosecutrix and the other eye witness, PW-3/Ms. 'S' is that there is a major contradiction as to *where and what happened on 27.07.2017*. What thus, assumes significance is the place where the incident happened.

27. According to PW-1/Ms. 'X', while she was standing on the staircase, the Respondent came and tried to remove her *payjami* and also caught hold of her '*susu wali jagah*'. In her Statement under Section 164 Cr.P.C., she stated that the Respondent removed her clothes and did '*Chherkhani*'. As she was objecting to the same, *Sheetal 'Aunty'* saw them and raised an alarm.

28. According to the Prosecutrix, the incident happened while she was standing in the staircase.

29. According to PW-3/Ms. 'S', she was passing by the room of the Respondent when she saw through the window that he had made the Prosecutrix lie down and he had removed his pant and was sitting over her. She made a noise and Veerpal uncle came, who kicked the door open and pushed the Respondent.

30. Pertinently, the Site Plan of the house has not been drawn and it is difficult to comprehend where exactly the incident happened; whether it was on the staircase or inside the room of the Respondent. It is also not explicit as to where was the location of the room and if indeed it had some window through which PW-3/Ms. 'S' could have seen what was happening inside the room. Though Veerpal was cited as a witness, but he was not examined since he was not available.



31. Thus, there again is a major discrepancy as according to the Prosecutrix, the incident happened on the staircase, while according to Ms. 'S', this incident happened inside the room of the Respondent. Furthermore, the act of molestation also is materially different in its description in the testimony of PW-1, PW-2 and PW-3.

32. The *third aspect*, which is of significance, was the *place and the time where this alleged incident occurred*.

33. The Prosecutrix stated that the incident happened at around 10:00 p.m. on the Staircase. The mother, who appeared as PW-2, had deposed that she had gone to purchase the medicines at 04:30 p.m. and she came back at around 07:30 p.m.

34. The learned ASJ in the detailed Judgment considered that the place of incident was the erstwhile tenanted premises of the Prosecutrix. There is no cogent explanation as to how the child came and what was she doing at 10:00 p.m. at the erstwhile tenanted premises. *Secondly*, according to the mother, she came back at around 07:30 p.m. So, if she came back at such time and while opening the door of her house, she was informed by Ms. 'S' about the incident, it could not have been at 07:30 p.m. as allegedly, the incident happened at 10:00 p.m.

35. Furthermore, PW-4/Rajni Sharma, the landlady deposed that she heard noises from the ground floor at her second floor premises at around 8:00 p.m., subsequent to which she came downstairs and saw a huge gathering beating the Respondent.

36. It was therefore, concluded by the learned ASJ that there was material contradiction about the time and the place where this alleged incident took



place. It is correctly noticed that there is a huge discrepancy of the timing and there is no explanation forthcoming as to what was the child doing at the erstwhile tenanted premises alone at 10:00 p.m. This whole narrative, therefore, becomes suspicious making it necessary to look for further corroboration.

Conclusion:

37. The learned ASJ has rightly held that there were major contradictions in the place where the incident happened and the manner in which it took place.

38. It is a settled law that while appreciating the testimony of small children, it must be considered that they may fault on minor details and it cannot be examined microscopically so long as it is consistent in the manner in which the incident took place. But here is a case where there are major contradictions about the time, the place and the manner in which the incident took place. Therefore, learned ASJ rightly observed that it may not be safe to conclude that the case of the Prosecution stands proved in the light when there are such major contradictions in the testimony of the Prosecution witnesses.

39. The suggestion was given by the Respondent that there was a dispute between Veerpal, who was known to the mother of the Prosecutrix and the Respondent, that the Respondent has been falsely implicated in this case on account of some enmity. While no such cogent evidence has emerged about the false implication, but considering the material contradictions as discussed above and noted by the learned ASJ, it cannot be said that the benefit of doubt has not been rightly extended to the Respondent.



40. There is no infirmity in the aforesaid Judgment of acquittal.

41. The Appeal is hereby dismissed and disposed of accordingly along with the pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 22, 2025/RS