



2025:DHC:5161



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

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*Reserved on: 11<sup>th</sup> March, 2025  
Pronounced on: 27<sup>th</sup> June, 2025*

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**CRL.A. 314/2025**

**STATE**

.....Appellant

Through: Mr. Mr. Shoaib Haider Haider, Ld.  
APP for State.

versus

1. **SANJAY**  
S/o Sh. Salik Ram  
R/o E-9, Swarn Park,  
Mundka, Delhi.

2. **GEETA**  
W/o Sanjay  
R/o E-9, Swarn Park,  
Mundka, Delhi.

.....Respondents

Through: Mr. Siddharth Pandit, Mr. J.K.  
Sharma and Mr. Vipin Kumar,  
Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. An Appeal under Section 378(1)(b) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed on behalf of the Appellant/State to challenge the Judgment dated 26.09.2019,



whereby the Respondent No.1, Sanjay and Respondent No.2, Geeta have been acquitted for the offence under Section 376/34 Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as "POCSO Act"*) in FIR No.530/2014, P.S. Nangloi.

2. The **case of the Prosecution** is that a Complaint dated 03.08.2014 was made by Ms. 'U', Mother of the Prosecutrix (Ms. 'Kh') that her husband had gone to Rajasthan for work on 19.07.2014. The incident happened on 20.07.2014 when at about 11:00 A.M., when she went for her bath leaving her three children in the room. Upon returning, she found her eldest daughter Prosecutrix, Ms. 'Kh' aged about six years, crying in the room. On making an enquiry, the child told her that "Uncle and Aunty" i.e. Respondent No.1 and 2 have "*inserted their finger in her vagina one after the other*". When Ms. 'U' checked, she found swelling present. She waited for her husband, Mr. 'US' who returned on 27.07.2014, to whom she narrated the entire incident. He, thereafter made a call to the Police on 03.08.2014. The Police came and the child was taken to the Hospital for examination.

3. On the Complaint dated 03.08.2014 of Ms. 'U', FIR No.530/2014 under Section 376/34 IPC and Section 4 POCSO Act, was registered.

4. The investigations were carried out and the statements of the witnesses were recorded. The statement of the mother and the Prosecutrix were also got recorded under Section 164 Cr.P.C. On completion of investigations, Chargesheet was filed in the Court on 03.09.2014.



5. The Prosecution in support of its case, examined eight witnesses. **PW1A, Sh. Amrik Singh** is the owner of the factory where the family of the Complainant was residing. **PW2, Mr. 'US'** is the father of the Prosecutrix and the **PW3, Ms. 'U'** is the mother of the Prosecutrix. The Prosecutrix, **Ms. 'Kh'** was recorded as **PW4. PW5, Dr. Anjali Sirohi Dahiya**, SGM Hospital proved the MLC as Ex.PX9. **PW6, Woman Inspector Sushila** is the I.O who deposed about the entire investigations.

6. The statement of the Accused/Respondent Nos. 1 and 2 were recorded *under Section 313 Cr.P.C., wherein they pleaded their innocence.*

7. The *learned ASJ* referred to the material contradictions in the testimony of the mother and the daughter in regard to the place of incidence. While PW3, Ms. 'U' had initially stated that she had left her three children in her room and she had gone upstairs to take a bath, but in her testimony there was material improvement in claiming that the Prosecutrix had gone to the room of the accused persons who were residing on the First Floor, to watch T.V., where she got sexually assaulted.

8. Furthermore, it was noted that PW4, Ms. 'Kh' the Prosecutrix in her testimony had exaggerated the entire incident by claiming that she was tied with a *chunni* and was threatened by the Respondents against reporting this incident to any person. The contradiction in the MLC and in the testimony of the PW3 and PW4 in the manner of sexual assault, was also noted. While in the Complaint and the statement of the Mother under Section 164 Cr.P.C., the manner of assault by both the Respondents was through the vagina, but the Complainant and the prosecutrix, in their testimony had deposed that



while Respondent No.2 had inserted her finger in the vagina, the Respondent No.1 was asserted to have done so in her anus.

9. Noting all the material contradiction in the evidence led by the Prosecution, benefit of doubt was **extended to the two Respondents who were acquitted vide Judgment dated 26.09.2019.**

10. *The State, aggrieved by the said acquittal, has challenged the Judgment by way of the present Appeal.*

11. The **grounds of challenge** are that the evidence led during the trial, has not been appreciated clearly. The incident had been clearly described by the Complainant in her statement. Furthermore, whatever improvements/contradictions have been noted by the learned ASJ, they should have been discarded in view of the tender age of the child. In *State of Punjab vs. Gurmit Singh & Ors.*, (1996) 2 SCC 384, it has been noted that in the case involving sexual molestation, the discrepancies in the statements of the Prosecutrix should not, unless discrepancies are such that they are fatal, be allowed to throw out an otherwise reliable prosecution case.

12. Furthermore, in the prevailing social situation, normally any family would try to conceal any mis-happening and hesitate to report the matter of sexual abuse. The Complainant had explained that she did not report the matter immediately on the date of incident, but waited for her husband to return who in turn consulted the factory owner before the Complaint was made on 03.08.2014, which is understandable in the given circumstances.

13. The medical examination was done of 03.08.2014, wherein after the lapse of about 15 days; the swelling was understandably not visible. The



MLC, however, recorded “*L/E healed 0.5 cm circular lesion present near urethra and over Mons.*”

14. Furthermore, learned Trial Court has grossly erred in disbelieving the testimony of PW4, the Prosecutrix, Ms. Kh by making a reference to her statement under Section 164 Cr.P.C, wherein she did not disclose about the incident. It is contended that considering the age of the victim who was a child of six years, her non-narration of the incident in her statement under Section 164 Cr.P.C could not have been a reason to disbelieve her testimony.

15. It is further contended that the testimony of PW2 and PW3, the parents of the Prosecutrix who were the most material witnesses, had consistently defined the act of sexual assault and should not have been likely disregarded. Furthermore, there is a presumption under Section 29 POCSO Act against the accused.

16. All these facts have been overlooked to acquit the Respondents. Hence, it is submitted that the impugned Judgment of acquittal be set aside and the Respondents be convicted.

17. The *Respondents in their detailed Reply* have asserted that the learned Trial Court has rightly appreciated the evidence of the witnesses and noted the material contradictions, to come to the conclusion that the Prosecution has failed to prove its case.

18. It is, therefore, submitted that the present Appeal is liable to be dismissed.

19. **Submissions heard and record perused.**

**Delay in Registration of FIR:**



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20. The first aspect for consideration is whether there was a delay in the registration of FIR which was fatal to the case of the Prosecution.

21. Admittedly, the incident took place on 20.07.2014 at 11:00 A.M, but the FIR got registered on 03.08.2014. The delay of about 12 days has been explained by PW3, Ms. 'U', mother of the Prosecutrix who had stated that her husband, PW2, 'US' had gone to Rajasthan for office work on 19.07.2014. The incident happened on 20.07.2014 and it was only when he returned on 27.07.2014 that she narrated the incident to him. He also took time to consult the factory owner in whose premises the Complainant's family as well as the Respondents were residing and only thereafter, the PCR call was made to get the FIR registered.

22. There is a delay of about 12 days in the registration of FIR, but in the light of the explanation given by PW3, Ms. 'U', it cannot be said that the delay has not been explained. It is common knowledge that in the case of sexual assault, the family member may get circumspect and hesitant and take some time before reporting the matter to the Police.

23. In the present case, the father of the child was not available at home and it was natural of the mother to first wait for his return and consults him before making the FIR. Also, the husband considered it appropriate to consult the employer in whose factory he was working and also residing. It cannot be overlooked that the respondents were also residing in the same Factory premises with whom the Complainant's family had relationship of cordiality, which explains there trepidation, caution and consultation to be doubly sure about making the Complaint.



24. The delay in the registration of FIR has therefore, been sufficiently explained and cannot be considered as a ground to doubt about the happening of the incident.

**Motive:**

25. PW3, Ms. 'U', the Complainant tried to explain the motive for the alleged offence by deposing *that she had been told to leave her husband and start living with some other person. When she did not agree to such suggestion, they did this to her daughter.*

26. However, this aspect of the testimony needs to be considered with some circumspection. The PW-4, the Prosecutrix has deposed that she used to regularly go to watch T.V. in the house of the Respondents thereby reflecting her comfort and the cordial relationship between the two families.

27. Similarly, PW-3, Ms. 'U' the Mother explained in her cross-examination, that her family as well as that of the Respondents were residing in the factory premises owned by PW1A, Shri Amrik Singh. They were living on the First Floor while they were on the Ground Floor and that they had good speaking terms. Aside from these two families, the Chowkidar, *Badkhu* also resided in the same premises. She admitted in her cross-examination that they were on good speaking terms with the Respondents and that they had a television in their room and that the Respondent No. 2/Geeta used to call her children for watching T.V. She also admitted that the Respondents did not have any child of their own. She expressed her ignorance about any money transaction between her husband and Respondent No. 1.



28. Despite there being such cordial relationship between the two families, PW-3 Ms. 'U', tried to introduce a motive by claiming that the Respondents wanted them to leave the premises. However, it seems too far-fetched, considering that the Respondents had no children of their own and the Prosecutrix used to daily visit the house of the Respondents.

29. PW4, Ms. 'Kh', the Prosecutrix also corroborated that *she used to go to the room of the Respondents daily*. Also, a suggestion was also given to suggest that there was some money transaction between PW-4, the father and Respondent No.1. It is evident that no such assertion found mention either in the Complaint or in her testimony but was stated only in her statement under Section 164 Cr.P.C.

30. Clearly, there is no cogent evidence about there being any such exhortation given by the Respondent No. 1; it has only been introduced to establish a motive for the commission of the offence which otherwise is non-comprehensible in the light of cogent and cordial relations between the parties.

**Spot/Location of the Alleged Incident:**

31. Another aspect is whether the alleged incident of sexual assault of the Prosecutrix Ms. 'Kh', is proved by the Prosecution.

32. The first thing to ascertain is *the place where the incident happened*. PW3, Ms. 'U', in her Complaint Ex.PW3/A had stated that she had gone upstairs to take a bath. She explained in her cross-examination that she had gone to take a shower to the First Floor (room of the Respondents) as there was no bathroom on the Ground Floor. She had left her three children in the room on the ground floor and when she came back, she found the



Prosecutrix crying, who upon enquiry disclosed the entire incident as detailed above.

33. The Complainant, PW-3, Ms. 'U', in her testimony gave an absolutely different version about the place of incident from the one given in her statement under Section 164 Cr.P.C, Ex.PX-12, wherein she had stated that while she had gone to take her shower on the First floor, the Prosecutrix had gone to the room of the Respondents for watching T.V. When she came down after taking a bath, her daughter came to her crying and informed her about the assault. *The place of assault was thus, changed to the room of the Respondents on the First Floor.*

34. There is a material contradiction in so much as if the three children had been left inside the room on Ground Floor, and there is not an iota of evidence that the two Respondents had come to her room to assault the child. Moreover, it has been rightly noted by the learned ASJ that it is highly improbable that the child would be assaulted in the presence of the two other children. This aspect cannot be overlooked lightly.

35. The other material witness is PW-4, Ms. 'Kh', Prosecutrix, who in her testimony had deposed that the Respondents reside on the first floor of the same factory where they are residing. The Prosecutrix used to go to their room daily. According to her, she was assaulted by them by tying her with the *chunni*. **What emerges from her testimony is that the incident happened in the room of the Respondents.**

36. The comprehensive reading of the statement of PW3, Ms. 'U' and of the Prosecutrix PW4, Ms. 'Kh' thus, establishes that there is a material contradiction in the place where the incident happened. *While as per the*



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*Complainant, this happened in her room on the Ground Floor, but in the testimony the place of incident changed to the room of the Respondents, as has been discussed by the learned ASJ.*

37. Further examination reveals improbabilities in both versions of events. If the alleged incident occurred in the family room of the Prosecutrix on the Ground Floor, as initially stated in the Complaint, it would mean that both accused persons committed the assault in front of the other two children. In contrast, if the incident occurred in the Respondents' room on the First Floor, as later stated, it raises questions about how the mother, who was bathing in the room of the Respondents/accused persons, did not hear any screams or disturbance during the alleged assault. The fact that the Complainant had sufficient trust in the Respondents to use their bathroom also indicates that she believed the Respondents to be of good character.

38. Much has been argued by the Prosecution that as per the admissions of PW-3 and PW-4, the factory was fully operational and there were many people present despite which no other person either heard any noise nor were they informed about this incident thereby creating a doubt about its occurrence and it being an afterthought.

39. This argument of the Prosecution does not hold any water for the simple reason that the alleged incident was of 'fingering' and there was not any visible injury, which could have raised an alarm in the mind of the Complainant to have immediately sought help of the other people present in the factory or to report the incident. It cannot be overlooked that such a sensitive matter would obviously put a mother under an apprehension and confusion about reporting the matter and it is not unnatural for a mother not



to go announcing about the alleged sexual assault on her daughter to the entire public before being absolutely certain about consequences of reporting. This needs to be considered in the light of the fact that their family had cordial relationship with the Respondents and they all were residing and working in the same factory.

**Manner of occurrence of the Alleged Incident:**

40. The *next aspect* which is of primary and utmost significance is of the alleged sexual assault itself.

41. The Complainant as well as the Prosecutrix had categorically stated *in their statements to the Police* that both the Respondents had put *their finger in the vagina of the child*. The child though was non-communicative at the time of recording of her statement under Section 164 Cr.P.C and refused to narrate the incident, but her mother PW-3, the Complainant had stated in her statement under Section 164 Cr.P.C. about the child having been fingered through her vagina by the Respondents.

42. Pertinently, even in the MLC, Ex.PX-9, the details/history of the incident given by the mother were in consonance with her statement in the Complaint. Consistently, the case was of assault by both the Respondents by insertion of finger in the vagina.

43. The two material witnesses were thus, consistent about the manner of sexual assault, being through the vagina, in their statements recorded during the investigations.

44. In the evidence however, a completely different version was given. In her testimony, PW4, the prosecutrix had materially changed the incident by asserting that while the *Respondent No.2 had inserted her finger in her*



*vagina, she claimed that Respondent No.1 had fingered her from the back (anus). The entire manner of incident has undergone material change from the consistent narration at the time of the registration of FIR and the testimony of PW3, the mother.*

45. The learned ASJ also noted that there was some traces of tutoring by the mother of the child. While in the statement of the child under Section 161 Cr.P.C., Ex.PW4/D1, the IO had noted that when the child was asked to narrate the incident, she looked at her mother and then slowly stated about being fingered by the Respondents through the vagina. Pertinently, she did not narrate anything in her statement under Section 164 Cr.P.C. While non-narration of the incident under Section 164 Cr.P.C. cannot be held against her considering her tender age and the reluctance to repeat an incident may be on account of the vulnerability of her age, but the element of tutoring of the Prosecutrix cannot be ruled out considering the material change in the manner of the incident in the testimony of the Prosecutrix.

**Medical Record/MLC:**

46. These material changes and exaggerations assume importance in the light of the MLC and certain admission of PW3, the Complainant in her cross-examination.

47. It emerges from the cross-examination of PW3 wherein she deposed that she used to apply some ointment on the vagina of the child though it was not prescribed by any Doctor. She used to go to the Chemist who used to give her the medicine. She further deposed that the child was suffering from fever for which she was giving her medication. She was not consulting



any Doctor but would go to the Chemist who would check her pulse and give her the medicine.

48. The material fact which has got revealed from the testimony of the PW3, Ms. 'U' is that the child was already under some medication and there was an ointment being applied on her private part, which is reflective of the child suffering from some injury/infection.

49. This also gets corroborated by the MLC, wherein it was recorded that there was a healed *0.5 cm circular lesion near urethra and over Mons*. The possibility of the child having suffered some injury in her private area for which she was under medication can therefore, cannot be ruled out.

50. The entire Prosecution story in the light of these material facts becomes suspicious.

**Other Material Contradictions:**

*Tying with Chunni and threats:*

51. PW-3, the Complainant deposed that the prosecutrix had told her that "*first aunty had inserted her finger and thereafter **the uncle had done so and thereafter they had tied a chunni around her***". In the Complaint Ex. PW3/A, it was nowhere mentioned that the child had been tied with a *chunni* or was threatened.

52. The other material witness was PW4, Ms. 'Kh', the Prosecutrix who also deposed that they had tied her mouth with *chunni* and had threatened her that in case she disclosed about the incident to her parents, her throat would be cut.



53. This aspect of being tied with a *chunni* and threatened, was a material improvement which emerged only in the testimony of PW3, the mother as well as the child who deposed as PW4.

54. Such exaggeration of having been tied by *chunni* by the Respondents clearly reflects on the child's propensity to overdramatize an incident when she realised that it has got public attention.

55. Learned ASJ had referred to the observations of the Supreme Court in the case of *State represented by Insp. of Police Tamil Nadu vs. Sait @ Krishan Kumar*, (2008) 15 SCC 440 wherein it was noted that there are certain facts, which are not disclosed earlier but for the first time, in the testimony of the witnesses before the Court, such version lacks credence and is liable to be discarded. Considering the embellishments made by the Prosecutrix in her testimony in the Court, about the manner in which she was subjected to assault, which never found any mention either in the earlier statement or in the statement under Section 164 Cr.P.C., rightly puts the Court towards caution to do a little closure scrutiny of the testimony of the witnesses to ascertain the absolute truth.

### **Conclusion:**

56. The onus was on the Prosecution to prove its case beyond reasonable doubt. There are material contradictions and improvements in describing the act of sexual assault, the place where the incident occurred and also about the medical treatment. The learned ASJ has rightly given benefit of doubt to the Respondent and has acquitted them.

57. There is no merit in the present Appeal, which is hereby dismissed.

58. The Appeal is disposed of along with pending Applications(s), if any.



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**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 27, 2025**  
*va*