



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

% ***Pronounced on: 28<sup>th</sup> June, 2025***

+ **CRL.APPEAL 537/2025**

**STATE**

Through DCP (East Delhi)

.....Petitioner

Through: Mr. Yudhvir Singh Chauhan, Ld.  
APP for the State with SI Aman P.S.  
Mandawali.

versus

**MOHAN @ SONU**

S/o Sh Satya Parkash  
R/o House No. A-509,  
3<sup>rd</sup> floor, Budha Marg,  
Mandawali, Delhi

.....Respondent

Through: Mr. Dharendra Kumar and Mr. Bikash  
Bishwakarma, Advocates.

**CORAM:**

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

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

**NEENA BANSAL KRISHNA, J.**

1. Criminal Appeal under Section 378 (1) Cr.P.C. has been filed by the Petitioner/State against judgment dated 28.03.2017 *vide* which the Respondent has been acquitted for offences under Section 354A IPC and Section 9 POCSO Act by learned ASJ, Delhi in FIR No.0109/2014, registered at PS: Mandawali.

2. ***Briefly stated***, a hand-written Complaint dated 05.02.2014 had been made by Smt. K. K. (mother of prosecutrix) that on 03.02.2014, her daughter was alone in the house and watching T.V., while other family



members were present on the roof. Respondent, who resides in their neighbourhood, came and tried to do 'utli sidhi harkat' with her daughter and asked her to sit in his lap and he would do something and would give a chocolate. He then started removing her cloths and lay on her, which frightened the little girl who came up and told about the incident to the family members. The mother of the Respondent requested the mother of prosecutrix that her son was 'mad' and no complaint be registered against him. However, on 05.02.2014, when Respondent again came to their house, he tried to repeat the same act, but this time, the police was called and the Complaint was made on which *FIR No.0109/2014, under Section 354A IPC and Section 9 POCSO Act was registered at PS: Mandawali.*

3. The statement of the Prosecutrix was recorded under Section 164 Cr.P.C. before the learned M.M. After completion of investigations, Chargesheet was filed in the Court on 05.07.2014.

4. Charges were framed under Section 354A IPC and Section 10 (wrongly mentioned as 9) POCSO Act, to which the Respondent pleaded *not guilty.*

5. The Prosecution examined *eight witnesses* in all. The most material witness was the Complainant who was examined as PW-1. The prosecutrix was examined as PW-2. *PW-5/Dr. Maneesha Singh*, Sr. Resident, Lal Bahadur Shastri Hospital, Delhi, proved the MLC of the prosecutrix dated 05.02.2025 as Ex.PW-5/A. *PW-8/SI Bal Singh (retired)* was the *Investigating Officer of the case.*

6. The statement of the Respondent was recorded under *Section 313 Cr.P.C.*, wherein he stated that he has been falsely implicated in this case as



there was a previous quarrel of the complainant with his father. On the date of incident, complainant had demanded money from his father and on refusal, present case has been registered. *No defence evidence was led by the Respondent.*

7. *Learned ASJ in the impugned judgment* considered the testimony of the Child as well as the Complainant and noted that there were material contradictions in the manner and the place where the incident had happened. Furthermore, though the Complaint was made by the mother of prosecutrix, but as per her own admission, she was not present at the time of the alleged incident, as she is working and leaves the house in the morning and returns at 07:00 PM. The Complainant was told about the incident by her mother (grandmother of prosecutrix), who had not been cited or examined as a witness. ***Thus, in the light of material contradictions, benefit was extended to the Respondent, who was acquitted.***

8. Aggrieved by the ***acquittal***, the State has challenged the judgement ***on the ground*** that the testimony of the child/PW-2 fully corroborated the case of the Prosecution and it was truthful and natural. There was no reason for her to have falsely implicated the Respondent. Her statement in the Court was consistent with her statement under Section 164 Cr.P.C.

9. It is claimed that the corroborative documents like FIR, seizure memos, which fully corroborated the testimony of PW-1 and PW-2, have not been considered. It has also not been appreciated that the child was barely five years old at the time of the incident and FIR was registered. On the basis of narration of incident by the child to her mother and minor discrepancies, could not have been taken as a reason to disbelieve her



testimony especially when they did not go to the root of the Prosecution case. Minor omissions, contradictions and discrepancies do not make the testimony of PW-3 unreliable. The acquittal has resulted in miscarriage of justice and is therefore, liable to be set aside.

10. The *Respondent in his Reply* has submitted that the testimony of child required minute consideration, as she was barely five years old at the time of incident and there was no independent corroboration to her testimony on the material aspect of sexual assault. According to the Complaint, the first incident had happened on 03.02.2014, but no complaint was made on that date and the same was registered after two days of the incident on 05.02.2014. The MLC Ex.PW-5/A also did not reflect any injury on any part of the body of the child. The learned ASJ has rightly noted the contradictions to observe that the statement of the child recorded under Section 164 Cr.P.C. at the first instance which was on the earliest opportunity, did not state about any sexual assault. The testimony of the child, in the light of her statement under Section 164 Cr.P.C., has been rightly appreciated to observe that there was no sufficient material to convict the Respondent.

11. It is asserted that there is no merit in the present case and the same is liable to be dismissed.

12. **Submissions heard and record perused.**

13. In Order to prove the sexual assault on the child, the first material witness examined was PW-1 Smt. K. K. (mother of prosecutrix) who made the complaint (Ex.PW2/A) in which she narrated the entire incident. Pertinently, as per her own admissions, she works from 09:00 AM to 07:00



PM. She admittedly was not present at the time of the incident and was informed about it by her mother (grandmother of the prosecutrix), who was present on the roof along with the mother of the Respondent and other family members, to whom the prosecutrix had narrated the incident.

14. Therefore, not much credibility can be annexed to the testimony of PW-1 (mother of prosecutrix), whose testimony is based on hearsay and grandmother, who was the material witness, was neither cited as witness nor examined.

15. PW-2, the prosecutrix herself, who was about five years old at the time of the incident, in her testimony which was recorded in question answer form, deposed that Uncle (accused/Respondent) had asked her to sit in his lap as he would do something with her and give her chocolate. He then made her sit on his lap and she went upstairs to tell this to everyone. She further deposed that this incident happened at around 07:00 PM. Her statement recorded by the learned M.M. under Section 164 Cr.P.C., is Ex.PW-2/A.

16. This witness, i.e. PW-2 in her cross-examination by the Respondent, admitted that the respondent was residing with his parents and *mausi* in a house adjoining to theirs. She further explained that since her grandfather has already died, at times when the mother of prosecutrix used to be unwell (sick) on account of an Operation, Respondent used to drop her to school. She further explained that on the date of incident, when Respondent had asked her to sit in his lap, mother and other family member of the Respondent were also sitting on the roof and none was present inside the house. She further deposed that she was watching Doraemon cartoon in her house, Respondent took her to his house and asked her to sit in his lap to



disturb her. On a question being put that she had told ‘judge sahab’ (learned MM) that she did not sit on the lap of the Respondent, she clarified that he had made her sit on his lap. She further deposed that sister of the Respondent, who is elder to her and resides with the Respondent, had also come to the house of the Respondent.

17. The testimony of the child needs to be considered in light of her Statement under Section 164 Cr.P.C. Ex.PW-2/A, wherein, she had stated that Respondent, who resides in their neighbourhood, had come to their house. While she was studying and the family members were sitting on the roof, the respondent took her to his house where he told her to sit in his lap and that he would do something. He then made her sit in his lap but she refused to do so; instead she came back to her house and went to the roof and explained the incident to her grandmother.

18. Before considering the testimony of the child, it needs no emphasis that while appreciating the testimony of a child who is barely five years old, the Court cannot overlook or ignore that the child cannot be expected to narrate the entire incident with graphic precision. There are bound to be minor variations in her narrations. However, at the same time, it cannot be overlooked that her testimony can be the sole basis for conviction of the Respondent. A delicate balance has to be thus, maintained while appreciating the testimony of the child and the rights of the accused.

19. The testimony of prosecutrix is the only material evidence on record. The mother in the complaint (Ex.PW-1/A) claimed that the incident happened on 03.02.2014, though no complaint was made on request of the



mother of the Respondent. However, when he tried to do the same act on 05.02.2014, the Police was called and FIR was registered.

20. Pertinently, the child has not stated that this incident had happened on 03.02.2014 and has merely deposed that it was vacation time. When she was watching T.V., the Respondent used to often take her to his house and disturb her. Though the child may not be able to narrate exactly, considering the tender age, her stating that he used to disturb her, cannot be considered enough to conclude any sexual assault.

21. It has emerged from the testimony of PW-1 as well as PW-2 that there were family relations between the family of prosecutrix and Respondent and they used to often sit together, and on the day of the alleged incident as well they were all sitting on the roof. Not only this, the Respondent used to take the child to school in case her mother was unable to do so due to her ill health. It has also emerged that Respondent used to frequently take the child to his house.

22. According to the case of the prosecution and the Complaint Ex.PW-1/A, the child had been apparently taken by the Respondent on 03.02.2014, where he had tried to take off her clothes and lie on her, but there is no such deposition by PW-2. The only testimony is that he had asked her to sit in his lap, while in her statement under Section 164 Cr.P.C. she had deposed very categorically that she did not sit in the lap and had gone upstairs to report the incident. Evidently, there are material improvements in her testimony; in so much as she said that she was made to sit in the lap. Not only is there material contradiction, but also such evidence cannot be held sufficient to bring home the charges of sexual assault.



23. Pertinently, while as per the Complaint this was repeated instance of the same conduct by the Respondent, earlier on 03.02.2014 and thereafter on 05.02.2014, but no such evidence has been led with regard to the alleged incident of 03.02.2025.

24. Moreover, from the testimony of the child, it has not emerged whether the incident as narrated by her, happened on 03.02.2014 or 05.02.2014. The learned ASJ has rightly observed that the grandmother of the prosecutrix, who was present and to whom she narrated the incident on 03.02.2014, has not been examined as a witness.

25. Furthermore, there were material improvements in the testimony of the prosecutrix as well as PW-1 from the original Complaint Ex.PW-1/A and also in the statement of the prosecutrix recorded under Section 164 Cr.P.C. Ex.PW-2/A.

26. Reference may also be made to the PCR form (Ex.Pw-7/A), which mentioned that the call had been made on the basis of suspicion (*shak ke aadhar par call ki h*), which also corroborates that there was only a suspicion of alleged assault with no cogent evidence.

27. In fact, the statement of the Prosecutrix also merely shows that she was asked to sit in the lap, but there was no attempt or actual commission of sexual assault established from the prosecution evidence.

**Conclusion:**

28. The learned ASJ has rightly extended the benefit of doubt and acquitted the Respondent.

29. There is no merit in the present Appeal which is hereby, dismissed. Pending Application(s), if any, also stands disposed of.

2025:DHC:5088



**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 28, 2025/R**