



2025:DHC:5204



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 03.07.2025*+ **CRL.A. 89/2025 & CRL.M.B. 169/2025****SUDAMA KUMAR**

.....Appellant

Through: Ms. Cauveri Birbal, Mr.
Kamlendu Pandey and Ms.
Preksha Gaur, Advocates

versus

STATE (NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Rajkumar, APP for the
State with Ms. Sangeeta
Dahiya, Advocate

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this appeal, the appellant seeks setting aside of the judgment dated 07.02.2024 [hereafter '*impugned judgment*'] and order on sentence dated 27.03.2024, passed by the learned Additional Sessions Judge (FTSC) (POCSO)-01, Dwarka Courts, South-West District, Delhi [hereafter '*Trial Court*'] in SC No. 513/2018, arising out of FIR No. 597/2017, registered at Police Station Dabri, Delhi on 30.09.2017 for commission of offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].



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2. The case of the prosecution, shorn of unnecessary details, is that on 30.09.2017, a complaint was lodged at Police Station Dabri, Delhi by the complainant 'S' (mother of victim child 'R'). It was alleged by her that on the said date, at around 12:00 noon, while she was away at work as a domestic help, she was informed that her minor son, aged about four years, had been taken to the police station by police officials. She had immediately reached the police station, where the child had informed her about the incident. As per the version of the victim child, when he was eating chowmein, the present appellant Sudama had approached him and asked him to come along. The said person had taken him to his room, removed his pants, and committed a wrongful act with him from behind, causing him pain, as a result of which the child had begun to scream. It was further alleged that on hearing the screams, a person had knocked on the door and asked the accused to open it. Upon the accused opening the door, the victim child, who was then in a naked condition, had run out. The accused had also come outside. A number of local residents had gathered at the spot, and one woman had helped the child wear his pants. Soon thereafter, police officials had arrived at the scene and had taken both the victim child and the accused to the police station. Based on this complaint, the present FIR was registered.

3. After completion of the investigation, a chargesheet was filed



for offence under Section 6 of the POCSO Act. Charge under Section 6 read with Section 5(m) of the POCSO Act was framed against the accused, to which he pleaded not guilty and claimed trial.

4. During the course of trial, the prosecution examined 16 witnesses in support of their case. After conclusion of the trial, the learned Trial Court *vide* judgment dated 07.02.2024 convicted the accused for commission of offence punishable under Section 6 read with 5(m) of the POCSO Act, had sentenced him to undergo rigorous imprisonment for a period of ten years and pay a fine of ₹3,000/-, and to undergo simple imprisonment for a period of 15 days in default of payment of fine.

5. Aggrieved by the impugned judgment of conviction and order on sentence the present appeal has been preferred by the appellant.

6. The learned counsel appearing for the appellant contended that the learned Trial Court erred in relying solely on the testimony of the victim child, without adequately appreciating the material contradictions between the deposition of the child and that of other witnesses, which cast serious doubt on the prosecution case. It was submitted that there are inconsistencies in the version of the victim child. In the initial FIR registered on the basis of the mother's statement, it was recorded that the victim child had stated – "*Sudama Kumar uncle ne meri pant ko utar diya aur peechhe se galat kaam karne lage jisse mereko dard hua to main chillaya to ek uncle ne darwaza khulwaya*". However, in his deposition before the Court, the



child stated – *“I did not cry when the accused put off my pants. I did not cry or shout in the room on the said day. I opened the door which was locked by the accused.”* These discrepancies, it was argued, undermine the credibility of the child’s testimony.

7. It was further submitted that the medical evidence on record does not support the prosecution case and, in fact, points towards the innocence of the appellant. The doctor had opined that “no fresh external injury” was seen, thereby raising doubt as to whether the alleged tears on the anal verge were caused during the incident in question. It was further pointed out that PW-11 Dr. Mayank Singhal, who conducted the medical examination of the victim, admitted in his cross-examination that such tears could be caused due to constipation and that he did not measure the size of the tears. Thus, the possibility of the injuries being caused by natural reasons could not be ruled out. The learned counsel also submitted that there was no other medical or biological evidence pointing towards the guilt of the appellant, and the FSL report also did not contain anything incriminating.

8. It was also argued that the learned Trial Court, in para 38 of its judgment, observed that *“none of the public witnesses is related to the victim and there is no motive on their part to falsely depose in favour of the child victim. The testimony of the public persons further corroborates the case of the prosecution.”* However, a close scrutiny of the testimony of public witnesses reveals inconsistencies. PW-3 Jai Kishan, who allegedly opened the door of the accused’s room,



deposed that – *“It is correct that I have not heard till date that the accused had done wrong act with the child victim.”* The learned counsel also questioned the credibility of the public witnesses and submitted that the possibility of planting such witnesses by the investigating agency cannot be ruled out. It was pointed out that as per the prosecution, PW-2 Ms. Shanu had allegedly seen the child victim exiting the accused’s room and she deposed – *“In the meanwhile, police came and took accused Sudama Kumar and one more boy to the police station.”* However, despite being a material witness present at the spot on 30.09.2017, her statement under Section 161 of Cr.P.C. was recorded only on 05.10.2017, without any explanation for this delay. Similarly, PW-3 Jai Kishan had deposed – *“After some time, police came there. Police asked accused Sudama Kumar about the home of the child but he was under the influence of liquor. The police also enquired from me about the home of the child and I, along with the child victim, police and accused Sudama Kumar, came to the house of the child.”* Again, there was no explanation for the delay in recording his statement under Section 161 of Cr.P.C. despite his presence at the scene.

9. It was further submitted that the possibility of the child witness being tutored could not be ruled out. The victim’s statement under Section 164 of Cr.P.C. was recorded only on 03.10.2017, i.e. after an unexplained delay of three days. It was further argued that the Investigating Officer had deposed in her cross-examination that *“as the Child Victim ‘R’ was unable to tell about the incident so I*



recorded the statement of his mother.” It was thus contended that the child was not in a position to depose regarding the incident and was likely tutored. It was also submitted that the FIR was registered on the basis of the statement of the victim's mother, who was not an eyewitness to the incident, rendering the prosecution version unreliable. On these grounds, learned counsel urged that the impugned judgment of conviction and order on sentence be set aside.

10. Conversely, the learned APP for the State submitted that the testimony of the child victim, coupled with the deposition of independent public witnesses who had heard the victim's screams and witnessed the child exiting the accused's room in a naked condition, fully corroborated the prosecution version. It was submitted that the accused was found to be under the influence of liquor at the time, and these circumstances lent credibility to the prosecution's case.

11. It was argued on behalf of the State that the statements of the witnesses were consistent in all material particulars and that minor discrepancies, if any, were natural and ought to be viewed in light of the tender age of the victim child, who was only four years old at the time of the incident. There was no reason to disbelieve the testimony of the child or the independent witnesses, and no infirmity could be found in the approach of the learned Trial Court. Accordingly, it was prayed that the appeal be dismissed and the impugned judgment and order on sentence be upheld.



12. This Court has **heard** arguments advanced by the learned counsel appearing for either side, and has perused the material available on record.

13. This Court has carefully considered the testimony of the child victim and the Trial Court Record. As noted by the learned Trial Court, the child victim was about five years of age at the time when his testimony was recorded by the learned Trial Court. Prior to recording the statement, the learned Trial Court had assessed the child's capacity to understand and speak truth. Upon being satisfied that the child witness was competent to depose, the Court had recorded his testimony, wherein he had deposed that the accused had sodomised him and that he had narrated the incident to his mother. On being cross-examined, he deposed that when he was sodomised, he had felt pain and he had cried. He further deposed that one uncle had got the door opened but the accused had not run away. He was wearing his pants when he came out. He also admitted that the police had taken him to the police station from the place of incident and he had narrated the incident to his mother in the police station. He admitted that he was medically examined, and his statement was recorded before the learned Magistrate under Section 164 of the Cr.PC. He also correctly identified the accused before the Court. Though the learned counsel for the appellant argued that there were discrepancies in his testimony, in the cross-examination also, his statement was consistent on the material fact regarding the accused sodomising him. Naturally, a five year old witness, who was four



years' old when the incident in question had taken place, could not have known the distance from his house to the shop where he was eating chowmein when he was picked up by the accused. In his cross-examination, though he stated that he had not cried when the accused had taken off his pants or in that room, he specifically denied that the accused had not sodomised him or that he had deposed falsely, as he was tutored. The statement recorded under Section 164 of the Cr.P.C. revealed that he had made a statement duly proved by the concerned Magistrate Ex.PW-1/A, wherein he had stated that the accused had sodomised him at his house, and thereafter, somebody had opened the door. He stated that he had narrated the incident to his mother.

14. Thus, this Court is of the considered view that the child victim has supported the prosecution's case on all material aspects pertaining to the act of sodomy committed by the accused.

15. This Court also notes that the victim in the present case was a minor at the time of the incident. The accused did not dispute the age of the child, having admitted the medical assessment report *vide* Ex.A-2(1). While the prosecution claimed that the victim was about 04 years of age at the time of incident, the ossification test placed the age of the child between 8½ to 11 years. However, even with such variation, the victim was unquestionably a minor at the relevant time and thus, application of the provisions of POCSO Act in the present case is not disputed.

16. Moving further, this Court notes that PW-2 Ms. Shanu is an



eye-witness to the immediate aftermath of the incident. She deposed that upon hearing an alarm, she saw the victim child coming out of the room of the accused, holding his pants in his hand and crying. Though the child was wearing the pants, it was not fastened at the top, and the child ran outside into the street, visibly distressed. PW-2 further stated that the accused emerged from the room shortly thereafter, tying a *gamcha* around his lower body and not wearing any clothes on his upper body. Upon inquiry, the accused claimed that the victim child was his brother's son. Meanwhile, the police arrived and took both the accused and the victim to the police station. During her cross-examination, PW-2 stated that there were four rooms in the house. It was argued on behalf of the appellant that the version of PW-2 lacked credibility as her statement was recorded by the police after a delay, however, this Court finds that even during her cross-examination, PW-2 remained consistent in her narration. She stated that she had reached the spot after hearing the hue and cry and clarified that she had not seen the child prior to the incident. She reiterated that the accused was not wearing any clothes and even the *gamcha* was initially untied. Her testimony, both in chief and in cross-examination, reveals that she is an independent witness, with no apparent vested interest in the case. Her testimony thus appears credible and it appears that she had narrated the incident as witnessed by her, which lends support to the prosecution version.

17. Similarly, PW-3 Mr. Jai Kishan has also supported the prosecution's case. He deposed that on the day of the incident,



around 12:00 noon, when he was on his way to the washroom, he heard a child crying from inside the accused's room. He pushed open the door, whereupon a child ran out. PW-3 caught hold of the child, who was crying inconsolably and unable to narrate what had happened. PW-3 testified that the accused appeared to be drunk and began to quarrel with him when he tried to make inquiries. Soon, 3–4 other persons arrived, and someone informed the police. PW-3 further stated that he, along with the accused and the child, was taken to the police station, where his statement was recorded. He identified the accused in court. His cross-examination did not materially weaken his version.

18. While the learned counsel for the appellant argued that there were material contradictions between the depositions of PW-1, PW-2, and PW-3, this Court finds that the testimonies of PW-2 and PW-3 are consistent on material particulars. Both witnesses corroborate each other on the fact that the victim child ran out of the room of the accused in a distressed state, that the accused was intoxicated, and that the police were called thereafter. The argument that PW-3 did not know what the accused had done to the child and that this demolishes the prosecution case is without any merit since in his examination-in-chief, PW-3 clearly stated that the child was crying and could not narrate the incident at that time. He further confirmed that both he and the child were taken to the police station, though he was unaware of what the child disclosed to the police. The presence of PW-2 and PW-3 at the spot, their observations, and the conduct of



the accused are relevant and corroborate the chain of events as alleged by the prosecution.

19. Further, PW-4 Mr. Yashvir Singh is an independent witness whose testimony materially corroborates the prosecution's case. He deposed that he had reached the spot in the neighbourhood where crowd had gathered due to some commotion. He came to know that a room had been found locked from inside, and upon opening the door, by PW-3 at the instance of PW-2, a man was seen without clothes along with a male child. The child was found wearing only his pants, while the accused attempted to cover his lower body with a pair of pants upon coming out of the room. The child had immediately run out towards his house. PW-4 also stated that when questioned, the accused claimed that the child was his relative. It was this witness who made the phone call to the police and ensured that the accused was handed over to them, after which he returned to his home. Despite a detailed cross-examination, his testimony remained consistent. He further supported the deposition of PW-2 and PW-3 by stating that the accused appeared to be intoxicated at the time of the incident.

20. In view of the aforesaid, this Court is of the considered opinion that the minor inconsistencies in the statements of various witnesses, which are natural in human recollection, do not affect the core of the prosecution's case. On material particulars, the witnesses have remained consistent and their testimonies corroborate each other to



support the case put forth by the prosecution.

21. Next, PW-8 Mr. Ram Lal is the owner of the shop from where the victim child had purchased and was eating chowmein. While the learned counsel for the appellant sought to rely on his statement that the child had eaten and then left the shop, his testimony does not come to the aid of the appellant, since PW-8 also stated that he did not know whether the child left on his own or was taken away by someone. The consistent version of the child victim and the other prosecution witnesses is that the accused had taken the child from the shop. Certain questions were put to PW-8 in his cross-examination, to the effect that he could not recall the child's clothing, the number of customers in the shop, or who prepared the chowmein. However, these details are immaterial and do not go to the root of the matter. Importantly, PW-8 did affirm that the victim child had visited his shop and had eaten there, and that subsequently, both the mother of the child and the police had visited the premises. This aspect lends further support to the prosecution's case and confirms that the shop formed part of the sequence of events which were investigated.

22. Thus, when the testimonies of aforesaid witnesses are considered and read together, they present a consistent, credible, and corroborated version of events. Minor discrepancies, which are bound to occur in the narration of different witnesses, do not affect the reliability of the evidence or the overall case of the prosecution.

23. The learned counsel for the appellant also contended that the



medical evidence does not support the prosecution's case. However, this Court notes that PW-11, Dr. Mayank Singhal, has deposed as under:

“On 30.09.2017 I was posted as SR (Surgery) in DDU Hospital, New Delhi. On that day a boy child was referred for his internal examination by Dr. Sanjay, CMO, DDU Hospital. I medically / internally examined the child victim and prepared my report from point B to B1 in the MLC already Ex.PW-5/D bearing my signature at point Y. On the examination of anus of the child victim, the same was found having tear and on rectal there were' multiple linear ulcer positive over anal verge. It means the rectal was having tears. I have made a diagram at point Z in Ex.PW-5/D to show the nature of tear on anal verge. I had also collected two samples from outside and inside anal verge and handed over the sealed sample to the police accompanied with the child victim.”

24. It was argued that in his cross-examination, the doctor stated that the child victim had not disclosed the incident or history of assault to him, and that he mentioned the possibility of fissures over the anal verge in cases of constipation. The doctor also acknowledged that he did not measure the dimensions of the fissures.

25. However, a perusal of the MLC [Ex. PW-5/D] reveals that the child was produced before the doctor with an alleged history of sodomy, and with the specific narrative that he had been freed by someone after knocking on a locked door. Upon physical examination, the doctor recorded the presence of multiple fissures in the anal region, as well as multiple linear ulcers over the anal verge.

26. As rightly observed by the learned Trial Court, the medical evidence – particularly the findings of anal tear over the verge and



rectal tears – corroborates the testimony of the child victim in material particulars. The presence of such injuries, documented soon after the incident, lends support to the prosecution's case and cannot be brushed aside on the basis of mere conjecture or alternative explanations such as constipation, particularly when such a defence was not otherwise substantiated. The medical findings, therefore, corroborate the ocular and oral testimony of the child and other prosecution witnesses.

27. This Court is also in agreement with the finding of the learned Trial Court that the witnesses examined in the present case were neither related to the victim nor were they interested witnesses, nor did they bear any enmity or animosity toward the accused. The testimony of the child victim stands duly corroborated by the statements of independent public witnesses as well as the medical evidence on record.

28. In view of the above, this Court finds no reason to interfere with the findings arrived at by the learned Trial Court.

29. Insofar as the order on sentence is concerned, the learned Trial Court has already awarded the minimum sentence of rigorous imprisonment of ten years to the appellant. Thus, no interference is called for in the same.

30. The impugned judgment of conviction and order on sentence are upheld, and the present appeal is accordingly dismissed. Pending application is also dismissed.



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31. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 03, 2025/zp/A