



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

% Reserved on : 01.09.2025
Pronounced on : 03.09.2025

+ **CRL.A. 820/2019**

TONNY

.....Appellant

Through: Mr. S.S. Ahluwalia, Advocate
(DHCLSC)

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Seema, P.S. Gandhi Nagar
Mr. Ishaan S. Sharma, learned
Amicus Curiae (Pro Bono) for the
victim.
Mr. Himanshu Anand Gupta
(DSL SA), Mr. Sidharth Barua, Ms.
Navneet Kaur, Mr. Mike Desai

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 25.02.2019 passed by the learned Addl. Sessions Judge-01, Special Court (POCSO Act), North East District, Karkardooma Courts, Delhi, in SC No. 309/2017 arising out of FIR No. 784/2017 registered under Sections 376/506 IPC and Sections 4/6/8 of Protection of Children from Sexual Offences Act, 2012 [in short, "POCSO"] at P.S. New Usmanpur, whereby he was convicted for the offences punishable under Sections 366/376/506 IPC and Section 6 POCSO. Vide the



impugned order on sentence dated 27.02.2019, the appellant was sentenced as under:-

- i) RI for 4 years alongwith fine of Rs.5,000/-, in default whereof he would undergo SI for 3 months, for the offence punishable under Section 366 IPC;
- ii) RI for 4 years alongwith fine of Rs.5,000/-, in default whereof he would undergo SI for 3 months, for the offence punishable under Section 506 IPC; and
- iii) RI for 12 years alongwith fine of Rs.10,000/-, in default whereof he would undergo SI for 6 months, for the offence punishable under Section 376 IPC.

2. The FIR came to be registered on 04.08.2017 on the statement of the child victim, who was about 10 years old at the time. She alleged that she was a student of Class VI and, on the way to her school, a person sitting in the woodwork shop used to offer *chowmin* or *kachori* and at times also used to abuse and threaten her. The said person used to take off his clothes as well as those of the child victim, press her chest, and commit the offence of rape, wherein she used to feel pain. The said person used to give her something and send her off, and also used to issue threats that he would drown her in a drain or cut her like a piece of wood, if she disclosed about the happenings to anyone. She also alleged that the person committed the offence of rape upon her on a number of occasions on account of these threats. She stated that she did not disclose the events to anyone as she was scared, and that the last time the offence was committed was in the shop on 01.08.2017. She further stated that, on being asked by her school teacher, she disclosed the said facts to her, who in turn told the same to her mother. On the basis of the aforesaid allegations, the child victim was taken for



medical examination and her statement under Section 164 Cr.P.C. was also recorded, wherein she reiterated her earlier statement. The appellant was arrested, and on completion of investigation, charges were framed under Sections 354B/366/506/376 IPC and Sections 6/8 POCSO.

MATERIAL WITNESSES

3. The child victim was examined as PW-1. The Trial Court, after asking a few preliminary questions, recorded its satisfaction as to the competency of the child victim to understand and answer the questions put to her. Being about 11 years of age, her statement was recorded without oath. She deposed that the accused would give her eatables and, at times, some money, and that he would also meet her outside a shop selling chowmein and other items. The accused, many times, took the child victim to his woodwork shop, wherein he committed the offence of rape upon her. She reiterated the factum, as well as the nature of, the aforementioned threats. She also reiterated that the act of rape was committed on several occasions. She further deposed that she had told the facts to her teacher 'D'. Initially, she couldn't identify the accused when shown from a distance, however, she then pointed her finger towards him and identified him as the person who had committed the offences upon her.

In her cross-examination, she stated that she used to pay as and when she used to buy things from the concerned shop. On being asked whether the accused was arrested on the same day as when she had gone to the police station, she answered in the negative. She stated that apart from the accused, another person used to work at the said woodwork shop. She admitted that the person who had done the wrong acts with her was shown to her in the police station on the same day. She denied the suggestion that the accused



had never given her chowmein to eat and that he had not inserted his penis into her urinary part.

4. The mother of the child victim was examined as PW-4. She deposed that she was called to her daughter's school about 3-4 months ago, where she was told that her daughter had been raped. She accompanied her daughter to the police station, where her statement was recorded and she was also taken for her medical examination.

In cross-examination, she admitted that her signatures were taken on documents in the police station and not at the school. She further stated that she had met the principal, though she did not remember her name, and that the accused was arrested from his shop on the same day.

5. Ms. 'D', the teacher to whom the child victim had disclosed the incident, was examined as PW-6. She deposed that on 04.08.2017, she received a call from a Sanskrit teacher, asking her to come to school. Thereafter, she went to the principal's office, where she met the Sanskrit teacher, the child victim's class teacher, and the child victim, who was sitting with them in the office. On being enquired, the child victim started crying and disclosed that a person who met her outside the school had threatened her and then put his urinary part in her urinary part. She further deposed that she had called one *Robin* from P.S. New Usmanpur. Before the arrival of the police, the child victim had led the witness to the concerned shop and identified the accused, who was standing near the shop. After the arrival of the police, *Robin* asked the witness to again go and see if the perpetrator was at the shop, and after such confirmation by the witness, he reached the spot and took the accused to the police station. Thereafter, she,



along with the victim and her mother, went to the police station, where further proceedings were conducted.

In cross-examination, she stated that her statement was not recorded by the police, but by an NGO official. She was confronted with her portion of statement made to the police, which she denied. She further denied the suggestion that she had deposed at the instance of the police.

6. The owner of the concerned woodwork shop was examined as PW-5. He deposed that the accused had been working in his shop for the last two years as a daily wager. In cross-examination, he stated that he had no documentary evidence to show that the accused was working at his shop. He denied the suggestion that the police had made no enquiry from him. He also denied the suggestion that no wood work was done in his shop and only corrugated boxes were prepared to be used for his brother's shops.

7. SI *Santosh*, the Investigating Officer of the case, was examined as PW-11. She stated that on 04.08.2017, the victim, her father, and one lady 'D' had come to the police station and levelled allegations of the child victim being sexually assaulted. She recorded the statement of the child victim, which is exhibited as Ex. PW-1/1. She further deposed that on 05.08.2017, she, along with Ct. *Srikant*, went to the house of the victim, from where they proceeded to the shop where the accused was found sitting, and on being identified by the victim, the appellant was apprehended.

In cross-examination, PW-11 denied the suggestions that she had not recorded the statement of the victim at the police station, or that she had obtained the victim's signatures on blank papers and manipulated them into a statement. She also denied that the victim was not taken to the hospital for medical examination or to the spot of the incident. She further denied that



she had not arrested the accused in the manner stated by her, that the accused had been falsely implicated, or that she had manipulated the exhibits of the accused at the police station to falsely implicate him.

8. Ct. *Srikant* was examined as PW-10 and deposed along similar lines. Nothing substantial came out in his cross-examination.

MLC

9. As noted above, the medical examination of the child victim was conducted on 04.08.2017. The MLC report notes that her hymen was found to be ruptured. Dr. *Renu Patel*/PW-13 deposed regarding the MLC and stated that besides the hymen being ruptured, slight bleeding (spotting) was also noted. Samples of the sexual assault evidence kit were collected and handed over to the police. PW-13 also identified the signatures of Dr. *Namita*, who had prepared the MLC. In cross-examination, she stated that Dr. *Namita* had worked as her junior. She denied the suggestion that she couldn't identify Dr. *Namita*'s signatures or her handwriting.

FSL

10. The samples seized during the investigation were sent to FSL. The FSL Report remained inconclusive as no male DNA could be extracted from the deposited exhibits.

CONTENTIONS

11. In the backdrop of the facts and evidence that have come on record, learned counsel for the appellant contended that the medical examination of the victim also did not show any external injuries. It is submitted that the version of the I.O. and Ct. *Srikant* is contradictory to the deposition of 'D' as to when and where her statement was recorded and how the appellant was arrested. In this regard, reference is made to the testimony of 'D' to contend



that the same is in complete contrast to what has been stated by the I.O. and other witnesses, as they have not stated about any *Robin* going to the spot. He further states that the testimony of 'D' does not inspire confidence as neither any *Robin* nor any Sanskrit teacher were examined. Reference is made to the FSL report to contend that the same does not support the prosecution case in any manner.

12. The said submissions were refuted by the learned APP for the State, who contended that the testimony of the child victim is consistent and credible. He also stated that the testimony finds support from the deposition of independent witness, Ms. 'D', as well as the MLC. He has further referred to the defence taken by the appellant, wherein, in his statement under Section 313 Cr.P.C., while answering question no. 6, the appellant stated that he was working in a shop which was not a woodwork shop but only manufactured corrugated boxes, used by the shops of PW-5's brother. In response to question no. 52, the appellant stated that he was falsely implicated at the instance of the parents of the child victim, in connivance with PW-5/*Yogesh*, with whom he had a dispute regarding payment of salary.

13. Mr. Sharma, learned *Amicus Curiae* appointed to represent the child victim, has further submitted that the child victim not only correctly identified the appellant herein as the person who had committed the offence of rape upon her, but also consistently stated about it i.e., in her statement recorded during the investigation, as well as during trial. He further stated that a minor lacuna in the investigation and/or the trial, i.e., the non-examination of one police official or the class teacher/Sanskrit teacher, would not enure to the benefit of the appellant. It was also stated that the



FSL report did not offer conclusive results, as the exhibits were submitted and examined days after the last stated date of occurrence of the offences in question, due to which no male DNA could be extracted from the submitted exhibits. In this regard, the learned counsel has placed reliance upon a decision of the Coordinate Bench of this Court in Mahinder & Anr. Vs. State of NCT of Delhi, reported as **2019 SCC OnLine Del 9548**.

DISCUSSION & ANALYSIS

14. Pertinently, the age of the child victim, being about 10 years on the date of the incident, was not disputed in trial, and even in present appeal, no contentions have been addressed in this regard. The child victim is thus held to be a “child” under POCSO.

15. Indeed, there are variations in the testimonies of the witnesses regarding the mode and manner of the appellant’s arrest. While ‘D’ stated that she had visited the concerned shop along with the child victim and that, on the victim’s identification, it was *Robin*, a police official from P.S. New Usmanpur, who apprehended the appellant and took him to the police station, the version of the I.O. is different. However, such an inconsistency does not, in my opinion, enure to the benefit of the appellant. In the cross-examination of ‘D’, suggestions were put to her that what she had deposed was also stated in her statement under Section 161 Cr.P.C., which she admitted she had not done. That said, insofar as ‘D’ deposed about the child victim confiding in her regarding the repeated wrong acts committed by the appellant, her version is corroborated by the testimony of the child victim, and the same aspect also finds mention in the testimony of the I.O. On this limited aspect, therefore, her testimony is believable. At the same time, it cannot be treated as binding in its entirety. Even assuming, arguendo, that



the statements of ‘D’ were to be disregarded altogether on account of inconsistencies regarding the manner of arrest, the deposition of the child victim, if found to be credible and reliable, would by itself be sufficient to sustain the appellant’s conviction.

16. At this stage, it is appropriate to state the position of law regarding the appreciation of the testimony of a child victim, as recently analysed by the Supreme Court in State of Madhya Pradesh vs. Balveer Singh, reported as **2025 SCC OnLine SC 390**, wherein it was held as under:

“58. We summarize our conclusion as under:-

- (I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.*
- (II) As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*
- (III) Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*
- (IV) The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.*



- (V) *The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*
- (VI) *The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*
- (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.*
- (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 desirable or required, and would depend upon the peculiar facts and circumstances of each case.*
- (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 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.*
... ”



17. Earlier, in State of Punjab Vs. Gurmit Singh, reported as (1996) 2 SCC 384, the Supreme Court, while dealing with the case of rape of a minor, had held that the evidence of the victim of sexual assault is sufficient for conviction and does not require any corroboration unless there are compelling reasons for seeking the same.

18. Again, in Ganesan Vs. State, reported as (2020) 10 SCC 573, the Supreme Court, dealing with a case of sexual assault of a minor, held that the sole testimony of the victim, if found worthy of credence and reliable, requires no corroboration and may be sufficient to invite conviction of the accused.

19. In view of the above, the settled position of law is that even if the victim is the sole witness to the incident, a conviction can be sustained if her testimony is found to be credible and reliable. Further, Section 29 POCSO creates a presumption of guilt against the accused once the foundational facts of the case stand established. A three-Judge Bench of the Supreme Court in Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, reported as (2025) 2 SCC 399, has held that Section 29 comes into play once such foundational facts are proved. It holds as follows:-

“35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the Pocso Act. Section 5 of the Pocso Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the Pocso Act defines what penetrative sexual assault is...”

20. A gainful reference in this regard may also be made to the decision of a co-ordinate Bench of this Court in Veerpal v. State, reported as 2024 SCC OnLine Del 2686, wherein it was held as under:-

“20. Section 29 of POCSO Act provides that Court shall presume that the



accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability.”

21. In view of the above, it is evident that if the testimony of the child victim inspires confidence and is reliable, the conviction can rest upon it. In the present case, the record shows that the child victim has consistently stated that the appellant, who used to sit at the woodwork shop near her school, would at times pay for the eatables she purchased from an adjacent shop; and that the appellant, after removing both his and her clothes, had committed the offence of penetration by inserting his male organ into her urinary part, on not one but several occasions. On this aspect, her stand has remained consistent and credible, and the appellant has not been able to demolish her testimony in cross-examination.

Further, no case has been made out by the appellant to suggest that the child victim was either tutored or that any member of her family had a motive to falsely implicate him. The appellant's defence that the case was created at the instance of the parents of the child victim in connivance with the owner of the concerned shop/PW-5, who had not paid his salary, is clearly moonshine. There is not even a whisper, let alone a suggestion, that the woodwork shop owner was known to the child victim or her family. The MLC further lends support to the testimony of the child victim. These factors, taken together, establish the foundational facts of the prosecution case, thereby attracting the presumption under Section 29 POCSO. This



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Court, as such, finds no merit in the present appeal, and the same is accordingly dismissed. The impugned judgment and order on sentence are upheld.

22. A copy of this judgment be sent to the concerned Jail Superintendent for information and for serving the same upon the appellant.

23. The Court records its appreciation for the assistance rendered by Mr. Ishaan S. Sharma, the learned *Amicus Curiae*.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 03, 2025

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