

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**CRL.A. 552/2020**

Reserved on : 23.11.2021  
Date of Decision : 05.01.2022

**IN THE MATTER OF:**

RAVINDER ..... Appellant  
Through: Ms. Saahila Lamba, Advocate.

Versus

STATE ..... Respondent  
Through: Ms. Neelam Sharma, APP for  
State.

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**  
**(VIA VIDEO CONFERENCING)**

**JUDGMENT**

1. The present appeal has been filed under Section 374(2) Cr.P.C. on behalf of the appellant against the judgment on conviction and order on sentence dated 30.09.2020 and 12.10.2020 respectively passed by the learned Additional Sessions Judge-01 (POCSO), South-West District, Dwarka Courts, New Delhi in SC No. 440884/16 arising out of FIR No. 573/2014 registered under Sections 354/509 IPC and Section 8 of the POCSO Act at Police Station Dwarka North, Delhi.

2. Vide the impugned judgment dated 30.09.2020, the appellant was convicted for the offence punishable under Section 12 of the POCSO Act and vide the order on sentence dated 12.10.2020, he was sentenced to undergo SI for a period of three years, alongwith payment of fine of

Rs.5,000/-, in default whereof, to further undergo SI for a period of three months. The benefit of Section 428 Cr.P.C. was extended to the appellant.

3. The brief facts of the case, as noted by the Sessions Court, are as under :-

*“1. The case of the prosecution is that on 27.08.2014, the child victim was residing with her parents in a rented premises. Her father was a rickshaw puller and her mother used to work as a cook in domestic households. Her mother used to leave the house between 7 to 8 am in the morning and she used to reside with her brothers and sisters. One man used to come and stand outside her house and used to open the zip of his pants and show her his private part. He even used to show currency notes to her and used to ask her to sit on his bicycle. She used to immediately close her door.*

*On the day when this complaint was filed, the child victim saw the accused sitting in a bhandara which was being held in the street outside her house. She went and told about the previous acts of the accused to her mother. Her mother caught hold of the collar of the accused and her father also reached the spot. Police was called. Her statement was recorded and FIR was registered against the accused under Section 354/509 IPC r/w Section 8 POCSO Act. Investigation was conducted. Accused was arrested and after thorough investigation, charge sheet was filed against the accused. Statement of the child victim u/s 164 Cr.P.C. was also recorded in which she completely corroborated her first complaint and also stated that the accused also used to harass her friend ‘N’. ‘N’ had also not disclosed this fact to her mother. She further stated in her statement u/s 164 Cr.P.C. that the accused even attempted to come into her house by climbing over the wall. She stated in her statement that on the day of the langar also, he was doing the wrong act when he was caught hold by her mother and her relatives including some uncles and aunties.”*

4. After completion of investigation, the charge sheet in the case was filed under Sections 354/509 IPC and Section 12 of the POCSO Act. Vide order dated 01.06.2016, charge was framed against the appellant under Section 12 of the POCSO Act, to which he pled not guilty and claimed trial.

5. Learned counsel for the appellant has contended that there are discrepancies and contradictions in the statements of the prosecution witnesses. While the child victim had stated in her statement recorded under Section 164 Cr.P.C. that her friend 'N' was also harassed, no such fact was mentioned at the time of recording of her testimony before the Court. It was also contended that while the child victim in her examination stated that her statement was recorded in the police station, *Const. Dharmender* (PW-2) stated that *SI Rattan Singh* (PW-9) called one lady officer at the spot, whereafter *W/Const. Mintu* (PW-3) reached and recorded the statement of the child victim, who in turn deposed that it was *SI Rattan Singh* (PW-9) who recorded the statement.

6. Learned APP for the State, on the other hand, supported the impugned judgment and submitted that the child victim had correctly identified the appellant as the person who committed the offence. It was also submitted that the inconsistencies in the statements of the prosecution witnesses are minor and non-fatal to the prosecution case.

7. I have heard learned counsel for the appellant as well as learned APP for the State and have perused the entire material placed on record.

8. In the present case, the prosecution examined the child victim as PW-4, who deposed that at the relevant time, her mother was working as a maid and her father was a rickshaw-puller. Neither she nor her siblings used to go to school and after their parents left for work, they used to

remain at the house. When she along with her siblings used to play in the street, one person (later identified to be the appellant) used to come and indulge himself in indecent behaviour. It was stated that the appellant had been coming for the last more than two years. He used to show his penis and offer money, which was refused. The said fact was told by the child victim to her mother. Possibly in the summer of the relevant year a *bhandara* was organized near the house of the child victim, which was attended by her, along with her family members, except her father. In the said *bhandara*, the appellant was also present and at that time also he behaved improperly. The child victim informed her mother about the same, whereafter he was apprehended at the spot and beaten up. When the police officials came, they took the child victim and others to the police station, where her statement was recorded (*Ex. PW-4/A*). On being asked to identify the appellant, the child victim correctly identified the appellant in the Court as the person who had committed the offence.

In her cross-examination, the child victim stated that the appellant used to come in the vicinity almost every day between 1 to 2 p.m. in the noon time. She further stated that on the day of the *bhandara*, she was accompanied by her mother, her sister, a friend and the friend's mother. Her mother left the *bhandara* earlier than others. On noticing the appellant, the child victim came back to her house and informed her mother. Her friend informed her own mother as well, who had also left the *bhandara*, whereafter she also came at the spot. It was also stated by the child victim that her father had reached the spot after the incident was over and the statement of her friend was also recorded.

9. The mother of the child victim was examined as PW-6, who deposed that the child victim had told her about four years back that one

person used to come in front of their house, show his private part after opening zip of his pant and offer money to the child victim. She further deposed that on the occasion of *bhandara*, initially the child victim had seen the appellant. When the witness reached the *bhandara*, the appellant was apprehended on the pointing of the child victim and thereafter, the police was called.

In cross-examination, the witness stated that the child victim was about 10-12 years old at the relevant time. She had told the witness about the acts of the appellant one day prior to the *bhandara* but the witness did not file any complaint in the police station on that day. It was further stated that the appellant had not done anything wrong with the child victim on the day of *bhandara*. The witness also stated that prior to the *bhandara*, she had not seen the appellant in the vicinity of her house. However, it was subsequently stated by her that one day prior to *bhandara*, she had chased the appellant at the instance of the child victim but he could not be apprehended at that time.

10. The father of the child victim was examined as PW-7. He deposed that on the day of *bhandara* his wife had apprehended the appellant and told that he used to do '*galat harkat*' with their daughter. In his cross-examination, the witness stated that his wife had not told him about the appellant earlier and the appellant had not done anything wrong with the child victim in his presence.

11. The neighbour of the child victim was examined as PW-8. She deposed that the mother of the child victim had told her earlier about one man who used to harass the child victim. It was further deposed that on the day of the *bhandara*, the appellant was apprehended by the mother of the child victim on identification by the child victim.

In cross-examination, the witness stated that by the time she reached the *bhandara*, the appellant had already been apprehended by the mother of the child victim. She further stated that her daughter had not gone to the *bhandara* and that neither her own children nor any of the neighbours had ever revealed to her that the child victim was being harassed by anyone. It was also deposed that the mother of the child victim had told her about 10 days prior to the *bhandara* that one man used to harass the child victim.

12. The prosecution also examined *SI Rattan Singh* as PW-9, who stated that on 27.08.2014 he had visited the place of incident to arrest the appellant. It was deposed that he, along with *Const. Dharmender* (PW-2), had reached the spot and arrested the appellant. In cross-examination, the witness stated that on the day of registration of FIR, as per the child victim, the appellant had not done anything wrong with her.

13. In the appellant's statement recorded under Section 313 Cr.P.C., he denied the prosecution case and stated that he was falsely implicated. The appellant examined himself as DW-1 and denied that he ever sexually harassed the child victim or showed his private part to her. It was stated that he was working as a labour and had gone to the aforesaid *bhandara* to have food. However, he was falsely implicated on the basis of wrong identification by the child victim and her mother who stated '*yahi ladka hai*'.

### **Age of the Child Victim**

14. During the testimony of *SI Rattan Singh* (PW-9), it was recorded that the child victim had not studied in any school, nor was there any birth certificate of her. Therefore, no birth certificate/school record with

respect to the child victim's date of birth could be collected during investigation. Be that as it may, it has come in the testimony of the mother of the child victim that she was about 10-12 years of age at the time of the incident. Neither during the trial nor at the time of arguments in the present appeal, the appellant has disputed the age of the child victim. In view of the above, this Court concurs with the opinion of the Trial Court that the child victim was about 10 years of age at the relevant time and thus, a 'child' within the meaning of Section 2(d) of the POCSO Act.

15. Before proceeding further, I deem it apposite to elaborate upon well-established principles of law surrounding the testimony of a child witness. Insofar as the sufficiency of the statement of child victim in convicting an accused is concerned, it has been repeatedly held that if the testimony of the child victim inspires confidence and is reliable, it is sufficient to record the conviction.

16. In this regard, the Supreme Court in Dattu Ramrao Sakhare and Others v. State of Maharashtra reported as (1997) 5 SCC 341 had held that conviction on the sole evidence of the child witness is permissible, if the witness is found competent and the testimony is trustworthy. Similarly, in State of Rajasthan v. Om Prakash reported as (2002) 5 SCC 745, while reversing the decision of the High Court and upholding the conviction of the appellant, the Court held:-

*“13. The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is a well-settled proposition. In State of Punjab v. Gurmit Singh, referring to State of Maharashtra v. Chandraprakash Kewalchand Jain this Court held that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and*

*undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. It has also been observed in the said decision by Dr Justice A.S. Anand (as His Lordship then was), speaking for the Court that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.*

*14. In State of H.P. v. Gian Chand Justice Lahoti speaking for the Bench observed that the court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined.”*

17. Reference may also be had of the decision in State of Himachal Pradesh v. Sanjay Kumar alias Sunny reported as (2017) 2 SCC 51, where while relying on the testimony of a child witness to restore the conviction, the following observations were made by the Supreme Court:-

*“31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally*



*amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma v. State of H.P.). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”*

18. Be that as it may, in cases involving testimony of a child witness, a note of caution has been sounded time and again to the effect that the testimony has to be evaluated more carefully. On this aspect, the Supreme Court in Ranjeet Kumar Ram @ Ranjeet Kumar Das v. State of Bihar reported as **2015 SCC OnLine SC 500** had observed as follows:-

*"14. ...Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one..."*

19. Coming to the facts of the present case, it is noted that the testimonies of the prosecution witnesses are fraught with inconsistencies. A brief analysis of the same is undertaken hereunder:-

*Firstly*, the child victim deposed during her examination that she had apprised her mother about the indecent behaviour of the appellant 3-4 days prior to the lodging of the FIR. However, her mother deposed contrarily, inasmuch as she stated that the child victim had revealed the acts of the appellant to her one day prior to the *bhandara*. Over and above, the neighbour of the child victim deposed that the mother of the child victim had told her around 10 days prior to the *bhandara* that one man used to harass the child victim.

*Secondly*, the mother of the child victim deposed that she had chased the appellant at the instance of the child victim one day prior to the *bhandara*, but he could not be apprehended at that time. This statement does not find support from the testimony of any other witness, including the child victim herself, from whose deposition it is borne out that the appellant was apprehended by her mother on the day of the *bhandara*.

*Thirdly*, the child victim deposed that the appellant behaved improperly on the day of the incident as well. To the contrary, the mother of the child victim deposed that the appellant did not do anything wrong with the child victim on the day of the *bhandara*. *SI Rattan Singh*, as well, deposed that as per the child victim, the appellant had done nothing wrong with her on the day of registration of the FIR.

*Fourthly*, the child victim deposed that her statement was recorded by the police at the police station. However, the mother of the child victim deposed that her statement was recorded at the spot, alongwith that of the child victim.

*Fifthly*, the neighbour of the child victim deposed that her daughter had not gone to the *bhandara*, however, the child victim deposed that she

had gone to the *bhandara* alongwith her friend as well as the friend's mother.

*Sixthly*, the child victim deposed that on seeing the appellant on the day of the *bhandara*, she went to inform her mother while her friend went to call her own mother. Per contra, the neighbour of the child victim deposed that her daughter had not gone to the *bhandara* and instead, the child victim had come to call her.

20. Notably, the testimony of the father of the child victim does not lend any support to the prosecution case. Admittedly, he was informed about the acts of the appellant neither by the child victim nor by his wife prior to the day of the appellant's arrest.

21. From an overview of the above, it is apparent that there are contradictions in the testimonies of prosecution witnesses on various aspects, including as to how and when the child victim had informed her mother about the acts of the appellant, as well as regarding apprehension of the appellant. Further, even though the statement of the child victim's friend was recorded during investigation, the prosecution neither examined the said friend nor examined the brother and sisters of the child victim in whose presence the appellant had allegedly behaved improperly. It is also the admitted case of the prosecution that the appellant had not committed any wrong act or involved himself in an improper behaviour on the day of *bhandara*.

22. Keeping in view the foregoing, this Court is of the opinion that the discrepancies in the testimonies of the witnesses and the deficiencies noted above cast a shadow of doubt on the prosecution case and the appellant's involvement is not proved beyond reasonable doubt. Accordingly, the present appeal is allowed. The impugned judgment on

conviction and the order on sentence are set aside and the appellant is acquitted of the charges framed against him.

23. A certified copy of this judgment be communicated to the appellant through the concerned Jail Superintendent and also to the Trial Court.

**(MANOJ KUMAR OHRI)**  
**JUDGE**

**JANUARY 5, 2022**

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