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

% ***Reserved on: 06.11.2023***
Pronounced on: 17.11.2023

\+ **CRL.A. 273/2023**

VICKY ..... Appellant
Through: Mr. Faiz Imam, Advocate

versus

STATE OF N.C.T. OF DELHI ..... Respondent
Through: Mr. Satish Kumar, APP for the State with SI Manisha, P.S. Ambedkar Nagar, Delhi

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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SWARANA KANTA SHARMA, J.

1. The instant appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) has been filed on behalf of appellant seeking setting aside of impugned judgment dated 30.03.2022 and impugned order of sentence dated 17.11.2022 passed by learned Additional Sessions Judge-04, (POCSO), District South-East, Saket Courts, New Delhi (*'Trial Court'*) in Sessions Case No. 7280/2016 arising out of FIR bearing no. 557/2014, registered at Police Station Ambedkar Nagar, Delhi for the offences punishable under Sections 323/377/34 of the Indian Penal Code, 1860 (*'IPC'*) and Section 7/8 of Protection of Children from Sexual Offences Act, 2012 (*'POCSO Act'*).

FACTUAL BACKGROUND

2. Briefly stated, facts of the present case are that an information was received on 19.08.2014 at around 12:50 PM at Police Station Ambedkar Nagar, Delhi regarding a quarrel which had taken place between the victim and other persons. Thereafter, the police had reached the spot and brother of the victim i.e. minor 'L' and mother of the victim i.e. 'V' had met the investigating officer and had narrated the incident. Minor victim master 'B' who was aged about 14 years had revealed that he was sexually abused by accused persons and that the accused persons had committed carnal intercourse with him. Thereafter, victim was got medically examined at AIIMS, Delhi. The investigating officer had recorded the statement

of victim 'B' and the present FIR was registered on the basis of the said complaint. The statement of victim was also recorded under Section 164 of Cr.P.C. on 21.08.2014. After the conclusion of investigation, chargesheet was filed before the learned Trial Court on 27.10.2014 under Sections 323/342/377/34 of IPC and Section 5/6 of POCSO Act.

3. The learned Trial Court had framed charges against accused persons Vicky and Pawan *vide* order dated 27.11.2014 under Sections 323/342/377/34 of IPC and Section 5/6 of POCSO Act.

4. After the conclusion of trial, the learned Trial Court had acquitted accused Pawan and convicted appellant Vicky for offences punishable under Sections 323/342/377 of IPC and Section 4 of POCSO Act *vide* judgment dated 30.03.2022.

5. Vide order on sentence dated 17.11.2022, the appellant was sentenced to undergo:

(i) ten years rigorous imprisonment for offence punishable under Section 4 of POCSO Act alongwith payment of fine of Rs.2,000/- and to undergo simple imprisonment of fifteen days in default of payment of same;

(ii) six months rigorous imprisonment for offence under Section 342 of IPC;

(iii) six months rigorous imprisonment for offence under Section 323 of IPC. All the sentences were to run concurrently.

6. The present appeal has been filed against the said impugned judgment dated 30.03.2022 and order on sentence dated 17.11.2022.

THE RIVAL CONTENTIONS

7. Learned counsel for the appellant argues that the appellant has been falsely implicated in the present case and the incident alleged had never taken place. It is stated that there is an inordinate delay of 2 days in reporting the alleged incident to the police. It is stated that brother of the victim had made the PCR call regarding the quarrel, but when the police had reached the spot, the alleged quarrel had been falsely converted into a case of sodomy. It is further argued that the prosecution case is only premised upon the sole testimony of the victim who in his cross-examination had stated that complaint made by him against accused Vicky was wrong and on the day of the incident, no wrong act was committed with him. It is further stated that the case of the prosecution is not supported by the medical evidence, and in the MLC, the local examination of the body of the victim did not reveal any suggestive cause of sodomy. It is stated that result of exhibits clearly show that no semen was detected on the clothes worn by the victim. Thus, it is argued that the present appeal be allowed and the impugned judgment dated 30.03.2022 and order on sentence dated 17.11.2022 be set aside.

8. *Per contra*, learned APP for the State argues that the MLC of victim clearly establishes that anal intercourse was committed upon the victim Master 'B'. It is further argued that with regard to involvement of appellant Vicky in the offence, the victim has consistently stated in all his statements that Vicky had subjected him to carnal intercourse against order of nature and had inserted his

penis in his anal region. It is stated that the victim in his testimony recorded on 28.01.2015 and cross-examination on 25.03.2015, had reiterated his earlier version given to the police and had supported the case of prosecution. However, in his cross-examination conducted on 08.10.2015, he had resiled from his earlier statement since he was won over by accused Vicky. It is stated that the mother of victim had also testified about the matter being compromised with accused persons after correctly identifying accused Vicky in the Court. It is further submitted that testimony of victim clearly proves that quarrel had taken place between victim and accused persons on the day of incident and the accused persons had beaten the victim at the time of incident. Further, it is argued that the defence of the accused has not been consistent and he has not been able to establish any motive on part of the family of the victim to falsely implicate him in the present case. It is further stated that in cases of Section 29 & 30 of POCSO Act, there is a prior presumption as to the guilt of accused and his culpable mental state. Thus, it is argued that prosecution has proved its case beyond reasonable doubt and the conviction against accused Vicky ought to be upheld.

9. This Court has heard arguments addressed by learned counsel for the appellant and learned APP for the State and has perused the material on record as well as impugned judgment passed by the learned Trial Court.

ANALYSIS AND FINDINGS

10. In the present case, during the course of trial, the prosecution had examined 13 witnesses, where victim master 'B' had deposed as PW1.

11. The statements of accused persons were recorded under Section 313 of Cr.P.C. on 22.02.2022.

i. Appellant's statement under Section 313 of Cr.P.C.

12. The appellant Vicky in his statement had pleaded innocence and had stated that he did not know victim 'B' at all before the incident. It was also stated that on the day of incident, he was with his family i.e. his wife and two daughters in his house. It was further stated that some boys were quarrelling with each other in the *gali* below his house and were abusing each other, as a result of which the accused had objected to it and had told them to leave. It was stated that he did not know whether the victim was present there as he did not know the victim before the incident. It was also stated that the boys had even abused him and his daughters.

ii. The Testimony of Minor Victim

13. This Court notes that minor victim master 'B' had first narrated the incident to the investigating officer on the day the present FIR was registered i.e. on 19.08.2014. Thereafter, the minor victim had got his statement recorded before the learned Magistrate under Section 164 of Cr.P.C. on 21.08.2014.

14. During the course of trial, victim had deposed as PW-1 before the learned Trial Court. In his examination-in-chief which was recorded before the learned Trial Court on 28.01.2015, the victim had disclosed that on 16.08.2014 at about 8.00 PM, he had gone to celebrate Janamasthmi at G-Block, where some boys had come and had started snatching money from him, to which he had objected. It was further stated that when he was going to Mandi Kanpur at about 11.30 PM, for taking *prasad* of Janamasthmi and had reached in front of House No.315, G-Block, the accused Pawan and Vicky had met him and had offered him drink and food items. Initially, the victim had refused to accept the same but on the insistence of the accused persons, he had taken the same. The accused persons had then taken him to the first floor of the said premises and had bolted the door from inside. It was further deposed that the accused Vicky had consumed liquor and had asked the victim to remove his pants, and upon his refusal to do so, the accused Vicky had forcibly removed his pants. The accused Vicky had then forcibly established physical relations with him and had inserted his penis into the anal region of the victim, and had also inserted the same in the mouth of the victim. The victim was beaten up multiple times and was forced to stay in the aforesaid house for the whole night. The victim had returned to his own house the next morning but was afraid to inform about the incident to anyone in his family. It was only after about 3-4 days, that the victim was able to narrate the incident to his minor brother 'L'.

15. Therefore, the victim master 'B' i.e. PW-1, in his deposition dated 28.01.2015, had supported the case of the prosecution and had

identified accused/appellant Vicky on the screen before the learned Trial Court and had stated that Vicky is the person who had committed wrong act with him.

16. In the cross-examination that was conducted by the learned counsel for accused on 25.03.2015, the victim had again supported the case of prosecution and had reiterated that he had made the present complaint and had given his statement to the police about the incident that had taken place on the day of Janamashtami, and had also got his statement recorded before the learned Magistrate. He also admitted that Vicky had nothing to do with the boys namely Sunny, Rahul and Anda with whom he had fight on the intervening night and that he had given his statement to the police on his own.

17. However, further cross-examination of the victim was deferred at the request of learned counsel for accused Vicky.

18. The minor victim had again appeared before the learned Trial Court on 08.10.2015, and it was in his cross-examination dated 08.10.2015 which was conducted by learned counsel for accused Vicky, that the victim had given contradictory statements. On this day, his further cross-examination was resumed and he had stated that it was correct that accused Vicky was his neighbor and he knew him prior to the incident. He had stated that it was correct that prior to the incident, he had an altercation with accused Vicky and therefore, to teach a lesson to him, he had implicated him in the present case. He had also stated that it was correct that on the day of the incident, no wrong act was committed against him.

19. The learned Trial Court thereafter had allowed learned SPP for the State to conduct re-examination of the victim on the same day i.e. 08.10.2015, and the victim had admitted that in the complaint lodged with the police, he had not mentioned that his complaint was false. The victim also admitted that he had made his statement under Section 164 Cr.P.C. before the learned Magistrate out of his own free will and without any pressure. The victim also admitted that on 28.01.2015 and 25.03.2015, he had deposed before the learned Trial Court on his own without any pressure. It was also denied by the victim had he had entered into any compromise with the accused.

iii. Evidence of Other Witnesses

20. As noted above, after supporting the case of prosecution on 28.01.2015 when his examination-in-chief was recorded and on 25.03.2015 when he was cross-examined partly, the minor victim had then turned hostile on 08.10.2015 during his further cross-examination. A few months thereafter, victim's elder brother 'L'had deposed as PW-4 before the learned Trial Court on 14.03.2016. He had only stated that his brother had told him on the night of the incident that he was beaten up by accused Vicky and Pawan when he had gone to celebrate Janmashtmi at G-Block, Dakshinpuri. He had also stated that after his brother had told him about the incident, he had made a PCR call and the police had recorded his statement. This witness was declared hostile by the State before the learned Trial Court, and permission was sought to put certain leading question to him, which was granted by the learned Trial Court. Thereafter, PW-4

stated that he was illiterate and the police had obtained his signatures on a blank piece of paper, and he also denied having stated before the police that his brother i.e. victim herein had told him about accused persons committing acts of sodomy upon him.

21. Similarly, mother of the victim had deposed as PW-7 before the learned Trial Court on 08.05.2018 and she had only stated that she had compromised the matter with the accused persons and wanted to finish the matter. She was also declared hostile by the learned SPP for the State before the learned Trial Court and. In her cross-examination conducted by learned SPP, she denied having given her statement to police. She also denied that on the day of alleged incident, her son had gone out to see function of Janmashtmi at G-Block. She further denied that there were any injury marks on the body of the victim and that he had informed his elder brother about the incident. She even denied the suggestion that elder brother of the victim had called the police and the victim had then been taken to AIIMS Hospital for medical examination.

22. Thus, on one hand, PW-4 i.e. elder brother of the victim had supported the case of prosecution to the extent that victim had gone to celebrate Janmashtmi at G-Block, Dakshinpuri on the day of incident and the victim had informed him about the beatings that were given to him by appellant Vicky and on this information he had called the police. On the other hand, the mother of the victim had even denied the suggestion that victim had gone out of the house on the day of incident or that the elder brother of the victim had called

the police or that the victim was medically examined at AIIMS Hospital.

23. As regards the issue of police being called at the spot and victim being medically examined at AIIMS Hospital, these facts stand proved by the records and the testimonies of PW-3, who proved the MLC, and PW-5, PW-6, and PW-13, who deposed about receiving the DD entry, reaching the spot of incident and recording the statement of the witnesses.

iv. Victim turning Hostile during Cross-Examination: Impact of Granting Long Adjournments on Trial

24. In the present case, this Court remains conscious of the fact that initially, the victim had supported the case of prosecution in all his statements including in his testimony before the learned Trial Court on 28.01.2015 and in the cross-examination that had taken place on 25.03.2015. However, it was only when the subsequent cross-examination was conducted after a period of about 7-8 months that the victim had turned hostile. It is also significant to note that the mother of the victim in her testimony before the learned Trial Court had deposed that she had settled the matter with the accused.

25. This Court has also gone through the order sheets of the learned Trial Court and an examination of same reveals that the examination-in-chief of the victim was recorded on 28.01.2015, however, his cross-examination was deferred for 25.03.2015, i.e. after a period of about two months. Thereafter, when the victim had supported the case of prosecution in his cross-examination also on

25.03.2015, the counsel for accused Vicky had sought further time to cross-examine the victim. Learned Trial Court had again adjourned the matter for the said purpose to 14.05.2015 i.e. after about 2 months. On 14.05.2015, it is reflected from the order sheet that since the counsel for accused Vicky was not present, the cross-examination was again deferred to 28.07.2015. Again on 28.07.2015, the matter was re-notified for cross-examination on 08.10.2015, when finally, the victim was cross-examined by the counsel for accused Vicky and the victim had turned hostile.

26. This Court notes the troubling trend of repeated adjournments being granted for cross-examination of the victims to longer dates after part cross-examination or examination-in-chief is recorded by the Trial Court. In the present case, despite the minor victim 'B' deposing on 28.01.2015, the learned Trial Court has repeatedly granted adjournments and deferred the cross-examination for a period of about two-three months on each occasion. The examination-in-chief was conducted on 28.01.2015 and final cross-examination after three adjournments was conducted on 08.10.2015 i.e. after about nine months. The learned Trial Court was in blatant disregard to the several decisions of the Hon'ble Apex Court wherein it has been time and again held and directed that the cross-examination of a victim should immediately follow examination-in-chief, and the Courts should not adjourn cases for cross-examination merely on the asking of counsel for accused. This was more critical in the present case as the minor victim had been sexually abused and had been called to the Court on four occasions.

27. In this regard, this Court takes note of the observations of Hon'ble Apex Court in case of ***Gurnaib Singh v. State of Punjab*** *(2013) 7 SCC 108*, where the Hon'ble Apex Court had expressed its displeasure over the conduct of trial in a piecemeal manner and adjournments being granted for cross-examination on the mere asking. The relevant observations are extracted hereunder:

> "26. In spite of our modifying the conviction, we are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. **As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere asking. The cross-examination of the witnesses were deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracised from his memory that a criminal trial has its own gravity and sanctity.** In this regard, we may refer with profit to the pronouncement in *Talab Haji Hussain v. Madhukar Purshottam Mondkar* wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction.
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> 29. In the present case, as the documents brought on record would reveal, that in the midst of examination of PW 1, the learned counsel for the defence stated that he was not feeling well and was unable to stand in the court and the court adjourned the matter to 8-5-1999 for a period of four weeks. The said witness was not examined on the adjourned date but on 7-2-2000 and on that day, after the examination-in-chief was over, the cross-examination was deferred at the instance of the learned counsel for the defence. Similarly, when PW 4 was examined, the case was adjourned on a prayer being made by the learned counsel for the defence. It is interesting to note that the cross-examination of PW 4 eventually took place on 2-8-

> 2000. **On a perusal of the dates of examination-in-chief and cross-examination and the adjournments granted, it neither requires Solomon's wisdom nor Aurgus-eyed scrutiny to observe that the trial was conducted in an absolute piecemeal manner as if the entire trial was required to be held at the mercy of the counsel. This was least expected of the learned trial Judge. The criminal-dispensation system casts a heavy burden on the trial judge to have control over the proceedings. The criminal-justice system has to be placed on a proper pedestal and it cannot be left to the whims and fancies of the parties or their counsel. A trial Judge cannot be a mute spectator to the trial being controlled by the parties, for it is his primary duty to monitor the trial and such a monitoring has to be in consonance with the Code of Criminal Procedure**.
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> ***
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> 35. **We have expressed our anguish, agony and concern about the manner in which the trial has been conducted. We hope and trust that the trial courts shall keep in mind the statutory provisions and the interpretation placed by this Court and not be guided by their own thinking or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for the parties. They have their roles to perform. They are required to monitor. They cannot abandon their responsibility.** It should be borne in mind that the whole dispensation of criminal justice at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice is not only a concern of the Bench but has to be the concern of the Bar. The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same.
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> (Emphasis supplied)

28. In such facts and circumstances, this Court also deems it important to refer to the observations of Hon'ble Apex Court in case of ***Rajesh Yadav v. State of U.P.*** *(2022) 12 SCC 200* in which the law on hostile witness and the appreciation of evidence in case of

witness turning hostile due to long gap between examination-in-chief and cross-examination, was discussed as under:

> "**Hostile Witness:**
>
> 22. The expression "hostile witness" does not find a place in the Indian Evidence Act. **It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief examination itself. This classification has to be borne in mind by the Court.** With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief examination could be termed as evidence. Such evidence would become complete after the cross examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. **Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court.** It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion.
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> ***
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> 24.This Court in **Vinod Kumar v. State of Punjab, (2015) 3 SCC 220** had already dealt with **a situation where a witness after rendering testimony in line with the prosecution's version, completely abandoned it, in view of the long adjournments given permitting an act of manoeuvring.** While taking note of such situations occurring with regularity, it expressed its anguish and observed that: (SCC pp. 244-46, paras 51-53 & 57)
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> > "51. It is necessary, though painful, to note that PW 7 was examined-in chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be

fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. **It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence.** In re-examination by the Public Prosecutor, PW7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9- 1999 after going through and admitting it to be correct. It has come in the re-examination that PW 7 had not stated in his statement dated 13-9- 1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. **Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief.** But, a significant one, his examination in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj

Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the reexamination.

xxx xxx xxx

57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. **That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time.** The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. **In fact, it is not at all appreciable to call a witness for cross examination after such a long span of time. It is imperative if the examination-in-chief is**

> **over, the cross-examination should be completed on the same day.** If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. **It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial**.
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> 57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute."
>
> (Emphasis supplied)

29. While examining similar facts and circumstances, where the witnesses had turned hostile during cross-examination which was conducted after a gap of about eight months from the date of their examination-in-chief and they had supported the case of prosecution in their examination-in-chief, this Bench in case of ***Antosh v. State*** *2023 SCC OnLine Del 3832* had discussed the judicial precedents in this regard and had summarised the position of law on this aspect of a trial, in the following manner:

> "...20**.** To summarize, the principles which can be culled out from the aforesaid decision are as under:

> a. The term 'hostile witness' would refer to a witness who deposes in favour of the opposite party.
>
> b. A witness may turn hostile either at the stage of examination-in-chief itself, or later during the cross-examination.
>
> c. **The evidence of a hostile witness cannot be discarded as a whole** merely because the prosecution chose to treat him as hostile, and the r**elevant parts of evidence which are admissible in law can be used by the prosecution or the defence**.
>
> d. It is imperative that **if the examination-in-chief is complete, the cross-examination should also be completed on the same day and must not be deferred for a long period of time as it may provide opportunity to the accused to pressurise and win over the witness**…"
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> (Emphasis supplied)

30. Therefore, it will be crucial for this Court to keep in mind that the minor victim, who was aged about 14 years, had consistently stated about the appellant committing carnal intercourse with him, which is reflected from his statement given to the police, statement recorded before the Magistrate, as well as his examination-in-chief and in the part cross-examination; and it was only when the cross-examination had remained deferred for a period of about 8 months that the victim had resiled from his earlier statements, and his mother had later in her testimony, stated that she had compromised the matter with the accused.

v. The Medical Evidence

31. Doctor Shashank Pooniya, who was Assistant Professor at AIIMS, Delhi, had medically examined the victim on 19.08.2014. He had deposed as PW-3 before the learned Trial Court, and had proved

the MLC of the victim. He had deposed during the trial that on the basis of medical examination of the victim and the alleged history given by the victim, he was of the opinion that the victim had shown signs of insertion of penis or penis like object in his anal canal.

32. In light of the aforesaid testimonies of the minor victim and the doctor concerned who had medically examined the victim, this Court has perused MLC of victim master 'B' which discloses the opinion of the doctor to be that there were suggestive signs of sodomy which was committed on the victim, and it was specifically noted in the MLC, proved by PW-3 in his testimony, that there were signs of insertion of private part or like object in the private part of the minor victim.

33. The relevant portion of the MLC of victim reads as under:

> :…Local Examination
> (examined in Knee Elbow Position)
>
> No external injury in perianal region
> No blood/faecal or any other stain in perianal region
> 1cm x 0.2 cm size tear in anal orifice at 12'o clock position
> No tenderness (c/o pain in anal region or sitting)
> Anal sphincter intact
>
> Opinion: - I am of the opinion that there are signs suggestive of insertion of penis or penis like object in anal canal…"

34. PW-3 had also proved the MLC of the victim as far as other injuries suffered by him were concerned, and he had specifically stated that the victim was found having the following injuries:

> "...(1) Sub conjunctival hemorrhage present in left eye,lateral aspect.
> (2) Wound of size 1.0 x 0.5 cm over frontal region of his scalp, just above hairline, brown colour scab present.

(3) Reddish blue colour contusion of size 3.0 x 2.0 cm on the inner aspect of upper lip.
(4) Reddish blue colour contusion of size 2.0 x 1.0 cm over left anterior superior iliac spine.
(5) Tenderness and pain over left shin and over back..."

35. Thus, in the opinion of this Court, MLC of victim master 'B' undoubtedly reflects that injuries were suffered by the victim, and carnal intercourse had been committed with him.

vi. Addressing the Argument of Delay in Lodging the FIR and False Implication of Accused

36. Learned counsel for the appellant had argued there was a delay in lodging the complaint with the police which raises doubt about the case of the prosecution. In this regard, this Court notes that the victim has clearly stated that he was terrified by the incident, which led to his reluctance in disclosing the incident to his family. This Court notes that the victim boy, who was merely 14 years old, had faced aggravated penetrative sexual and physical assault at the hands of the appellant. It is understandable that such a traumatic experience would have instilled fear, aligning with the victim's statement that it hindered an immediate disclosure to his family. The victim further clarified that he eventually confided in his brother only when he was asked to reveal his injuries and distress. Therefore, the victim has adequately disclosed the reasons for the minor delay of two days in reporting the matter to authorities.

37. Further, the learned counsel for the appellant has also failed to present a compelling reason for the victim's family to falsely

implicate accused Vicky. In his statement under Section 313 of the Cr.P.C., accused Vicky had claimed that Victim "B" was a complete stranger to him, and had referred merely to some altercation on the day of the incident without naming the victim. On the other hand, the victim had consistently and unequivocally stated at all stages, including during in his cross-examination on 08.10.2015, that he knew accused Vicky prior to the incident since he was his neighbour.

CONCLUSION

i. Societal Expectations and Judicial Obligations: Duties of Criminal Courts

38. The **judges may often stay aloof from the public, but they do not remain aloof from the societal expectations** that offenders of criminal offences should be punished for their wrong doings. The Courts have to remain alert at all times that a decision of theirs based on **hyper-technicality** or non-appreciation of evidence will often lead to miscarriage of justice. In the present case, the learned Trial Court has justified its decision with the backing of judicial precedents and the relevant law and calls for no interference.

39. The **consequences of a crime in an individual case may visit victim of that particular case**, however, in the criminal justice system, it is the critical duty of the Court to ensure that the judgments discourage others from engaging in similar behavior and those breaking law are awarded punishment with the aim of rehabilitation

and reformation in order to reconsider their past behaviours and refrain from committing crimes in future.

40. **The responsibilities of the Courts extend beyond the mere determination of guilt or innocence**. Instead, the Courts play a vital role in safeguarding justice, preserving societal order, and addressing the wider repercussions of criminal acts on the community. Courts are seen as guardians of public trust and confidence, and their decisions, especially in serious criminal cases, send signals to society about the consequences of unlawful actions. Thus, it is the duty of the Courts to decide cases in a manner that resonate beyond the confines of a courtroom.

41. In the present case, this Court in the light of detailed discussion made above has reached a conclusion that the **Trial Courts have to remain mindful of the victim's state of mind** when they appear before them and to pay attention that while at times, they adjourn a case to a longer date for cross-examination of a witness who has been sexually assaulted and is a minor, the complexion of the case may change due to many factors which operate outside the four walls of the Courts. The Courts though confined to the four walls of the Court rooms, cannot remain aloof to such factors and therefore, must pay attention while adjourning cases for cross-examination of the witnesses to longer dates and recalling them again repeatedly that in such cases, the victims while facing such harassment or otherwise may digress from their journey to get justice from Courts. The judicial precedents and principles regarding witnesses, examination and cross-examination as discussed in the preceding paragraphs must

be kept in mind at all times while deciding such cases where after supporting the case of prosecution at all stages of trial, the witness may not support his own examination in chief and stand when recalled many times for cross-examination.

ii. Judicial Alertness towards the Unwritten Hindrances

42. In the present case, a **particularly discerning aspect**, **conspicuously evident to this Court**, is the revelation that the mother of the minor victim had testified before the learned Trial Court, that she had settled the matter with the accused indicating her reluctance to proceed with the case any further.

43. This Court believes that **Judges while adjudicating a matter have to go beyond 'why' of 'how' a thing has happened**.

44. **The Courts must remain alert towards the unwritten hindrances, which speak of its commitment to uncovering the actual facts and developments of a case**. **In doing so, it ensures that justice is not compromised by hidden influences or external pressures.** By acknowledging the responsibility to pay attention to the intricacies that may not be explicitly evident, the Court demonstrates its dedication to a thorough and unbiased examination of the facts. By maintaining a vigilant approach, the Courts ensure that the pursuit of truth remains paramount, undeterred by outside influences or attempts to compromise the integrity of the legal process.

45. In absence of anything on record, this Court cannot ascertain as to what would have transpired when long adjournments were

being given for cross-examination, between the period March 2015 to October, 2015, when the victim had turned hostile after supporting the case of prosecution on all previous occasions and as to how the matter would have been 'compromised' between the mother of the victim and the accused persons. However, a lapse on part of Trial Court to expeditiously conclude the evidence of minor victim cannot come in way of ensuring justice to the minor victim. It is also relevant to note that the mother of the victim had simply stated in her testimony that she had compromised the matter with the accused person and did not want to proceed with the same, and further that she was illiterate which means that she did not deny that the incident in question had taken place but that she had compromised the matter which would mean that the incident had taken place. In case no such incident would have taken place, where was the question of compromise.

46. **The Courts, thus, have to delve in for a deeper understanding into the underlying reasons for such compromises**. **Going beyond the surface of the matter, the Courts must recognise the need to understand the socio-economic context that may drive individuals to make choices that compromise their pursuit of justice.** This approach ensures that the Courts remain cognizant of the broader societal dynamics that influence legal proceedings.

iii. The Decision

47. In this Court's opinion, it is essential to deal with such cases with a heavy hand. **Law has to stand firm with the victim who cannot stand for himself being minor, even if his own parents are not standing with him**.

48. The learned Trial Judge, who was presiding over the Court when the testimony of the minor victim was being recorded in the year 2015, should have exercised caution and should have not granted long adjournments, for the purpose of cross-examination of victim after his examination-in-chief had already been recorded.

49. It is also important to note that the concept of 'hostile witness', as also discussed in preceding paragraphs, revolves around a witness deposing in favour of an opposite party. As held in various judicial precedents, the entire testimony of a witness who turns hostile at a later stage is not be disregarded and the relevant parts of the testimony can still be relied upon by the Trial Courts while deciding a case. In such situations, the gap between the examination-in-chief and the cross-examination of the witness is also significant to be taken note of, since long time period between conclusion of testimony can provide an opportunity to the accused to win over a witness.

50. In the present case, due to long gap between the recording of examination-in-chief and cross-examination of victim, the victim after supporting the prosecution's case throughout had turned hostile, and his mother also had later testified that she had compromised the matter with the accused. However, the learned Trial Court in this

case, had correctly appreciated the entire facts and evidence including the MLC of the victim which was reflective of commission of carnal intercourse with the victim, and had rightly arrived at a conclusion of guilt of the appellant herein.

51. Thus, the learned Trial Court in this, which had convicted and sentenced the appellant herein, was aware of the judicial precedents and was also alert and sensitive towards the sufferings of the minor victim. Thus, no fault can be found with the observations of the learned Trial Court.

52. Thus, in view of aforesaid discussion, this Court observes that prosecution has succeeded in establishing, that the appellant Vicky had committed Aggravated Penetrative Sexual Assault with Victim Master "B" aged about 14 years after wrongfully confining him, on the basis of testimony of the minor victim and the medical examination. The learned Trial Court has shown utmost sensitivity, appreciation of evidence and judicial precedents and has thus, given a finding which cannot be faulted with. To reaffirm, the Trial Court came to the following conclusion:

> "31. Section 29 of POCSO Act 2012 provides Presumption as to certain offences. It reads that "*where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 & Section 9 of this Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.*"
>
> Section 30 of POCSO Act also provides Presumption as to culpable mental state of accused. Section 30(1) reads that "1) in any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it

> shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. So, while ordinarily there is a "presumption of innocence" vis a vis an accused, Section 29 of the POCSO reverses this position. Section 29 of POCSO Act creates "Presumption of guilt" on the part of accused if he is prosecuted for committing, abetting or attempting any offence u/s 3. 5. 7 & Section 9 of the Act unless the accused is able to prove the contrary The defence, in the present case, has miserably failed to dislodge/disprove the presumption provided under Section 29 & 30 of POCSO Act
>
> 32. In view of abovesaid discussions, the prosecution has succeeded in establishing that accused Vicky has sodomized / committed Aggravated Penetrative Sexual Assault with Victim Master "B" (full particulars are mentioned at serial no. I in the list of witnesses attached with the police report under Section 173 of Cr.PC and withheld here in order to protect the identity of victim) aged about 14 years on 16/17.08.2014 at about 11.30 pm at G-215, First Floor. Dakshinpuri, New Delhi in his rented house after wrongfully confining him and also beaten up the victim. So, the accused Vicky is Convicted for offence punishable under Section 377/323/342 of IPC and Section 4 of POCSO Act."

53. Thus, this Court finds no infirmity with impugned judgment dated 30.03.2022 and order on sentence dated 17.11.2022 passed by the learned Trial Court. The conviction of the appellant Vicky is thereby upheld. Accordingly, the present appeal stands dismissed alongwith pending applications.

54. Copy of this judgment be forwarded to the concerned Jail Superintendent for communication to the appellant.

55. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 17, 2023/zp

(Corrected & uploaded on 06.12.2023)