



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

% **Reserved on: 30th April, 2025**
Pronounced on: 17th July, 2025

+ **CRL.A. 360/2021**

MOHD. SAJID @ BENAMAppellant
Through: Mr. Dhruva Bhagat, Advocate.

versus

THE STATERespondent
Through: Mr. Shoaib Haider, APP for the State
with SI Savita, P.S. Aman Vihar.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 374 read with Section 482 Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed by the Appellant/Mohd. Sajid @ Benam against Judgment dated 19.02.2020 *vide* which the Appellant has been ***convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012*** (*hereinafter referred to as "POCSO Act"*) & ***Sections 506/34 of the Indian Penal Code, 1860*** (*hereinafter referred to as "IPC"*) and Order on Sentence dated 20.02.2020 sentencing him to undergo ***Rigorous Imprisonment for 10 years with fine of Rs.5,000/- and Simple Imprisonment for 3 years with fine of Rs. 3,000/-, respectively.***



2. It is a case where a 13 years old boy, is a victim to aggravated penetrativegangsexual assault by the Appellant along with co-accused, Chand and Arif (JCL).

3. On 25.01.2016, Child Victim 'A', aged about 13 years, gave a statement that on 24.01.2016 at about 10:00 PM he along with his friend Nitin, had gone to Haridas Vatika, Mubarakpur Road, Aman Vihar, Delhi to attend *Jagranof Khatu Shyam ji*. At about 03:00 AM, three boys came and asked him to come out as they wanted to have a conversation with him. They all took the victim from the backside of the pandal to one oil tanker, where they made him sit in the cabin of the truck. In the meanwhile, two other boys, aged about 18-20 and 25 years, came and pulled down his pants and committed anal sex and thereby sexually assaulted him. There was third boy aged about 18-20 years, who threatened the victim that in case he raised an alarm, he would be stabbed with the knife. In the meanwhile, his friend 'N' along with one uncle came looking for him and rescued him from the truck. However, all three assailants ran away from the other side of the truck.

4. On his complaint, FIR No.0113/2016 was registered. During investigations, police along with victim went to search the assailants/accused. Chand was arrested at the instance of the Complainant. During his interrogation, he disclosed the name of other two co-accused as Mohd. Sajid @ Benam (Appellant herein) and Arif (JCL). Mohd. Sajid @ Benam was subsequently arrested on 15.04.2016.

5. The statement of Child Victim 'A' was recorded under Section 164 Cr.P.C. Since Arif (JCL) could not be apprehended, proceedings under Section 82 Cr.P.C. were carried against him.



6. On completion of investigations, Chargesheet was filed in the Court.
7. ***Charges under Section 6 of POCSO & Sections 377/506/34 IPC*** were framed against Chand and Mohd. Sajid @ Benam, to which they pleaded not guilty.
8. Prosecution in support of its case examined **18 witnesses**. The most important witness was PW-4 child victim "A" who supported the entire incident. The incident was corroborated by his friend **PW-5 'N'**, who on finding the Victim missing from the *Jagran* for a long time, had approached **PW-9 Pushpender** who had accompanied him to the Oil Tanker from where the victim was rescued. He supported the case of the prosecution, but was cross-examined by learned Prosecutor on certain aspects. **PW-11 R K**, father of the Child Victim PW-4, has corroborated the case of the prosecution.
9. **PW-8 Arjun Bal** was the registered owner of the Tanker, who deposed that on the intervening night of 24/25.01.2016, the Tanker was with the driver Shamshad, who had taken it for renewal of Fitness Certificate. **PW-13 Shamshad**, driver of the Oil Tanker, deposed that on the night of incident he had left his Tanker parked on the road side.
10. **PW-10 Dr. Gurdeep**, CMO, SGM Hospital, Mangolpuri, Delhi proved the MLC of the victim as Ex.PW-10/B and that of the Appellant as PW-10/A.
11. **PW-17 SI Jitender Joshi** (Investigating Officer) has deposed about entire investigations carried out by him.
12. ***The statement of the accused persons was recorded separately under Section 313 Cr.P.C.,*** where they denied all the incriminating evidence. They did not lead any evidence in their support.



13. ***Learned ASJ*** considered the evidence of the PW-4 'A' Child Victim, which were consistent and proved the case of the prosecution. The entire incident got corroborated by the testimony of PW-5 'N', his friend and PW-11 Raj Kumar (his father) and also by PW-9 Pushpender. Learned ASJ concluded that the case of the prosecution was proved beyond reasonable doubt under Section 6 POCSO Act and Section 506/34 IPC and accordingly, convicted and sentenced the Appellant and co-accused, Chand.

14. *Aggrieved by the said conviction and sentence, present Appeal has been preferred on behalf of the Appellant Mohd. Sajid @ Benam.*

15. The main **grounds of challenge** are that there is no incriminating evidence against the Appellant for the offence. It has not been appreciated that the Judgment has been written in a mechanical manner, ignoring that the alleged incriminating acts attributed to the Appellant, have not been proved. The judgment is highly presumptive and based on conjectures and premises. The Prosecution has failed to prove the complete chain of circumstances, leading to the commission of alleged offence, beyond reasonable doubt.

16. Not only is the testimony of all the Prosecution Witnesses inconsistent and contradictory, but is also not reliable. The Child Victim 'A' had stated that he was beaten by the accused persons after being called out from the *jagran pandal*, whereas in his Complaints as well as statements recorded under Section 164 and 161 Cr.P.C., he never stated that he was beaten up. He has given different versions at different time, making his testimony unreliable.

17. It has also not been appreciated that the testimony of **PW-5 and PW-9** are fully of discrepancies and are contradictory to each other. According to PW-9, PW-5 had come to him at about 10-10:30 PM to say that the Victim



was not traceable. He stated that he has called the PCR at No.100 from the mobile phone of PW-5 and thereafter, the Police had arrived. He then met the IO and had shown him the Tanker in which the child was present. However, the IO as well as other Constables who accompanied him, had stated that when they reached the alleged site of incident, then only met the child and his friend and no other person was found present with them.

18. It has not been appreciated that the time of incident was stated to be 03:00 AM by PW-4 and PW-5, while PW-9 had given the time as about 01:30 AM. However, the incident was reported at about 04:25 AM. PW-11, father of the Child Victim, stated that he received the call from Constable Bhargava at about 03:00 AM, while the IO and police officials had reached the spot at about 05:00 AM.

19. These material contradictions and improvements have been overlooked. It is a settled law that if there are two contrary views possible, then the benefit of the same must be given to the Appellant, who is entitled to be acquitted.

20. **Learned APP for the State** however, has controverted the assertions made in the Appeal and has submitted that testimony of the child victim, who was aged about 13 years at the time of commission of offence, is not only consistent but is also corroborated by PW-5 his friend and PW-9 in material aspects. Appellant and the co-convicts were not known to the victim and no evidence whatsoever has been adduced to show that the victim had any motive whatsoever, to falsely implicate the Appellant.

21. It is submitted that learned ASJ *vide* her well-reasoned and detailed judgment has rightly convicted and sentenced the Appellant and co-



convicts. Therefore, present Appeal has not merit and is liable to be dismissed.

Submissions heard and record perused.

22. It is one of the unfortunate cases where a young boy aged about 13 years has fallen victim to the lust and lascivious conduct of the Appellant and co-convicts.

23. The entire incident has been proved by the **Child Victim 'A' / PW-4**, who had deposed that on 24.01.2016 at about 10:00 PM he along with his friend 'N' / PW-5 gone to attend *Jagran of Khatu Shyam* at *Haridas Vatika, Mubarakpur Road, Aman Vihar, Delhi*. At about 03:00 AM, three boys aged about 18-20 years came and asked him to come out as they wanted to speak. He was taken out from the back gate of the *pandal* to a distance of about 25-30 paces. He refused to proceed further with them upon which they gave beatings to him. They forcibly made him board the cabin of an Oil Tanker, which was parked there. They also boarded the Cabin. Thereafter, the two boys, who appeared to be around 20-25 years of age, committed penetrative sexual assault upon him, one by one. The third boy [identified as Arif (JCL)] had kept knife at his neck and threatened him not to raise alarm or else he would stab him. After some time, his friend 'N' came there along with one uncle from *Jagran*, in his search. They found him in the cabin. The PCR call was made by his friend from his mobile phone on the asking of the uncle, who had accompanied his friend. PCR van arrived and he was taken for his medical examination to the Hospital and his statement, Ex. PW-4/A was recorded.

24. Extensive cross-examination was done of the Child victim, who explained that when he was being forcibly taken by three boys, he had tried



to raise alarm, but was given beatings and had to stop screaming. A suggestions was also given to him that Mohd. Sajid @ Benam (Appellant therein) was known to him, as he used to go with him to mosque to offer *namaj* on Fridays, which was denied by him. He also denied that the Appellant used to study with him in the school.

25. No material contradiction could be brought out from the cross-examination of the Child Victim in regard to the happening of the incident. The testimony of the Child Victim PW-4 is not only consistent with the statement Ex. PW2/A made to the IO but also to his statement recorded under Section 164 Cr.P.C. Ex.----

26. The testimony of the Child Victim got fully corroborated by that of **PW-5, Child Witness 'N', his friend**, who deposed about having gone with the victim "A" to attend the *Khatu Shyam Jagran* at *Baba Haridas Vatika*. He further deposed that at about 03:00 AM, while they were inside the *pandal*, three boys took the Victim on the pretext of discussing something with him and the child went with them through the back gate. He also followed, but was given beatings by belt by one person and was told to go back into the *pandal*. There were 3-4 other friends, who were present inside the *pandal* and he told them about Victim having been taken away by three boys. They all came out of *pandal* from the back gate to search the Child Victim, but 5-6 boys blocked their way and gave them beatings. They came back to the *pandal*. Thereafter, he found one uncle, to whom he narrated the all the facts, who took him on his scooty to search for Victim. They met some other boys on their way, who told them that a child has been waylaid by three boys in a Tanker. They found the Tanker bearing Registration No.HR55T2966, parked on the road side. The uncle knocked at the door of



the cabin of that Tanker; one boy opened the glass and told them that they were truck *walas* and sleeping there. When the uncle asked them to open the door, they all ran away through the other gate. Child Victim was found inside the cabin with his pant half removed. On the asking of uncle, he called the PCR from his mobile phone. In his cross-examination, no contradiction could be brought out. *The testimony of this child PW-5 fully supports the testimony of PW-4 child victim.*

27. The third important witness was **PW-9 Pushpender, the uncle** who had been approached by PW-5 'N' and requested to help him search for the his friend. PW-9 in his testimony admitted that he was present in the *jagran* on 24/25.01.2016. At about 01:30 PM, he came out of the *pandal* feeling tired and found one child aged about 12-13 years weeping. On his asking, he told him that 2-3 boys had forcibly taken away his friend through the back side of the *pandal* and pleaded with him to help trace his friend. He went with that boy on foot and after about 50 paces, they found an Oil Tanker parked on the road side. He had also met 2-3 boys passing through the road in front of Tanker, who on inquiry told him that some boys and children were present inside the cabin of the tanker. He knocked at the door of cabin of that Tanker and opened the latch. He saw 2-3 boys jumping and running out of the other gate of the cabin. The child, whose pant was half removed, was found inside the cabin. On making an inquiry, about how he came there, he narrated the entire incident of having been forcibly brought by 2-3 boys. He further told that since battery of his mobile phone was dead, he made a call to PCR from the mobile phone of the boy, who had accompanied him to search the victim. The police came, after which he left the spot. But was called on the next day, when his statement was recorded.



28. Learned APP for the State cross-examined this witness PW-9 about the timing and the name of the victim, which he admitted to be not able to give on account of passage of time. Pertinently, this witness was not cross-examined at all by the Appellant and the other co-convicts.

29. From the aforesaid discussion, it emerges that testimony of Child Victim was consistent and was corroborated by PW-5, his friend 'N' and PW-9 Pushpender, who along with PW-5 had gone and was able to trace him in the cabin of Oil Tanker parked on the road side.

30. While it was argued that PW-9 Pushpender was declared hostile and cross-examined by learned APP for State, but as discussed in detail, he was consistent about the entire incident. His cross-examination was only in respect of the date and the time, which cannot be considered at material fact which would discredit his testimony. Rather, he has been absolutely consistent about the entire sequence of events and fully corroborates the testimony of PW-4 and PW-5.

31. The testimony of the Child Victim of sexual assault is fully corroborated by his MLC, Ex.P-10/B, which is proved by Dr. Gurdeep, CMO, SGM Hospital, Mangolpuri, Delhi. The MLC recorded the alleged history of Sodomization by three persons at about 04:00 AM, as told by the victim. The details of the assault were mentioned on the MLC; *abrasion around anal opening was noted and child was advised medicines and future treatment.* **The medical record also corroborates about the sexual assault on the child.**

32. The learned defence counsel has argued that the alleged knife stated to have been used for threatening the victim, was not recovered. However,



knife had been used only to threaten and scare the victim and in that sense was not even germane to the actual commission of the offence. Learned ASJ has rightly observed that mere non-recovery of knife is not a factor, the benefit of which can be claimed by the Appellant. It is also pertinent to note that alleged knife for threatening the victim was used by one Arif (JCL), who has never been apprehended and was declared Proclaimed Offender.

33. Another contention that was raised on behalf of the Appellant was that he had been implicated falsely in this case. However, it is pertinent to note that though such defence was taken, no such suggestion was given to any of the witnesses nor any such defence disclosed in the statement under Section 313 Cr.P.C. Admittedly, the Appellant and co-convicts were not known to the Child Victim and were not even named in the FIR, thereby there was no reason for false implication. In the absence of any motive or evidence of false implication, this defence is of little assistance to the Appellant.

34. The suggestions have been given to the victim in the cross-examination that he knew the Appellant from before as he used to study with him in the school and also go for *namaj* in mosque. But no such evidence has been led either by way of school record or show that the Appellant was known to the victim.

35. Some challenge were also sought to be made in regard to the time of commission of offence. However, it has consistently been deposed that the incident happened at about 03:00 AM. The call to PCR was made at about 04:30 AM, which also fits into the sequence of the events, as described above.



2025:DHC:5734



36. Learned ASJ has rightly concluded that the prosecution has successfully proved its case against the Appellant beyond reasonable doubt.

37. Considering the gravity of offence, the Appellant has been rightly sentenced and impugned Judgment dated 19.02.2020 and Order on Sentence dated 20.02.2020 does not merit any interference.

38. There is no merit in the present Petition, which is hereby dismissed.

39. Pending Application(s), if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 17, 2025/R