



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

% Reserved on : 27.08.2025  
Pronounced on : 22.09.2025

+ **CRL.A.636/2023**

SARAVJEET

.....Appellant

Through: Mr Akshay Chandra, Advocate  
(DHCLSC) with Mr Utkarsh Bhanu,  
Advocate

versus

THE STATE & ANR.

.....Respondents

Through: Ms Shubhi Gupta, APP for State with  
SI Rajesh Kumar.  
Ms Gunjan Sinha Jain, Advocate  
(Amicus Curiae-pro bono) for victim

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

### **JUDGMENT**

1. The present appeal has been instituted under Section 374(2) read with Section 482 of Code of Criminal Procedure, 1973 against the impugned judgment dated 09.02.2023 and order on sentence dated 29.03.2023 passed by Id. ASJ (FTSC) (POCSO), District: North-West District, Rohini Courts, Delhi in SC No.246/2018 arising out of FIR No.42/2018 registered under Sections 376/506/342 IPC and Section 6/21 of POCSO Act, at PS Vijay Vihar, Delhi.

Vide the impugned judgement, the appellant was convicted for the offence under Section 376(2)(i)&(n)/506 IPC as well as Section 5(l) punishable under Section 6 of the POCSO Act. Vide order on sentence, for



the conviction under Section 6 POCSO Act, he was sentenced to undergo R.I. for a period of 11 years and for the offence under Section 506 IPC to undergo R.I. for a period of 3 years. For both offences, he was sentenced to payment of fine of Rs. 500/- each and in default of payment of fine, to undergo simple imprisonment for 1 day. The sentences were directed to run concurrently and the benefit of Section 428 Cr.P.C. was also extended.

2. The facts, in a nutshell, noted by the trial court are extracted hereunder:

*“1. In brief, as per the chargesheet, it is the case of the prosecution that DD no. 96B dt. 18.01.2018 was received by SI Rita whereafter the IO SI Rita, W/Ct. Neelam, the complainant/victim 'C' and the mother of the complainant/victim went to BSA hospital where 'C' was got medically examined, she was got counseled through NGO counselor and she gave statement to the effect that she was studying in class 6<sup>th</sup> and while her mother worked in a factory, her father was also working/operating finishing machine. The complainant/victim further stated that the accused Sarvjeet was residing in the room opposite to their room and had ill intentions towards her (Mere upar galat nazar rakhta tha). The complainant/victim further stated that on the last Thursday prior to the complaint, Sarvjeet locked her in the washroom (laterine), raped her and also threatened her not to tell anyone or else he would kill her parents. The complainant/victim further stated that on 17.01.2018 her parents were not at home when at around 7:30 pm, the accused Sarvjeet again raped her after locking her in the washroom (laterine) and the complainant/victim narrated the incident to her mother who had returned home and thereafter her mother called her father and when her parents asked the accused about the same, he started quarreling with them after which the landlord Hem Chand came, who was informed about the complainant/victim having been raped by the accused Sarvjeet but the landlord stopped them from reporting the matter to the police stating that they would have to vacate the house, if they would report the matter to the police.*

*The complainant/victim further stated that the landlord got the room vacated by the accused Sarvjeet and got him a room in the neighbouring house.”*



3. After the completion of investigation, charges were framed against the appellant under Section 5(1) punishable under Section 6 of POCSO Act. Charges were framed additionally for the commission of offence under sections 376(2)(i)(n) IPC and Section 506 IPC. The charges were also framed against *Hem Chand* i.e., the landlord of the appellant for the commission of offences under Section 19(1) punishable under Section 21 POCSO Act. He pleaded guilty and was sentenced to payment of fine of Rs. 5,000/-. The appellant pleaded not guilty and claimed trial.

4. To prove its case, the prosecution has examined 9 witnesses in total. The prime witnesses being the victim (PW-1), her mother (PW-2), her father (PW-3), her sister (PW-5), teacher of school (PW-4) and Dr. Renu (PW-6) who proved the MLC of the child victim. The rest of the witnesses were formal in nature who deposed as to various aspects of investigation. The appellant in his statement under Section 313 CrPC claimed false implication on account of a quarrel over filling of water bucket. He did not lead any evidence in his defence.

5. The age of the victim was proved through the school teacher, who was examined as PW-4. She had exhibited the school records i.e. the admission form (Ex. PW4/A) and affidavit submitted by the father of the victim (Ex. PW4/B). The original admission register (Ex. PW4/C) and the admission form both showed the date of birth of victim 'C' being 28.08.2004. She admitted to be correct that no birth certificate was issued either by MCD or any other statutory authority to the victim at the time of admission. Moreover, the date of birth is also not mentioned in the affidavit furnished by the father. However, no suggestion was put to the effect that



either the school record was incorrect or that the father at the time of admission had furnished false information. Moreover, as is evident from the statement under Section 313 CrPC and the cross examination of prosecution witnesses, it was never the defence of the appellant that the victim was an adult. No document proving her age to be other than that which is discernible from the school records was put forward. In such circumstances, the age of the victim was held to be proved.

6. Learned counsel for the appellant contended that the testimony of the victim does not inspire confidence as there is inconsistency between her statement recorded under Sections 161 & 164 Cr.P.C. and her deposition before the court.

Further, it is contended that there is also variance as to how many times incidents have been allegedly committed. In this regard, attention is drawn to the testimony of the victim (PW-1), wherein in her examination-in-chief she had stated that there were three incidents whereas in her initial statement before the IO, she had stated that there were two incidents.

Learned counsel further stated that besides above, there is also no specific date of the incident in either of the statements. Further, incident was reported after a delay of one day and that the FSL report also does not lead any evidence to the furtherance of the prosecution case. Learned counsel for the appellant also submitted that no clothes were seized.

7. The contentions of the learned counsel for the appellant were opposed by the learned APP for the State as well as learned counsel for the complainant, who state that the victim was aged about 13 years at the time of the incident. The victim has categorically stated that the identity of the appellant is not in doubt and that present is a case of repeat incidents, with



the last one having occurred just one day prior to the registration of the FIR. The testimony of the child victim finds corroboration in her medical examination as well.

8. The present case primarily rests on the testimony of the child victim, who was aged around 13 years at the time of incident. The appreciation of testimony of a child victim needs to be carried out with a greater scrutiny. In a recent decision of State of Madhya Pradesh vs. Balveer Singh<sup>1</sup>, the Supreme Court has examined the principles governing the testimony of a child-witness and summarized the legal position in the following manner:

*“58. We summarize our conclusion as under:-*

*...*

*(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 desirous 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*

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<sup>1</sup> 2025 SCC OnLine SC 390



*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..”*

9. The prosecutrix was examined as PW-1. She deposed that she along with her family were residing as tenant in the same building where the appellant was also residing as a tenant. She correctly identified the appellant in Court and stated that he had an evil eye on her. One day in January 2018, after coming back from school, she had gone to purchase a pouch of shampoo to wash her head. While she was at the stairs of the building, the appellant dragged her towards the toilet by holding her hand. On being asked, she clarified that the appellant had committed *jabardasti* with her i.e. he removed her clothes and committed rape upon her. At that time, her parents had gone to their workplace and the two brothers had gone to their school in the evening shift and her two sisters were sleeping at home. She stated that at that time, the appellant had threatened to kill her parents in case she disclosed about the incident to anyone. The act was repeated by the appellant with her after 2-3 days in the toilet. The witness further deposed that one day prior to the registration of FIR, the appellant again committed the same act with her and again threatened not to disclose it. However, she disclosed this to her mother, who in turn informed her husband i.e., the child victim's father. They confronted the appellant on which a quarrel took place between them. The landlord of the building was also informed about the incidents, who resisted the parents of the child victim from lodging the FIR. On the next day, despite resistance from the landlord, a complaint on the basis of the statement of the child victim was recorded. The same was



exhibited as PW-1/A. The statement recorded under Section 164 Cr.P.C. was exhibited as PW-1/B. The victim reiterated that the act of rape was committed thrice. She also stated that on hearing her cries, her brother and sister banged the door of the toilet. The appellant opened the door and when the victim came out of the toilet, her elder sister scolded her and also gave her 2-3 slaps.

10. In cross-examination, the victim categorically stated that there were two toilets on the floor where she was residing. The victim stated that the appellant had committed rape upon her twice in the toilet at the ground floor and once in the toilet on the third floor, where she used to reside. She also stated that there was a factory on the ground floor and first floor, however, only portion at ground floor was functional. She denied the suggestion that her father used to frequently take liquor with the appellant, whereafter they also used to pick quarrel and for which reason, the appellant had been falsely implicated.

10. The victim's mother was examined as PW-2. Deposing about the incident, she stated that it was 17<sup>th</sup> January of last year (2018) when she returned after completing her duty. Thereafter, she had gone to weekly 'Wednesday Market' to purchase some household items and on returning from market, her other daughter 'R' told her that the appellant had taken the victim to bathroom forcibly. She found the victim present in home and continuously weeping. She stated that the appellant was residing as a tenant in the room adjacent to her room. On coming to know of the incident, she inquired from the victim, the victim described that the appellant had committed rape upon her. She informed her husband about the incident. She also stated that landlord tried to intervene in the matter. However, on the



next day, they went to the police station with victim and got a case registered against the appellant.

In cross-examination, she admitted that there were other tenants residing with families in the said building and on the same floor. Each floor had two toilets and two bathrooms. She denied the suggestion that her husband used to take liquor or had quarrel with the appellant. She denied that the appellant was falsely implicated on account of any quarrel.

11. The father of the victim was examined as PW-3. The testimony of the father of the victim is also to the effect that his wife told him about the incident and they reported it in the police station. He denied the suggestion that there was any prior quarrel with the appellant.

12. The sister of the child victim 'R' was examined as PW-5. She deposed that on 17.01.2018, she was present along with the victim in the house, while her mother had gone to Wednesday Market and only the children were at home. After having *chowmein* in dinner, the victim had gone to wash her hand, however, she did not come back. She further stated that while she was searching for her sister, she saw a shadow in the common bathroom. Thereafter, she knocked on the door of the bathroom but it was not opened. On hearing the banging on the door, she called her brother, thereafter both of them started knocking on the door. The victim opened the door from inside and the appellant came out from the bathroom and went away. She further stated that she slapped the victim twice who started weeping and told her about the wrong act committed by the appellant and when her mother came back, she informed her about the incident. She also stated that her father confronted the appellant. In cross-examination, she admitted the suggestion that there were only boys residing in the room





where the appellant was residing and they used to consume alcohol, which was objected to by her parents.

13. MLC of the child victim (Ex. PW2A) was proved through Dr. Renu Azad, SR (Obs. & Gynae), Dr. B.S.A Hospital, Rohini, Delhi, examined as PW6. She stated that she had examined the victim on 18.01.2018 and during examination, she found ‘hymen torned inferiorly (fresh)’. She also found teeth bite mark present on lower lip of the victim. In the cross-examination, she stated that ‘fresh torned’ means that blood stains were present in the hymeneal area.

14. Though it is contended that in her initial statement, the victim mentioned occurrence of the incident only twice, however, she was not confronted with her initial statement under Section 161 CrPC at the time of her testimony, which she could have explained. In her statement under Section 164 CrPC as well as her deposition, she has clearly stated that the incident occurred 3 times. She had explained in her testimony that it had occurred twice in the bathroom on the ground floor and once on the floor where she was residing.

15. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts (Ref: Sambhubhai Raisangbhai Padhiyar v. State of Gujarat)<sup>2</sup>.

16. In the present case, it has come on record that both families of the victim as well as the appellant were residing on the same floor of the building. Child victim has stated consistently about the occurrence and

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<sup>2</sup> (2025) 2 SCC 399



correctly identified the appellant. Earlier incidents were not reported on account of threats being extended by the appellant to the victim. The testimony of the victim that on one occasion when the appellant had taken her to the bathroom, the door was banged by her sister and brother is also corroborated by the deposition of the sister. The allegation also finds corroboration from MLC as in the MLC report, it was found that hymen was freshly torn. The concerned doctor had stated that the fresh tear meant presence of blood stain. In the FSL examination, no semen could be detected, however, at the same time, recording of fresh hymen tear cannot be doubted in light of the finding that the testimony of the victim on the aspect of commission of rape by the appellant has been found consistent and credible. In view of the above, the prosecution has been able to lay the foundational facts and thus brought into play Section 29 of the POCSO Act, and that presumption the appellant has miserably failed to rebut. He has been unable to shake the credibility of any of the witnesses who supported the prosecution case by thorough examination or pointed any fatal gaps in the prosecution case. The angle of prior enmity due to filling of water is weak and unsubstantiated by any material evidence.

17. In view of the above, no ground is made out to interfere with the impugned judgment. The appeal is accordingly dismissed and the impugned judgment convicting the appellant as well as the order on sentence are upheld.

18. A copy of this judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.



2025:DHC:8452



19. Copy of this judgment be also uploaded on the website forthwith.

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

**SEPTEMBER 22, 2025/pmc**