



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

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Reserved on: 03.09.2025

Pronounced on: 15.09.2025

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CRL.A. 1145/2016

RAJU SUNAR S/O NAVAL SUNARAppellant

Through: Mr.Azhar Qayum @ A.Q.Butt,
Advocate (DHCLSC) with Mr.
Narender Kumar, Advocate

versus

THE STATE (NCT OF DELHI)Respondent

Through: Mr.Pradeep Gahalot, APP for State.
Ms.Gayatri nandwani, Advocate,
(DHCSLC) with Ms. Mudita Sharda
and Mr.Adrian Abbi, Advocates for
the victims.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C'), the appellant has assailed the judgment of conviction dated 13.10.2016 and order on sentence dated 18.10.2016 passed by ASJ-01 North, Rohini, Delhi in SC Case No. 58033/2016 arising out of F.I.R. No. 282/2014, registered under Sections 377 IPC and Sections 6 & 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act'), at P.S. Mukherjee Nagar, Delhi.

Vide the impugned judgment and order on sentence, the appellant was



convicted under Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for 15 years under Section 6 of the POCSO Act along with a fine of Rs.5,000/-, and in default of payment of fine, to further undergo simple imprisonment for 30 days for committing repeated penetrative sexual assault upon victim 'R'. Likewise, the convict was further sentenced to undergo rigorous imprisonment for 15 years under Section 6 of the POCSO Act and along with a fine of Rs.5,000/-, in default of payment of fine, to further undergo simple imprisonment for 30 days for committing repeated penetrative sexual assault upon victim 'P'. Both sentences were directed to run concurrently. The benefit of Section 428 Cr.P.C was given to the appellant.

2. Briefly put, the facts as enumerated from the record disclosed that the investigation in the present case commenced with the DD No.104-B recorded on 18.03.2014 at about 10.40 pm. In the said DD (Ex.PW-4/A), it was recorded that near a Tea Stall at *Dasherra* Ground, Mukherjee Nagar, a person has been apprehended who has done *galat kaam* (wrong act) with the children. The DD was assigned for further inquiry to the Investigating Officer SI *Manoj Kumar*, who alongwith Ct. *Prahlad* reached at the spot and met the caller *Mukesh Kumar*. The appellant was apprehended. Statements of two male child victims were recorded under Section 161 Cr.P.C. and they were taken for medical examination. Their statements under Section 164 Cr.P.C. were further recorded before the learned Judicial Magistrate. In their statements, the victims 'R' and 'P', who were aged around 14 and 16 years at that time respectively, alleged that the appellant had committed repeated penetrative sexual assault on them.

3. On completion of investigation, a chargesheet under Section 377 IPC



and 6/8 of POCSO Act was filed. Initially, on 04.08.2014, charge under Section 4 of the POCSO Act was framed, however, later on 01.10.2016, the same was amended and charge under Section 6 of POCSO Act was framed against the appellant to which the appellant pleaded not guilty and claimed trial. In trial as well his statement recorded under Section 313 Cr.P.C., he claimed false implication at the hand of *Mukesh*, who was having personal animosity with him.

4. Learned counsel for the appellant contended that the age of the child victims was not conclusively proved as no evidence could be collected qua the victims' date of birth and their age was ascertained only through ossification test. It was next contended that though both the victims were held to be minors, their testimonies do not inspire confidence as the same contained material contradictions. Further, their deposition is motivated at the behest of the complainant *Mukesh Kumar* (PW-1) with whom the appellant had a prior dispute as he had not returned the complainant's bicycle. Reference was further made to the testimony of Dr. R.S.Mishra, CMO, BJRM Hospital, examined as PW-9, who admitted that the findings in the MLC were not suggestive of any anal penetration. The deposition of the child victims as well as the complainant is also contrasted with the testimony of *dhaba* owner *Ramesh Sahu* (PW3) to contend falsity in sync.

5. *Per contra*, learned APP refuted the contentions made by learned counsel for the appellant. It is stated that both the child victims have alleged that the appellant committed repeated act of oral and anal penetration and the testimonies of both the victims not only corroborate each other but also draws strength from the MLC. It is stated that the complainant was an independent witness who had informed the police when told about the



incident by the victims. The testimony of *dhaba* owner is also an aid to the prosecution.

6. In order to prove the charges against the accused, the prosecution had examined 16 witnesses. The complainant Mukesh Kumar was examined as PW-1. He deposed that he was earning his livelihood by selling flowers from his shop which is near *Dasherra* Ground, Mukherjee Nagar, and on 18.03.2014 at about 10.00 p.m., when after closing his shop, he was having tea with his friend *Deepak* at a nearby tea stall, one minor boy 'P' came and told him that the appellant had attempted to commit unnatural sex with him by removing his clothes. At the same time, another boy namely 'R' i.e. the other child victim also came there and stated that the appellant had also committed sexual assault upon him. The witness alongwith his friend *Deepak* apprehended the appellant who was near the gate of *Dasherra* Ground and called the PCR.

On being cross-examined, the witness deposed that he was in the business of selling flowers for the last 20-25 years and knew both the child victims prior to the incident as they used to roam in the same locality. The appellant was also known to him prior to the incident as he used to work in the *Bengali Dhaba*. He stated that the appellant even used to visit his shop and they were on talking terms. A suggestion was given to the witness that prior to the incident, the appellant had borrowed his bicycle which he had not returned till date. The witness stated that though he had asked the appellant to return his bicycle and on which issue an altercation had taken place between him and the appellant. He denied the suggestion that he had tutored both the child victims to make a false statement against the appellant.



7. The child victim 'P' was examined as PW-2. He stated that he was a resident of West Bengal and had come to Delhi in the year 2010 to earn his livelihood. He had started residing in and around *Dasherra* Ground alongwith other child victim namely 'R' who was also of the same age. They were dependent on the leftover food in the marriage ceremonies. He further deposed that the appellant was working at a *dhaba* and he used to meet both the child victims in the ground. Being asked by the appellant, both the child victims started staying with the appellant for 2-3 days and the appellant gave food to both of them. After 2-3 days, the appellant committed sodomy upon another child victim 'R' and the said child victim 'R' then informed about this incident to him. One day, when the appellant on the pretext of arranging a job for him, took the witness to Gopalpur forest area and committed offence of sodomy. The witness stated to have resisted, however, the appellant threatened that he would kill him. The act of sodomy was committed on four occasions. He further deposed that though he did not remember the date but it was around 10.00 pm when the appellant took him to *Dasherra* Ground, removed his pant and started kissing him, whereafter, he tried to insert his penis in his mouth. However, the witness managed to escape and raise alarm. He met one person outside and told him what had happened. The said person called the police. The witness was cross-examined wherein he stated that he knew *Mukesh Kumar* for 2-3 months prior to the incident as he used to go to his shop once or twice in a week. He admitted that even prior to the incident; he had visited the shop of *Mukesh Kumar*. He admitted that he was aware that *Mukesh Kumar* was acquainted with the appellant, however, he was not aware about any dispute between them. He admitted the suggestion to be correct that *Mukesh* told



him that there was a dispute between him and the appellant. The witness admitted knowing the appellant 2-3 months prior to the date of incident. He stated that he did not inform about the earlier incidents to anyone. However, the last incident was disclosed to *Mukesh*. He denied the suggestion that no such incident had taken place and the appellant had been framed on the asking of *Mukesh*.

8. The other child victim namely 'R' was examined as PW-16. His statement was also recorded without oath in which he stated that he had come to Delhi from his native place in West Bengal in the year 2013. He deposed that he had met child victim 'P' at Prayas Home from where they managed to escape and started residing together in the *Dasherra* Ground. He started working in a *dhaba* in *Dasherra* Ground and sharing his meals with the victim 'P'. The appellant was working in same *dhaba* and sometimes, the appellant used to prepare meals and they had dinner with the appellant on one occasion. He deposed that the appellant committed sexual assault upon him on three occasions, including both oral as well as anal penetration. He claimed that similar acts were committed with the victim 'P' also at least 2-3 occasions. The witness further deposed that first act was committed with him in Gopalpur jungle when the appellant had inserted his penis in his anus on which he had suffered from bleeding. On another occasion, the appellant had inserted his private part in his mouth and the third time, the appellant committed anal penetration. When the victim 'P' was disclosing about the incidents to one person, the witness also informed the person about his own ordeal.

In cross-examination, he stated that he had lived with victim 'P' for 2-3 months and had disclosed the sexual acts committed by the appellant with



him to the victim 'P'. He admitted the fact that he did not disclose the acts committed by the appellant with him to the *dhaba* owner as the threat of beatings were extended by the appellant. He admitted that in his presence the appellant did not commit any wrong act with victim 'P'. He further stated that he does not know the name of the person who had called the police but recalled that there was some dispute between the appellant and the *dhaba* owner regarding a bicycle. A suggestion given of false implication at the behest of *Mukesh Kumar* was denied by the witness.

9. The prosecution examined the *dhaba* owner *Ramesh Sahu* as PW-3. He stated that he had employed the appellant for 10-12 days for making *chapattis* and cleaning utensils. The appellant used to reside at *Dasherra* Ground, Mukherjee Nagar where two other children, who were rag pickers were also residing. They used to come to his *dhaba* for eating leftover food. The appellant was removed from *dhaba* on 16.03.2014. In his cross examination, the witness stated that two minor children/victims came to his *dhaba* on 14.03.2014 and 15.03.2014. He asked them not to come again as he was unable to feed them on daily basis. He further deposed that later he came to know that the appellant had a dispute with *Mukesh* and said *Mukesh* by using these two victims falsely implicated the appellant. He stated that the dispute occurred when the appellant took *Mukesh's* bicycle and went to buy liquor and from where the bicycle got stolen and the appellant did not compensate *Mukesh* fully.

10. The other witnesses examined by the prosecution were police officials who deposed about various aspects of investigation.

11. The MLCs of the child victims were conducted on 19.03.2014. The MLCs were exhibited through Dr. R.S.Mishra (PW-9). The witness



identified the signature of Dr. *Jitender Nath Jha* who had examined the victims. He stated that the said doctor has given his findings which are not suggestive of any anal penetration. The witness was not put any questions by the learned APP. The learned trial court also returned a finding that the MLC of the child victims do not suggest any anal penetration. No samples were taken, as there is no mention of anything on that part in the MLCs.

12. The appellant has doubted the credibility and reliability of the testimonies of the child victims as being tutored by *Mukesh*. It is contended that as per the testimonies, despite being aware of the incident taking place with each of them on multiple occasions, the same was not reported to anyone.

13. 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 Singh¹, 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

¹ 2025 SCC OnLine SC 390



or embellishments, the same does not require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirable or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition..”

14. It appears that the caller *Mukesh*, the child victims ‘P’ and ‘R’, and the appellant were all known to each other prior to the alleged incident. Though *Mukesh* knew the appellant and used to be on talking terms with him, however, the DD No.104B does not mention him by name and just records that one person was caught. In his cross examination, *Mukesh* admitted that an altercation had taken between him and the appellant over the appellant not returning his bicycle.

The child victim ‘P’ stated that he knew the appellant who had given him food on 2-3 occasions. He also knew *Mukesh* since last 2-3 months and used to visit him once or twice a week. In fact, he had visited him a day or two before the incident. *Mukesh* had told him that there was a dispute between him and the appellant.

The child victim ‘R’ stated that he was working with the appellant at the same *Dhaba*. However, the *Dhaba* Owner (PW3) said that the two children were ragpickers who sometimes used to come to eat leftovers and



he had told them on 15.03.2014 to not come again. 'R' further stated that he did not know the name of the caller but he knew that there was a dispute between him and the appellant regarding a bicycle. However, *Mukesh* (the caller) had clearly stated that he knew both the child victims.

15. No doubt, a conviction can be based on the sole testimonies of child witnesses, provided that their evidence is not marred by improvements or embellishments and is otherwise credible and reliable. In the present case, the caller had an admitted history of altercation with the appellant. Both the children were aware of such dispute. The caller knew the children before the incident. 'P' has corroborated that in his own deposition. 'R' has refused to recognise the caller. In fact, he has claimed that he was working at the *Dhaba* with the appellant, whereas the *Dhaba* owner states that he was merely a ragpicker who sometimes came for leftovers. Thus, it appears that the testimonies are marred by contradictions and the history of the caller coupled with him knowing the children raises some doubt on the reliability of the child victims. It is prudent to look at other material as this does not seem to be a fit case for conviction solely on the basis of testimonies of child victims.

16. The MLC of both the child victims assumes utmost relevance, which has not supported the case of the prosecution one bit. MLCs of both 'R' and 'P' records no fresh injury marks. MLCs record that findings are not suggestive of any anal penetration. The witness who proved the MLC (PW9) had deposed as to the surgical opinion whereas PW11 only spoke about the general examination. PW9 was not put any questions as to this finding by the learned APP. The Trial Court also returned a finding that the MLC of the child victims do not suggest any anal penetration but stated that since there



were allegations of oral sex as well, the charge of penetrative sexual assault was still made out. However, nothing has been shown in the MLC which would indicate oral penetration either. Pertinently, in the statements under Section 161 CrPC of the victim 'P', there is no mention of attempt of oral penetration. Moreover, there was no FSL conducted since no samples were taken.

17. Section 29 of the POCSO Act stipulates that the Court shall presume that the accused has committed the offence with which he is charged, unless the contrary is proved. Nevertheless, it is well settled that before such presumption can be invoked, the prosecution must first discharge its burden of proving the foundational facts, namely, the commission of the offence and the identity of the accused, on the basis of the evidence collected during investigation. A 3-Judge Bench of the Supreme Court in Sambhubhai Raisangbhai Padhiyar v. State of Gujarat² has held that section 29 of the POCSO Act comes into play once the foundational facts are established. It holds as follows:-

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

18. In the present case, it is clear that the prosecution has failed to discharge the burden of establishing the foundational facts necessary for invoking the presumption under Section 29 of the POCSO Act. The testimonies of the two child victims are not free from contradictions. In

²(2025) 2 SCC 399



addition, the admitted dispute between the caller *Mukesh* and the appellant in relation to the bicycle raises a possibility of false implication, considering that *Mukesh* knew the child victims beforehand. Still, they have referred to each other as one person or one child. Further, the incident is stated to have taken place on multiple occasions with both the child victims that too, immediately before its reporting, however, the medical evidence produced does not support the allegation of penetrative sexual assault, as the MLCs categorically record that findings were not suggestive of anal penetration. There is no FSL report either. In such circumstances, the benefit of doubt must necessarily go to the appellant.

19. Accordingly, this Court is of the considered view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The conviction and sentence imposed by the learned trial court under Section 6 of the POCSO Act cannot be sustained. The impugned judgment of conviction dated 13.10.2016 and the order on sentence dated 18.10.2016 are therefore set aside. The appellant is acquitted of all charges.

20. Resultantly, the appeal is allowed. The appellant be released forthwith, if not required in any other case.

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

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

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 15, 2025/ry