

(2025) 07 DEL CK 0975
In the Delhi High Court
Case No : Criminal Appeal No. 655 Of 2022

Jawahar Lal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-07-2025

Acts Referred:

Criminal Procedure Code, 1973 — Section 161, 164, 313, 428
Indian Penal Code, 1860 — Section 354D, 376, 376(2)(n), 506
Protection of Children from Sexual Offences Act, 2012 — Section 4, 5(I), 6, 12
Evidence Act, 1872 — Section 118

Citation : (2025) 07 DEL CK 0975

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Amit Chadha, Pranav Gupta, Mohd. Arif, Saarthak Sethi, Harjas Singh, Shubhi Gupta, Sunita Arora

Final Decision : Allowed

Judgement

Manoj Kumar Ohri, J

1. The present appeal has been instituted against the judgement of conviction dated 29.07.2022 and order on sentence dated 20.10.2022 passed by Additional Sessions Judge-01 (POCSO) South West, Dwarka Courts, New Delhi in the case arising out of FIR No. 409/2018 registered under Sections 4 POCSO Act and 354D/376/506 I.P.C. at Dwarka North, Delhi.

Vide the impugned judgement, the appellant was convicted for the offences under Section 12 POCSO Act and in the alternative under section 354D IPC and under Sections 6 r/w Section 5 (I) of POCSO Act & 376(2)(n) IPC and under Section 506 IPC. He was sentenced to 10 years of R.I. and fine of Rs.5,000/- under section 6 POCSO Act and in default of fine, six months simple imprisonment. He was further sentenced to 3 years R.I. and fine of Rs.2,000/- under Section 12 of POCSO Act and in default of fine, six months S.I. For the offence under Section 506 IPC, he was sentenced to undergo R.I. for a period of

six months. All the sentences were directed to run concurrently. The benefit of Section 428 Cr.P.C. was also to be given to the appellant.

2. The facts, in a nutshell, are that the child victim in her complaint dated 17.11.2018 accused the appellant of stalking her since 2 years and on the day of incident, making her forcefully sit in his car and establishing physical relations with her. She later alleged that the act was also repeated 2-

3 days later. It was further alleged that the mother of the child victim, upon being informed about the incident, confronted the accused who slapped her and also threatened the child victim to withdraw her complaint. The appellant was arrested on 17.11.2018. Charges were framed under section 12 POCSO Act and in the alternative, under Section 354D IPC and under Sections 6 r/w Section 5 (I) of POCSO Act & in the alternative under Section 376 (2) (n) IPC and under Section 506 IPC.

3. In trial, a total of six witnesses were examined by the prosecution to prove its case. The child victim was examined as PW-1. The mother of child victim was examined as PW-2. The investigating officer S.I. Manju Chahar was examined as PW-6. The rest were formal witnesses who deposed as to the various aspects of investigation. On the other hand, the appellant, in his statement recorded under section 313 Cr.P.C., claimed innocence and false implication. He did not lead any witness in his defence.

4. Learned Senior Counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. He contends that there was an inordinate delay in the registration of the FIR and the Trial Court has failed to appreciate that there are material omissions and contradictions in the statement of PW1 and PW2 as to the date, place and time of the incident. He further submits that the testimonies are not supported by any FSL report or CDR records. It is lastly submitted that there was a prior enmity between the family of the child witness and the appellant.

5. The appeal has been vehemently opposed by the learned APP for the State who submits that the appellant has been rightly convicted by the Trial Court and the contradictions are trivial and not affecting any material particulars. It is further submitted that the delay in reporting was due to the threats of the appellant and is not fatal to the prosecution case.

6. I have heard learned counsel for the parties and gone through the record.

7. The age of the victim has not been disputed. The appellant has primarily challenged the impugned judgement on the grounds of contradictions, omissions and delay in the trial.

8. While mere delay in reporting the incident by itself is not fatal to the prosecution case, however, if the same is not fully explained and it appears that the same has led to the reporting of a coloured version of the incident, then delay can also be a factor which vitiates the conviction. Due reference may be

made to the decision of Supreme Court in *Sekaran v. State of T.N.*, reported as (2024) 2 SCC 176 wherein it was held as under:-

"14. We start with the FIR, to which exception has been taken by the appellant urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version.

15. In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction."

9. Omissions in statements during investigation or different versions of the incident would render the testimony of the witness unreliable if they amount to a contradiction in material particulars. A gainful reference in this regard may be made to *Narayan Chetanram Chaudhary v. State of Maharashtra*, reported as (2000) 8 SCC 457 wherein it was held that:-

"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness..."

10. The prosecutrix, in her statement recorded under Section 164 CrPC, stated that the incident occurred in March 2018. The FIR however, came to be lodged only on 17.11.2018 i.e., after a delay of nearly eight months.

11. There is inconsistency regarding the date of incident as in her complaint and statement recorded under Section 161 CrPC, there is no mention of any time or date, it is only in her statement recorded under Section 164 CrPC that she stated

that the incident occurred in March 2018. Moreover, in her testimony, she stated that she did not remember the exact date of incident.

12. There is also contradiction as to when the prosecutrix informed her mother about the incident. While the prosecutrix deposed that she told about the incident to her mother (PW2) in November 2018, the mother, on the other hand, stated that she was told about the incident by the prosecutrix in March 2018 itself. She further deposed that the case was registered some days later, however, the case actually came to be registered after around 8 months in November 2018. If PW2 was made aware of the incident as early as March 2018, there is no satisfactory explanation as to why the police was not intimated earlier.

13. Notably, the appellant has been convicted, amongst other Sections, under Section 6 r/w Section 5 (I) of POCSO Act & Section 376 (2) (n) IPC. Both these Sections require for their applicability the repeated commission of the act of penetrative sexual assault or rape respectively. The prosecutrix in her initial complaint dated 17.11.2018 (Ex. PW1/A), stated that while she was coming back to home from work, the appellant made her sit in his car and established forceful relations. Pertinently, the complaint lacks any mention of specific date, time or location of the incident. In her statement recorded under Section 161 Cr.P.C, she reiterated her initial complaint. It is for the first time in her statement recorded under Section 164 Cr.P.C. that she mentioned that the incident occurred in March 2018 and the same was repeated 2-3 days later. This aspect of incident being repeated after 2-3 days is also without any details as to the time, date and place of incident. Even, her deposition in court also lacked the details.

14. Coming to the next contention if there existed prior enmity, it is pertinent to note that though mother of the prosecutrix denied the suggestion of frequent quarrels with the family of the appellant, however, the investigating officer (PW6) deposed otherwise. He rather deposed that the family of prosecutrix and the appellant were acquainted with each other, being neighbours and there were frequent quarrels between them.

The mother of prosecutrix stated that on an earlier occasion, the appellant had stalked the prosecutrix for which police was called however, neither any time or date of such prior incident nor any police record was produced before the Trial court. Worse, this aspect was not even mentioned by the prosecutrix in any of her statements or court deposition.

15. Even the allegations of threats undergo a drastic change from the complaint to the statement under Section 164 CrPC and the testimony in Court. While at the first instance it was alleged that the appellant, upon being confronted, threatened the prosecutrix and her mother that he would commit suicide, later it was stated that this threat was given to only the prosecutrix after the first incident and additionally, it was alleged for the first time that the appellant threatened to kill the prosecutrix after the second incident.

16. In so far as the other evidence is concerned, besides oral testimonies, the

only material seized is the car of the appellant. Since the appellant was a neighbour of the PW1, her identification of the same is not out of ordinary.

Interestingly, though the prosecutrix stated that the appellant owned a mobile phone, no CDR/ location details were obtained to establish the appellant's presence at the spot of the incidence.

The MLC is also of no help, as not only is there a delay in medical examination, but the same records the refusal of internal examination.

17. It is trite law that if the testimony of the child victim inspires confidence and is reliable, the same is sufficient to record conviction. (Ref: State of Himachal Pradesh v. Sanjay Kumar alias Sunny (2017) 2 SCC 51). However, as a note of precaution, the Court should ensure that the witness is a reliable and competent witness, with no likelihood of child witness being tutored. If the attendant circumstances cast a shadow of doubt on the prosecution version, the Court has to scrutinise the testimony in greater detail.

18. The competence of a child witness and its evaluation by the Court has been the subject matter of many decisions. The Supreme Court in Dattu Ramrao Sakhare v. State of Maharashtra (1997) 5 SCC 341, observed as under:

"5. ...A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

19. The evidence of a child witness for being credible needs to be reliable. In Ranjeet Kumar Ram v. State of Bihar, 2015 SCC OnLine SC 500 the Supreme court held that:

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

20. Examining the testimony of the prosecutrix in above backdrop of facts and law, though there is no doubt on the competency of the prosecutrix to depose, however, the delay coupled with aforementioned omissions and contradictions cast a shadow of doubt on the reliability of her testimony to uphold the appellant's conviction under the charged Sections.

21. Insofar as Section 29 of POCSO Act is concerned, it 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. However, in the present case, an overall view of the above scenario raises significant doubts about the credibility of the prosecution version. The credibility of the prosecution story has been severely affected by the material contradictions in deposition of the witnesses, including the victim coupled with a lack of supporting evidence. Thus, it is evident that the prosecution has failed to establish the foundational facts.

22. Resultantly, the appeal succeeds. The appellant is acquitted of the offences under Section 12 POCSO Act and in the alternative under section 354D IPC and under Sections 6 r/w Section 5 (I) of POCSO Act & 376(2)(n) IPC and under Section 506 IPC.

23. The appellant be released forthwith if not require in any other case.

24. A copy of this judgment be communicated to the concerned Trial Court alongwith the records as well as to the concerned Jail Superintendent for information and necessary compliance.

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