

(2025) 01 SHI CK 1684
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No.241 of 2022

State Of Himachal Pradesh

APPELLANT

Vs

Sazad Deen

RESPONDENT

Date of Decision : 03-01-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 125, 154, 313, 437A
Indian Penal Code, 1860 — Section 34, 107, 114, 306, 309, 323, 498A, 506(2)
Criminal Justice Act, 1967 — Section 8
Evidence Act, 1872 — Section 113A, 113B

Citation : (2025) 01 SHI CK 1684

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Sheetal Vyas, Jitender Sharma, Sanjay Jaswal

Final Decision : Allowed

Judgement

Rakesh Kainthla, J

1. The present appeal is directed against the judgment dated 16.04.2022 passed by learned Special Judge, Chamba, District Chamba, H.P. (learned Trial Court) vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of offences punishable under Sections 354, 506, and 201 of the Indian Penal Code (for short "IPC") and Sections 8, 9, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012. (for short, "POCSO Act") (The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 354 and 506 of IPC and Sections 8, 9, 10 and 12 of POCSO Act. It was asserted that Kapil Sharma (PW-20) was posted as Co-ordinator, Childline, Chamba, District Chamba H.P. He came to know two months before the incident regarding the molestation of the

girl students in Government Primary School. He and his team member Mamta Kumari visited the school and made enquiries from the students studying in classes third, fourth and fifth. Thirteen (13) students disclosed that the accused had molested the female students and acted indecently with them. They disclosed that the accused did not allow them to study. He used to put them on his lap and touch them inappropriately. He would show porn videos to them and ask them to dance. He also used to kiss them. Mamta Kumari talked to students of the sixth class, and six students disclosed that the accused used to act indecently with them. He would show them obscene videos on his mobile and touch them inappropriately. He would threaten the students to beat them in case the incident was revealed to anyone. The matter was reported to the police. Statement (Ext.PW-20/A) was recorded and sent to the Police Station where F.I.R. (Ext.41/Z) was registered. Inspector Sher Singh (PW-41) conducted the investigation. He visited the school and prepared the site plan (Ext.PW41/A). He recorded the statements of victims as per their version. He seized the extract from the attendance register of the victims and teachers. He wrote a letter to the Secretary, Gram Panchayat, to issue the birth certificates of the victims. He also wrote a letter to the Principal of Senior Secondary School for providing the admission and withdrawal certificates. Desh Raj (PW-26) and Himati Devi (PW-30) provided the record of admission, school leaving certificates of victims and attendance register of the students and teachers. The victims were produced in the Court of Rajinder Kumar, Chief Judicial Magistrate Chamba, H.P (PW-39) and in the Court of Ekansh Kapil, JMIC, Chamba, H.P. (PW-40), who recorded their statements under Section 164 of Cr.P.C. The appointment and posting order of the accused were taken into possession. Statements of witnesses were audio recorded, and these were transferred to the CD. Inspector Mohinder Singh (PW-37) conducted further investigation. He interrogated and arrested the accused. The birth certificates of the victims were produced by Mukesh Kumar (PW-31) and Rattan Chand (PW-33), which were taken into possession. Dr Aleeza Pal (PW-24) and Dr Suruchi (PW-25) medically examined the victims and found that they had not sustained any injuries. The guardians of the victims refused the internal examination of the victims; therefore, their internal examination was not conducted. The mobile phone was sent to RFSL, NR, Dharamshala. Dr Minakshi Mahajan (PW-36) examined the mobile phone of the accused and issued a report (Ext.PW-36/A) stating that no porn video was found physically present in the mobile phone (Ext.P-1). Statements of remaining witnesses were recorded as per their version, and after completion of the investigation, a challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court charged the accused with the commission of offences punishable under Sections 354, 506 & 201 of IPC and Sections 8, 10 & 12 of the POCSO Act. The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined forty-one (41) witnesses to prove its case. PWs-1 to 14, 16, 19, 22 and 23 are the victims. Reeta Kumari (PW-15) was a team

member of Childline. Kapil Sharma(PW-20) is the Co-ordinator of Childline, Chamba, H.P, who reported the matter to the Police. LC Jogindera (PW-21) accompanied HC Deep Kumar during the investigation and took the victims to the Hospital and the Court. Dr Aleeza Pal (PW-24) and Dr Suruchi (PW-25) medically examined the victims. Desh Raj (PW-26) produced the record of the attendance. Narinder Kumar (PW-27) produced the appointment order of the accused. HHC Ajay Kumar is the witness to the recovery of the report. Surjeet Kumar (PW-29) proved the F.I.R. and the final report in F.I.R. No. 66 of 2018. Himati Devi (PW-30) produced the school leaving certificates of the victims. Mukesh Kumar (PW-31), Narsi (PW-32), and Rattan Chand (PW-33) produced the date of birth certificates of the victims. HC Deepak Kumar (PW-34) was working as MHC, with whom the case property was deposited. HHC Subhash (PW-35) carried the rukka to the Police Station. Dr Minakshi Mahajan (PW-36) examined the mobile phone of the accused. Inspector Mohinder Singh (PW-37) and Inspector Sher Singh (PW-41) investigated the case. HC Deep Kumar (PW-38) was present with the Childline Team, Chamba. Rajinder Kumar, CJM, Chamba (PW-39) and Ekansh Kapil, JMIC (PW-40) recorded the statements of victims under Section 164 of Cr.P.C.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution case in its entirety. He claimed that the staff of the school and members of the Childline had connived together to falsely implicate him. He was under transfer to the far-flung area of Bharmour. The witnesses deposed against him falsely. Statements of the father of victim No.2 (DW-1), Surjeet Kumar (DW-2) and the father of victim No.18 (DW-3) were recorded in defence.

6. Learned Trial Court held that all the victims except victim No.2 and victim No. 9 had turned hostile. Father of victim No. 2 denied that she had made any complaint regarding molestation to him. There was an unexplained delay in reporting the matter to the police. Victims were tutored by the members of the Childline, Chamba. There were inconsistencies in the statements of victims No. 2 and 9, and they could not be relied upon. The evidence led by the prosecution did not prove its case beyond reasonable doubt against the accused. Hence, the accused was acquitted of the charges levelled against him.

7. Being aggrieved from the judgment passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court erred in acquitting the accused. Learned Trial Court appreciated the evidence in a slipshod and perfunctory manner. Learned Trial Court discarded the testimonies of prosecution witnesses without any tenable reason. There was no proof of enmity, and the testimonies of prosecution witnesses should not have been discarded. Victims No. 2 and 9 categorically stated that the accused used to touch their chests and private parts, which used to give them bad feelings. The contradictions noticed by the learned Trial Court were not significant enough to discard the prosecution case. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I heard Mr. Lokender Kutlehria, learned Additional Advocate General for the appellant/State and Mr. Ram Murti Bisht, learned counsel for the respondent.

9. Mr. Lokender Kutlehria, learned Additional Advocate General for the appellant, submitted that the learned Trial Court erred in acquitting the accused. It was duly proved by the testimonies of Victim No.2 and Victim No. 9 that the accused had molested them. They deposed naturally, and contradictions pointed out by the learned Trial Court were not sufficient to discard their testimonies. Learned Trial Court could not have used the statement recorded under Section 161 of Cr.P.C., which was not even exhibited and put to the victims, to discard their testimonies. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Ram Murti Bisht, learned counsel for the respondent, submitted that the majority of the victims had turned hostile, and the father of victim No. 2 stated before the Court that she had not made any complaint of molestation to him. The learned Trial Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with it while deciding an appeal against the acquittal. He prayed that the present appeal be dismissed.

11. I have considered the submissions made at the bar and have gone through the records carefully.

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in Mallappa v. State of Karnataka, (2024) 3 SCC 544: 2024 SCC OnLine SC 130 that while deciding an appeal against acquittal, the High Court should see whether the evidence was properly appreciated on record or not; second whether the finding of the Court is illegal or affected by the error of law or fact and thirdly; whether the view taken by the Trial Court was a possible view, which could have been taken based on the material on record. The Court will not lightly interfere with the judgment of acquittal. It was observed:

"25. We may first discuss the position of law regarding the scope of intervention in a criminal appeal. For that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretised when the case ends in acquittal. It is so because once the trial court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened, and a higher threshold is expected to rebut the same in appeal.

26. No doubt, an order of acquittal is open to appeal, and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to reappraise or re-visit the evidence on record. However, the power of the High Court to reappraise the evidence is a qualified power, especially when the order under challenge is of acquittal. The

first and foremost question to be asked is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The "two-views theory" has been judicially recognised by the courts, and it comes into play when the appreciation of evidence results in two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of the innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. Therefore, when two views are possible, following the one in favour of the innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eye of the law.

28. In *Selvaraj v. State of Karnataka* [*Selvaraj v. State of Karnataka*, (2015) 10 SCC 230: (2016) 1 SCC (Cri) 19]: (SCC pp. 236-37, para 13)

"13. Considering the reasons given by the trial court and on an appraisal of the evidence, in our considered view, the view taken by the trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in *Jagan M. Seshadri v. State of T.N.* [*Jagan M. Seshadri v. State of T.N.*, (2002) 9 SCC 639: 2003 SCC (L&S) 1494] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus: (SCC p. 643, para 9)

'9. ... We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutary principles while dealing with appeals against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view, and even if by any stretch of the imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.'"

29. In *Sanjeev v. State of H.P.* [*Sanjeev v. State of H.P.*, (2022) 6 SCC 294:

(2022) 2 SCC (Cri) 522], the Hon'ble Supreme Court analysed the relevant decisions and summarised the approach of the appellate court while deciding an appeal from the order of acquittal. It observed thus: (SCC p. 297, para 7)

"7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see *Vijay Mohan Singh v. State of Karnataka* [*Vijay Mohan Singh v. State of Karnataka*, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] and *Anwar Ali v. State of H.P.* [*Anwar Ali v. State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395]).

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley v. State of U.P.* [*Atley v. State of U.P.*, 1955 SCC OnLine SC 51: AIR 1955 SC 807]).

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see *Sambasivan v. State of Kerala* [*Sambasivan v. State of Kerala*, (1998) 5 SCC 412: 1998 SCC (Cri) 1320])."

13. This position was reiterated in *Ramesh v. State of Karnataka*, (2024) 9 SCC 169: 2024 SCC OnLine SC 2581, wherein it was observed at page 175:

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325], regarding the power of the appellate court while dealing with an appeal against a judgment of acquittal. The principles read thus: (SCC p. 432, para 42)

"42. ... (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on the exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and law.

(3) Various expressions, such as "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc., are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal

jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

21. In *Rajendra Prasad v. State of Bihar* [*Rajendra Prasad v. State of Bihar*, (1977) 2 SCC 205: 1977 SCC (Cri) 308], a three-judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the trial court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses, and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the trial court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice.”

14. The present appeal has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

15. In the present case, all the victims except victims No. 2 and 9 did not support the prosecution case. All of them denied that the accused had molested them or he used to show them the obscene videos. Therefore, the statements of Victim No. 2 and Victim No. 9 are material for the adjudication of the appeal before this Court.

16. Victim No. 2(PW-2) stated that the accused used to touch her on her chest and her private parts. This gave her a bad feeling. The accused used to kiss her lips and cheeks. She narrated this incident to Childline Madam, and her statement was recorded before the learned Magistrate. She identified her signatures on the statement. She stated in her cross-examination that the school had three teachers, including the accused. Fourteen (14) children were studying in class 3rd. The accused used to touch her in the classroom. She had narrated the incident to her parents.

17. Her father (DW-1) stated that victim No.2 is his daughter. No obscene act was done with her at school. She never complained of any sexual harassment.

18. He is the father of the victim and has no reason to support the accused. He denied that version of victim No.2 that she had complained about the harassment to her parents. When the victim’s father did not support her version, it would be highly unsafe to rely upon the testimony of victim No.2(PW-2).

19. Victim No. 9 (PW-9) stated that the accused used to touch her body parts, shoulder, chest, and private parts, which gave her a bad feeling. Her statement

(Ext.PW-9/A) was recorded under Section 164 of Cr.P.C. She admitted that the touching of the body part and private parts by the accused was not recorded in her statement under Section 164 of Cr.P.C. She has not given any explanation for the same. A perusal of the statement under Section 164 of Cr.P.C. of the victim (Ext.PW-9/A) shows that she had stated before Rajinder Kumar (PW-39) that the accused used to teach her and touch the other girls inappropriately. She had not stated anything about touching her inappropriately. Therefore, she made an improvement before the Court, to which her attention was properly drawn. Hence, the learned Trial Court was justified in discarding the testimony of victim No. 9 before the Court.

20. It was laid down by the Hon'ble Supreme Court in *K. Venkateshwarlu v. State of A.P.*, (2012) 8 SCC 73: (2012) 3 SCC (Cri) 795: (2012) 2 SCC (L&S) 484: 2012 SCC OnLine SC 613, that the Court can act upon the testimony of a child witness if it is satisfied that he is not tutored and his testimony has a ring of truth. It was observed at page 78:

9. Several child witnesses have been relied upon in this case. The evidence of a child witness has to be subjected to the closest scrutiny and can be accepted only if the court comes to the conclusion that the child understands the question put to him and is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record because while giving evidence, a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it.

21. It was held in *Digamber Vaishnav v. State of Chhattisgarh*, (2019) 4 SCC 522: (2019) 2 SCC (Cri) 300: 2019 SCC OnLine SC 316 that the testimony of a child witness must be evaluated carefully because the child may be swayed by what was told to him and he is an easy prey for tutoring. It was observed at page 528:

"21. The case of the prosecution is mainly dependent on the testimony of Chandni, the child witness, who was examined as PW 8. Section 118 of the Evidence Act governs the competence of the persons to testify, which also includes a child witness. Evidence of the child witness and its credibility could depend upon the facts and circumstances of each case. There is no rule of

practice that in every case, the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand, but as prudence, the court always finds it desirable to seek corroboration for such evidence from other reliable evidence placed on record. The 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.

22. This Court has consistently held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him, and he is easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a rule of practical wisdom than law. [See *Panchhi v. State of U.P.* [*Panchhi v. State of U.P.*, (1998) 7 SCC 177: 1998 SCC (Cri) 1561], *State of U.P. v. Ashok Dixit* [*State of U.P. v. Ashok Dixit*, (2000) 3 SCC 70: 2000 SCC (Cri) 579] and *State of Rajasthan v. Om Prakash* [*State of Rajasthan v. Om Prakash*, (2002) 5 SCC 745: 2002 SCC (Cri) 1210].]

23. In *Alagupandi v. State of T.N.* [*Alagupandi v. State of T.N.*, (2012) 10 SCC 451: (2013) 1 SCC (Cri) 1027], this Court has emphasised the need to accept the testimony of a child with caution after substantial corroboration before acting upon it. It was held that: (SCC p. 463, para 36)

"36. It is a settled principle of law that a child witness can be a competent witness provided a statement of such witness is reliable, truthful and corroborated by other prosecution evidence. The court, in such circumstances, can safely rely upon the statement of a child witness, and it can form the basis for conviction as well. Further, the evidence of a child witness and the 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 that there exists no likelihood of being tutored. There is no rule or practice that in every case, the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand, but as a rule of prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable."

22. It was held in *Hari Om v. State of U.P.*, (2021) 4 SCC 345: (2021) 2 SCC (Cri) 440: 2021 SCC OnLine SC 2 that the Court should evaluate the testimony of a child witness carefully and act upon it after being satisfied with its credibility and reliability. It was observed at page 368:

"22. At the outset, we must note the perspective from which the evidence of a child witness is to be considered. The caution expressed by this Court in *Suryanarayana* [*Suryanarayana v. State of Karnataka*, (2001) 9 SCC 129: 2002 SCC (Cri) 413] that "corroboration of the testimony of a child witness is not a

rule but a measure of caution and prudence” is a well-accepted principle. While applying said principle to the facts of that case, this Court in Suryanarayana [Suryanarayana v. State of Karnataka, (2001) 9 SCC 129: 2002 SCC (Cri) 413] observed : (SCC pp. 133-35, paras 5-9)

“5. Admittedly, Bhavya (PW 2), who at the time of occurrence was about four years of age, is the only solitary eyewitness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eyewitness. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the grounds of her being of tender age. The fact of PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based on her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under normal circumstances, would like to mixup what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence-inspiring testimony of such witness for the purposes of holding the accused guilty or not.

6. This Court in Panchhi v. State of U.P. [Panchhi v. State of U.P., (1998) 7 SCC 177: 1998 SCC (Cri) 1561] held that the evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law (vide Prakash v. State of M.P. [Prakash v. State of M.P., (1992) 4 SCC 225: 1992 SCC (Cri) 853]; Baby Kandayanathil v. State of Kerala [Baby Kandayanathil v. State of Kerala, 1993 Supp (3) SCC 667: 1993 SCC (Cri) 1084]; Raja Ram Yadav v. State of Bihar [Raja Ram Yadav v. State of Bihar, (1996) 9 SCC 287: 1996 SCC (Cri) 1004] and DattuRamraoSakhare v. State of Maharashtra [DattuRamraoSakhare v. State of Maharashtra, (1997) 5 SCC 341: 1997 SCC (Cri) 685]).

7. To the same effect is the judgment in State of U.P. v. Ashok Dixit [State of U.P. v. Ashok Dixit, (2000) 3 SCC 70: 2000 SCC (Cri) 579].”

23. A similar view was taken in *Pramila v. State of U.P.*, (2021) 12 SCC 550: (2023) 2 SCC (Cri) 223: 2021 SCC OnLine SC 711 wherein it was observed at page 552

"5. Criminal jurisprudence does not hold that the evidence of a child witness is unreliable and can be discarded. A child who is aged about 11 to 12 years certainly has reasonably developed mental faculties to see, absorb and appreciate. In a given case, the evidence of a child witness alone can also form the basis for conviction. The mere absence of any corroborative evidence in addition to that of the child witness by itself cannot alone discredit a child witness. But the courts have regularly held that where a child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for of the evidence so that the court is satisfied with regard to the reliability and genuineness of the evidence of the child witness. PW 2 was examined nearly one year after the occurrence. The Court has, therefore, to satisfy itself that all possibilities of tutoring or otherwise are ruled out, and what was deposed was nothing but the truth.

6. The evidence of a child witness and the manner of its consideration has been dealt with in *State of M.P. v. Ramesh* [*State of M.P. v. Ramesh*, (2011) 4 SCC 786: (2011) 2 SCC (Cri) 493], as follows : (SCC p. 792, para 14)

"14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored the court can reject his statement partly or fully. However, an inference as to whether the child has been tutored or not can be drawn from the contents of his deposition."

24. It was laid down by the Hon'ble Supreme Court in *Pradeep v. State of Haryana*, 2023 SCC OnLine SC 777 that the child witness is susceptible to tutoring, and the Court should evaluate the same carefully. It was observed:

"9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution."

25. In the present case, the testimony of PW-2 is contradicted by her father and the testimony of PW-9 is shown to be an improvement regarding inappropriate touch. Therefore, the learned Trial Court was justified in discarding the

statements of these witnesses.

26. There is no other witness to connect the accused with the commission of crime. Hence, the learned Trial Court has rightly acquitted the accused for the commission of the offences with which he was charged. This was a reasonable view taken by the learned Trial Court, and no interference is required with it while deciding the appeal against the acquittal.

27. No other point was urged.

28. In view of the aforesaid discussion, the present appeal fails, and the same is dismissed.

29. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023), the respondent is directed to furnish bail bonds in the sum of ₹ 25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

30. A copy of this judgment along with the record of the learned Trial Court be sent back forthwith. Pending applications, if any, also stand disposed of.