

(2025) 07 DEL CK 0951
In the Delhi High Court
Case No : Criminal Appeal No. 1003 Of 2025

State	Vs	APPELLANT
Ashok		RESPONDENT

Date of Decision : 23-07-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164, 313, 378(1)
Indian Penal Code, 1860 — Section 354
Protection of Children from Sexual Offences Act, 2012 — Section 10, 29

Citation : (2025) 07 DEL CK 0951

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Yudhvir Singh Chauhan

Final Decision : Dismissed

Judgement

Neena Bansal Krishna, J.

1. Appeal under Section 378 (1) Cr.P.C. has been filed to challenge the Order of acquittal dated 20.08.2016 passed by the Learned Additional Sessions Judge in FIR No.1180/2015 under Section 354 Indian Penal Code, 1860 and Section 10 Protection of Children from Sexual Offences Act, 2012(POCSO Act).

2. The brief facts are that on 09.12.2015, information was received about assault of a nine years old girl by her neighbour. An inquiry was initiated during which SI Pramod Kumar along with Ct. Vinay went to the house of the prosecutrix where he met the child with her Aunt (Ms.V). It was found that the alleged accused was in the house which was in the neighbourhood and was in a drunken condition. The IO along with the prosecutrix and her Aunt went to the house of the accused where they met him and he was recognized by the prosecutrix.

3. The statement of the prosecutrix was recorded wherein she stated that on that day at about 7:00 pm she was going to a shop for making some purchases when one person caught hold of her hand and took her to a dark corner in the Park

where he did "Cherkhani" with her. That man was under the influence of alcohol. The child raised an alarm on which the man ran away. She came back home and informed her aunt 'V' about it.

4. On her statement, FIR No.1180/2015 under Section 354 IPC was recorded. During investigation the statement of the prosecutrix was got recorded under Section 164 Cr.P.C. On the identification of the prosecutrix, the Respondent/Accused was arrested. On completion of investigation Charge Sheet was filed in the Court.

5. Charges were framed on 28.03.2016 under Section 354 IPC and Section 10 of POCSO Act.

6. The prosecution in support of its case, examined three witnesses PW1 being the prosecutrix, PW2 Aunt 'V' and PW3 SI Pramod Kumar IO.

7. The statement of the Respondent/Accused was recorded under Section 313 Cr.P.C. wherein he denied all the incriminating evidence and stated that his signatures had been obtained on some blank papers and printed proforma by the Police and had been subsequently used against him. No such alleged incident took place and he has been implicated falsely in this case.

8. He examined DW1 Mamta, wife of Respondent/Accused who deposed that on 09.12.2015 at about 7.00 pm, Puran husband of Ms. 'V' came to the house and he along with her husband consumed liquor. Thereafter a quarrel ensued. Then he and the wife of Puran came to their house and picked a quarrel. She bolted the door after which Puran and his wife started kicking at the door. She made a PCR call and the PCR officials arrived. Ms. 'V' thereafter, made false allegations of commission of sexual assault upon her niece by her husband.

9. Learned ASJ appreciated the testimony of all the parties and noted the material contradictions in the testimony of the prosecution witnesses. Consequently, benefit of doubt was given to the Respondent who was acquitted.

10. Aggrieved by the acquittal, the prosecution has filed the Appeal. The grounds of challenge are that the judgment is based on conjectures and surmises and against the facts and law. It has not been appreciated that the victim had narrated the entire incident in her statement as to the Police as well as in her statement under Section 164 wherein the role of the Respondent was specifically described. The Trial Court did not consider the tender age of the prosecutrix who was barely nine years old and minor; deviation due to passage of time was natural since the incident had taken place some time back. The child is always receptive to abnormal events which take place in a life and would never forget them for the rest of her life.

11. Reliance has been placed on Harjit Singh Bedi and J.M. Panchal AIR 2010 SC 3071.

12. It is further contended that the testimony of the witnesses which is

consistent with the entire episode, has not been appreciated. The contradictions in fact are the natural variations which are bound to occur with passage of time. The Trial Court has wrongly concluded that the prosecutrix was not a witness of sterling quality. It has been ignored that this is a generic term which is to be assessed on the basis of the entire statement and the demeanor of the witness. The prosecutrix and the corroborative witnesses have proved the entire incidence beyond reasonable time. Minor contradictions and improvement in the testimonies of the witnesses did not affect the prosecution case and acquittal based on those inconsistencies is liable to be set aside.

13. Reliance is placed on Kuria Vs. State of Rajasthan, AIR 1085 SC.

14. It is further contended that the child had identified the Accused in front of PW2 her Aunt 'V'. The conduct of the Respondent in running away from the spot on being so identified has also not been considered.

15. Presumption under Section 29 POCSO Act has also not been interpreted in the correct perspective. The impugned judgment is against the material evidence brought on record and is liable to be set aside.

16. Submissions heard and record perused.

17. The prosecution machinery was set into motion on 09.12.2015 vide DD No.20-A Ex.PW3/A whereby information was received from a caller that a neighbour has tried to molest a nine years old girl. As per the testimony of PW-3 SI Pramod Kumar, he immediately on receipt of DD No.20-A along with Ct. Vinay reached the spot where they met the prosecutrix aged about ten years along with her paternal Aunt (PW2).

18. On enquiry, it was found that one person under the influence of alcohol has been locked by the family members, in his house in the neighbourhood. The prosecutrix along with Aunt 'V' led the Police to the house of the neighbour where they met the Respondent aged about 30 years, who was identified by the prosecutrix. He was apprehended by the Ct. Vinay and the statement of the prosecutrix as well as her Aunt 'V' was recorded.

19. In this backdrop of the Respondent having been identified by the prosecutrix soon after the incident in the presence of Police, may now be appreciated in the light of the statements of the prosecutrix.

20. She in her Complaint had given a statement Ex.PW1/A to the Police that at about 7.00 pm while she was going to make purchases from a shop, one man caught hold of her hand and took her to the Park in the dark where he tried to do "Cherkhani".

21. She raised an alarm on which that man ran away. She came back home and reported the incident to the Aunt 'V', who then called the PCR and the Police came. It was found that the perpetrator of crime had been locked in his house by his family members. On enquiry, the Police went and apprehended the Accused.

22. The second statement about this incident was made by the prosecutrix to the Learned MM under Section 164 Cr.P.C., Ex.1/B. She stated that while she was going to the shop for making purchases, she met the Respondent on the way, who touched on her hip and said "abhi to tere chhote hain". Thereafter he left. She went to the shop of Suresh uncle and bought the milk and went back to home and narrated this incident to her Aunt 'V'.

23. The third statement has been made by the prosecutrix in the Court, wherein her testimony was recorded in question/answer form. She deposed that at about 7.00 PM while she was going to the shop of uncle Suresh for purchasing milk, the Respondent/Accused came behind her who was duly recognized to be the Respondent present in the Court. She further deposed that the Respondent/Accused resides in the lane opposite theirs. When she reached the shop, the Respondent/Accused came from the behind and touched her hip portion and said "tere abhi bahut chhote hain" and thereafter, he left.

24. Significantly, in the first statement Ex.PW1/A the prosecutrix asserted that she was taken towards dark spot in the Park by the Respondent/Accused where he did "Cherkhani". Pertinently no explanation of this "Cherkhani" has been given in the first statement Ex.PW1/A. Also, the venue of commission of alleged offence was in a dark corner of the Park.

25. However, in her statement under 164 Cr.P.C. Ex. PW 1/B the place of incident is en-route to the shop of Suresh. In her statement PW1, she has deposed that the incident happened at the shop of Suresh where she had gone to purchase the milk.

On Place of Incident:

26. The first aspect which emerges from the three statements given by the prosecutrix and which has also been considered by the Learned ASJ is that the place where the alleged incident took place has changed significantly from a dark corner in a Park, it changed to en route the shop of Suresh and then to the shop of Suresh.

27. Therefore, it can also not be overlooked that while there are change in two versions in the subsequent statement under 164 Cr.P.C. and the testimony in the Court, but the first reporting of the incident was on the same day wherein the allegations were in stark contrast to the subsequent versions.

28. The second aspect is that as per her testimony, it was the mother and the sister who found the child weeping and were the first persons to whom the child narrated the incident. They called PW2/Ms. V. However, the mother and sister have significantly not been made a witness.

29. The first version of child as was told was that the Accused had taken her towards the Park and held her hand and did "Cherkhani".

30. As has already been first narrated in the Complaint the place of incident was

being stated to be a Park which also is corroborated by the statement of the PW2/ Ms. V. Yet at the same time as already noted above, the venue of alleged offence kept changing from en route to the shop of Suresh. The testimony of PW2/Ms. V re-enforces a discrepancy in the place of incident.

31. Learned ASJ therefore, has rightly observed that there is a doubt about the incident as narrated by the prosecutrix.

On Nature of Allegations:

32. The connected aspect is that the nature of the allegations has changed from "Cherkhani" to touching her bottoms and making a lewd remark. There is no forthcoming as to what was the "Cherkhani" to which the prosecutrix was initially subjected. There is thus, a discrepancy about the alleged act of sexual assault and there is no explanation as to why the versions changed subsequently.

33. This manner of assault becomes significant in view of complete change of venue in the three statements.

On Apprehension of the Accused:

34. The third aspect which emerges is the manner in which the Respondent/ Accused was apprehended. This has been explained in the testimony of PW/2 Ms. 'V', the aunt of the prosecutrix. She has deposed that according to PW2/Ms. V on 09.12.2015 at about 7.00 pm or 7.30 pm, the prosecutrix had come back home after fetching the milk from the shop of Suresh and started crying on reaching back home. Her mother and the younger sister who had come to see the ailing mother and whose house was about 7-8 houses away from the house of the witness, were called by the mother. About coming to know of the incident she went to the house of the mother and found the child weeping. She enquired about the reason for crying but she could not tell anything for about half an hour to forty-five minutes. Thereafter, she disclosed that one uncle had waylaid her towards the Park and had held her hand and touched her hip and made lewd remark. She then went to the shop of Suresh and asked him as to who was the person standing there at that time. He told that there were 3-4 persons including the Respondent/Accused Ashok. The child was then asked to identify the said person who had misbehaved with her. She identified the Respondent/Accused. Thereafter, he ran away and went inside his house and bolted the door. She knocked at the door and asked him to apologize but instead of doing so, he told her to do whatever she felt like. Left with no option, she made the call to the PCR.

35. The Police arrived and made the Accused come out of the house. At that time, he was in an inebriated condition. The Police recorded the statement of the child and the Respondent was arrested.

36. Certain significant facts emerged from the testimony of PW2/Ms. V. She had deposed that her house was 7-8 houses away from that of the mother and she had got the call from the mother about the child crying. She then went and talk to the child who narrated the incident.

37. It further emerges is that the PW2/Ms. V went to the shop of Suresh. However, she has not explained as to why she went to the shop of Suresh. These aspects have not been explained either by PW2/Ms. V or PW3/SI Pramod Kumar, the IO.

38. Another connected fact is that PW2/Ms. V had asked the shopkeeper Suresh to disclose the names of the persons who were present at his shop and he named Ashok as one of the 3-4 persons who were standing from where she concluded that it was the Respondent who had committed the assault. The child also identified the Respondent who then rushed from the shop to his house and locked himself inside. Later PW2/Ms. V went to her house and asked him to apologize on which he threatened her.

39. PW3/SI Pramod Kumar IO also deposed in his testimony that Accused was made to come out of his house by him and Ct. Vinay and was identified by the child and was arrested. Pertinently, according to the testimony of PW2/Ms. V the child had identified the Respondent at the shop of Suresh and not when he was called out of his house by the IO.

40. The manner in which the Respondent has been apprehended, is also not consistent.

41. In the end, the Learned ASJ has rightly observed that if as per the testimony of the PW2/Ms. V, Suresh was the person who disclosed the name of the Respondent along with 3-4 persons and the identification of the Respondent was done by the child at the shop of Suresh, he was a material witness to prove not only the commission of the alleged offence but also the identity of the Respondent. Suresh for the reasons best known to the Police has not been made as a witness who could have disclosed the correct facts.

42. Learned ASJ has rightly observed that though the sole testimony of the prosecutrix is sufficient for conviction, but the same has to be of sterling quality. In the light of the contradictions as mentioned above, it cannot be said that these are minor contradictions or that they which do not create a doubt about the actual incident.

Conclusion:

43. Learned ASJ has rightly given the benefit of doubt to the Respondent in the light of material contradictions and inconsistencies in the statement of prosecutrix and the other prosecution witnesses.

44. There is no merit in the Appeal which is hereby dismissed. Pending Applications are disposed of accordingly.