



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

*Judgment delivered on: 15<sup>th</sup> April, 2024*

+ CRL.A.223/2023

VEERPAL @ TITU

..... Appellant

Through: Mr. Nagendra Kasana, Mr. Aditya Sharma, Ms. Palak and Mr. Rajesh R. Rathod, Advs.

versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for State with SI Satyapreet, PS Jaitpur. Mr. Bir Singh and Mr. Ravi Nirvan, Advs. for victim.

**CORAM:**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**J U D G M E N T**

**ANOOP KUMAR MENDIRATTA, J.**

1. An appeal has been preferred by the appellant/convict under Section 374(2) of Code of Criminal Procedure, 1973 (Cr.P.C.) challenging the judgment and order on sentence dated 09.01.2023 and 16.01.2023 respectively passed by learned Additional Sessions Judge, Special Court POCSO, Saket Court, New Delhi in Session Case No.2781/2016, FIR No.529/2016 under Section 376/354/506/509 IPC and Section 8/10 of POCSO Act, PS: Jaitpur, Delhi.

The appellant has been thereby sentenced for offence punishable under Section 10 of POCSO Act, 2012 to RI for five years and fine of Rs.2,000/- (in default of payment of fine, to undergo SI for 15 days); for offence punishable under Section 506 IPC to RI for five years and fine of Rs.2000/- (in default of payment of fine, to undergo SI for 15 days), with benefit of



Section 428 Cr.P.C. Appellant has also been directed to pay compensation of Rs.20,000/- to the victim

2. In brief, as per the case of the prosecution, a written complaint was given by the victim/prosecutrix 'R' (name withheld) aged about 12 years on 16.09.2016 alleging that she is living with her grandmother, uncle and aunty {i.e. chacha (O) and chachi (M) (i.e.sister of appellant)} since her father had expired. Appellant Veerpal @ Titu who is brother of her chachi (M), used to visit their house and teach her wrong things. On 10.09.2016, when the appellant came to their house, she went to meet him in the room of her chachi (M). After some time, when her chachi (M) went to bathroom, the appellant started kissing her and pressed her chest. She somehow released herself from his clutches and ran away. In the evening at the time of going to his house, appellant threatened to kill her in case she made any complaint against him. She remained upset for many days and disclosed the incident on asking by her grandmother on 16.09.2016. FIR was accordingly registered under Section 354/509/506 IPC and Section 8/10 of POCSO Act.

3. Charge-sheet was presented after completion of investigation and charge was framed against the appellant for offences punishable under Section 506 IPC and Section 6/10 POCSO Act, 2012. Appellant pleaded not guilty to the same and claimed trial.

4. In support of its case, prosecution examined 11 witnesses, namely, PW1 Ms.V (victim), PW2 Ms.SK, Primary Teacher (name withheld), Delhi who proved the date of birth of the victim i.e. 10.11.2004; PW3 Mrs.SD (grandmother of the victim), PW4 Rajbir Singh, MRT AIIMS Hospital who proved the MLC Ex.PW4/B; PW5 Ct. Kuldeep; PW6 Harbir Singh Yadav, Principal (name withheld), Aligarh, U.P. who proved the date of birth of the



appellant Veerpal @ Titu; PW7 Const. Sarita; PW8 Const. Hanuman; PW9 HC Bheem Singh; PW10 SI Rajiv Kumar and PW11 SI Pravesh Kumar deposed on various aspects of investigation.

5. In the statement recorded under Section 313 Cr.P.C., appellant denied the prosecution version and claimed that he had been falsely implicated. Also, DW1 Shri Om Dutt and DW2 Sukhbeer were examined in defence, who had accompanied the appellant on the alleged date of incident i.e. 10.09.2016 in order to resolve the matrimonial differences between 'M' (chachi of victim/sister of appellant) and her husband 'O' (chacha of victim). They also deposed with reference to quarrel which had taken place at the premises of victim on 10.09.2016 and further stated that 'M' along with her child had proceeded to her parental home with them.

6. Learned counsel for the appellant submits that appellant has been falsely implicated by using the child victim on account of animosity between the family of victim and the appellant on account of matrimonial differences between his sister 'M' and her husband 'O'. It is pointed out that since father of the victim had already expired and her mother had left, she was staying with her uncle/chacha 'O' and aunt/chachi 'M' (sister of appellant). It is urged that on the alleged date of the incident i.e. 10.09.2016, appellant had visited along with his father and other persons for purpose of resolution of matrimonial disputes between his sister 'M' and her husband "O". Since the matter took an ugly turn, the police reached the spot at about 4:45 PM for resolving the quarrel between the parties. However, no such sexual assault was reported by the victim at the aforesaid time and thereafter different narrations of the incident have been given by the victim since 16.09.2016. The discrepancies in the initial complaint, statement under Section 164



Cr.P.C., supplementary statement under Section 161 Cr.P.C. dated 22.09.2016 and deposition made before the Court have been pointed out. It is also contended that the factum of visit of appellant along with other family members also stands corroborated by the statement of defence witnesses as well as police officials who had reached the spot and inquired into the incident on 10.09.2016, after a call regarding quarrel was made to PCR. It is vehemently pointed out that there has been delay of five days in lodging the FIR and the word *badtamizi* used by the prosecutrix has been given different connotationS from time to time.

7. On the other hand, the impugned judgment passed by the learned Trial Court is supported by learned APP for the State as well as learned counsel for the victim. It is submitted that testimony of the victim is trustworthy and, as such, there is no bar in law to base conviction on the testimony of solitary witness. It is also submitted that the victim felt suffocated and nervous and, as such, did not inform the incident for five days after 10.09.2016. The contradictions pointed out on behalf of the appellant are stated to be immaterial to discredit the testimony of witnesses.

8. Perusal of impugned judgment reflects that there is no dispute as to the age of the victim which has been duly proved on record and, as such, the findings of the learned Trial Court that victim R was aged about 11 years and 10 months on the basis of school records, requires no interference.

9. The principle is well settled that the Court can base conviction on the testimony of a child victim, if the same is credible and truthful. Corroboration is not a must on record but is a rule of prudence. The precaution which the Court should bear in mind while relying upon the testimony of a child victim is that the witness must be reliable, consistent and



there is no likelihood of being tutored or under an influence. The version put forth has to be unassailable, trustworthy and of sterling quality, capable of holding appellant guilty on the basis of solitary evidence.

**10.** It is pertinent to notice that the genesis of incident on 10.09.2016 reflects matrimonial issues between 'O' and 'M' and no complaint of sexual assault was made by the victim despite visit of police to the spot. The initial DD No.43A recorded at 04:45 PM on 10.09.2016 at the instance of the victim is to the extent that three-four goons have entered into the house of a lady. On the same day, DD No.53A was again recorded at 19:41 hrs. that the police officials had not taken any action with regard to earlier DD. The result of inquiry pursuant to the aforesaid DD No.43A as recorded vide DD No.62B by PW11 is crucial and report of SI concerned in this regard is categorical that 'M' wife of 'O' had called her father 'R' and brother to her matrimonial home being aggrieved of habit of 'O' of consuming liquor. Due to arguments at the spot, the victim called on Number 100 about entry of goons. Further, 'R' took his daughter 'M' (chachi of victim) along with her child to his village Dankaur but did not make any police complaint in writing. The same also reflects that mother of 'O' stated that there is no place for her daughter-in-law (M) in the house.

**11.** It may next be noticed that victim in her written complaint given to the police on 16.09.2016 after delay of five days, alleged that on 10.09.2016, she had gone to meet appellant Veerpal @ Titu, who is brother of her chachi, in the room of her chachi 'M'. Her chachi was also present in the room and when she proceeded to bathroom, appellant had kissed her and pressed her chest. However, she managed to leave and in the evening while leaving, appellant had threatened her to kill. Further, since she felt suffocated, she



disclosed the incident to her grandmother (dadi) on 16.09.2016 and, thereafter, written complaint was filed by her.

Apparently, the deliberations before lodging the complaint cannot be ruled out in view of contradictions dealt with hereinafter, without whispering a word regarding quarrel and visit of police on 10.09.2016.

**12.** Thereafter, in her statement under Section 164 Cr.P.C. recorded on 22.09.2016, victim improved the version and stated that appellant had made her sit on his lap and had kissed her on the cheek. Further, she alleged that appellant kept his hand on her chest and, thereafter, on her vagina. She further stated that when he started doing *badtamizi*, she informed the same to her grandmother (dadi). Further, when her grandmother (dadi) confronted appellant Veerpal, they assaulted her grandmother (dadi) and chacha and also threatened them. Further, the incident occurred at about 04:35 PM and she called the police.

Thus, on the face of record, in the second version, victim stated that incident was disclosed to her grandmother (dadi) and chacha on the same day though in the complaint lodged on 16.09.2016, a contrary version was given of having informed her grandmother (dadi) of the incident on 16.09.2016 which occurred on 10.09.2016.

**13.** Another supplementary statement of the victim under Section 161 Cr.P.C. was thereafter recorded on 22.09.2016, wherein she stated that appellant had been accompanied by three other persons. Further, her chachi 'M' and chacha 'O' were residing in the room on the roof while she was residing with her grandmother (dadi) on the ground floor. She further alleged that apart from keeping the hand on her vagina, appellant had also



inserted the finger. Further, she clarified that she had told her grandmother (dadi) on 16.09.2016 itself about the entire incident.

Therefore, in the third version, victim again changed her version of having informed her grandmother (dadi) on 16.09.2016 and also added the allegations of fingering by the appellant.

**14.** It may be further noticed that in her deposition before the Court, victim stated that appellant had put his hand on her private part and on cross-examination by learned APP for the State, she denied that appellant inserted his finger in her vagina. She further stated that she had disclosed the incident to her grandmother (dadi) on the next day itself but report was made 16.09.2016. It is pertinent to note that during cross-examination, victim stated that on 10.09.2016, police officials had visited their house since she made a call to the police as the appellant and other persons were beating her father (possibly the victim wanted to refer to her chacha 'O'). She also admitted that her chachi along with her son had left with her brother (appellant Veerpal) and had not returned home after the incident. Further, she reiterated that she had told the incident to her grandmother (dadi) on the next day in the noon time. She also stated that appellant with accompanied persons had come at about 3:00-3:30 PM and stayed till 5:30 PM and from there they had gone to the Police Station.

Thus, in her deposition before the Court, victim again changed her statement and stated that incident was disclosed to her grandmother (dadi) on the next day contrary to the complaint lodged by her whereby incident was stated to have been reported on 16.09.2016. Further, the same is also contrary to the statement under Section 164 Cr.P.C. wherein incident was



stated to have been conveyed to her dadi on 10.09.2016 itself on which there was a quarrel and her chacha and dadi were assaulted. She further denied the incident of fingering by the appellant. The chain of events reflects that testimony of the witness/victim is unreliable as she has been changing the stands, possibly due to tutoring or influence and throwing doubt if the incident had happened, as alleged. If any such incident had occurred on 10.09.2016 on which quarrel took place as alleged by the victim in her statement under Section 164 Cr.P.C., there is no reason that the same would not have been conveyed to police on visit to the premises on 10.09.2016. The edifice of prosecution version, as such, is weak and full of gaps.

**15.** 'S' (grandmother of victim) in her statement under Section 161 Cr.P.C. on 17.09.2016 stated that she had been informed of the '*badtamizi*' by the appellant with the victim on 16.09.2016 and in her supplementary statement under Section 161 Cr.P.C. recorded on 22.09.2016, she clarified that insertion of finger was disclosed by the victim to her on 22.09.2016. She further stated that on 10.09.2016 appellant was called by 'M' (chachi of victim) since there used to be fights between 'M' and her son 'O' and on 10.09.2016, police had visited the premises and had left after counselling her son 'O' and 'M'.

**16.** However, it may be noticed at this stage itself that in her deposition recorded before the Court 'PW3-SD' (grandmother of victim) stated that it was disclosed by her grand-daughter that appellant had kissed her and touched her chest and thighs but on cross-examination by learned APP for the State, PW3 stated that her grand-daughter had told her that appellant had inserted his finger in the vagina. PW3 apparently did not depose if appellant



had earlier misbehaved with the victim as alleged by her that appellant used to teach the victim wrong things.

During cross-examination on behalf of the appellant, PW3 admitted that on the date of incident, the police officials had visited the premises on call of quarrel. She admitted that there were five persons from the in-laws' house of her son 'O' on the date of incident which included father-in-law and brother-in-law (appellant) of her son 'O'. She also admitted that police officials on the aforesaid date had asked 'M' wife of 'O' to file a case at CAW Cell. However, she denied the suggestion that the present case had been falsely registered in order to save the proceedings before the CAW Cell.

17. In the aforesaid background, it is discerned that there was a matrimonial dispute between 'M' (chachi of victim) and 'O' (chacha of victim), due to which appellant (who is brother of 'M') along with his father and other persons had visited the house of his sister for resolution of matrimonial disputes on 10.09.2016. A call was made to the police after the quarrel. After the visit of police, 'M' along with her child, appellant and other persons proceeded to her parental home. The fact that police had visited the site due to quarrel on a call made by the victim is not disputed and the matter had been duly inquired into by the police. Keeping in perspective the aforesaid factual position, the delay in lodging the FIR along with variations and contradictions in the statement of the victim 'R' assumes significance. The victim in the present case, who was aged about 12 years and a student of 7<sup>th</sup> class, in view of written complaint submitted by her on 16.09.2016 and calls made after the incident on 10.09.2016 appears to be



fully capable of understanding the facts and consequences of the incident. It is crucial that though the police officials reached the spot but for the reasons best known the incident was never revealed to the police for a period of five days. The reasons extended by the victim for delay in lodging the complaint also do not match with the contradictions brought out in the testimony of the victim and PW3 on record. In her statement under Section 164 Cr.P.C. recorded on 22.09.2016, victim categorically stated that appellant had also kept his hand on her vagina and she disclosed the same to her grandmother (dadi) on which appellant had beaten her grandmother and Chacha 'O'. In case any such incident had happened as alleged by the victim and prosecution, there is no reason that PW3 (grandmother of victim) or her chacha 'O' would not have disclosed the same to the police officials who had visited the premises around the same time on a call of quarrel on 10.09.2016. A complete stoic silence on the incident for a period of five days creates a deep shadow of doubt on the prosecution case. It may also be noticed that victim has been changing her version regarding the acts committed by the appellant at her discretion.

**18.** It cannot be ignored that entire incident is alleged to have happened only within a short period of time while 'M' (chachi of victim) had gone to bathroom and is followed by an altercation due to matrimonial disputes on which the police was called but the incident was not revealed. In the light of contradictions brought on record, the testimony of the victim as well as her grandmother (PW3) does not inspire confidence and it cannot be ruled out that case is based upon tutoring or fabrication due to animosity and matrimonial disputes. It may also be noticed that the victim also refused for internal medical examination for no plausible reasons.



**19.** The learned Trial Court completely missed to appreciate the contradictions which have been brought up on record and go to the root of the prosecution version. The defence of the appellant is also duly supported by police entries as discussed above as well as deposition of DW1 and DW2, whose presence along with the appellant and other family members for resolving the matrimonial disputes between 'M' (chachi of victim) and 'O' (chacha of victim) is trustworthy. In case, victim was told any dirty things by the appellant, in that eventuality, victim would not have gone to meet the appellant on her own on 10.09.2016. The fact that 'M' (chachi of victim) was not examined by the Investigating Agency to even confirm if any such incident had happened during her alleged proceeding to bathroom at the relevant time, reflects that allegations have been accepted at face value. Despite strong rebuttal evidence of implication due to animosity generated because of matrimonial differences, the appellant stands convicted by the learned Trial Court. The quarrel at the time of incident and matrimonial differences provide a strong motive for falsely implicating the appellant subsequently.

**20.** Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the



incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability.

Keeping the same in perspective, the prosecution in the first instance is required to establish the foundational fact that the incident, as alleged, was conveyed by the victim to her dadi (grandmother) on 16.09.2016 (i.e. the day of lodging of FIR). However, the evidence and statements during investigation, as discussed above, reflect different dates of alleged communication of the incident, which throws a doubt on the prosecution version. In view of above, in absence of foundational fact not being proved beyond reasonable doubt, the reliance placed upon presumption under Section 29 & 30 of POCSO Act by learned Trial Court to base conviction, appears to be misplaced. Taking in the alternative, even if the foundational facts are considered to be proved, to make the presumption under Section 29 of POCSO Act, the same stands discredited by way of discrepancies brought in cross-examination of the victim, PW3 and witnesses examined in defence.

The presumption of guilt under Section 29 & 30 of POCSO Act taken by the learned Trial Court could not be an edifice to convict the appellant since testimony of victim is unreliable and there are serious flaws and gaps in the prosecution case. As a wrongful acquittal shakes the confidence of people, a wrongful conviction is far worse. A child abuser in the eventuality of false implication even continues to suffer a blot of social stigma which is much more painful than the rigours of a trial and imprisonment. Prosecution case is marred by inadequacies and contradictions which strike to the root of prosecution case and, as such, prosecution has failed to bring home the charge against the accused beyond reasonable doubt.



For the foregoing reasons, appeal is allowed and the judgment and order on sentence passed by the learned Trial Court is set aside. Appellant is acquitted and be released forthwith, if not required in any other case.

Pending applications, if any, also stand disposed of.

A copy of this judgment be forwarded to the Jail Superintendent and the learned Trial Court for information and compliance. A copy be also provided to the appellant, free of cost.

**(ANOOP KUMAR MENDIRATTA)**  
**JUDGE**

**APRIL 15, 2024/sd**