

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

% Judgment delivered on:03.07.2025

+ **CRL.A. 1004/2023 & CRL.M.(BAIL) 1688/2023**

**PAWAN KUMAR PASWAN** .....Appellant

versus

**STATE (NCT OF DELHI)** .....Respondent

**Advocates who appeared in this case:**

For the Appellant : Ms. Jahanvi Worah, Adv.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State.  
SI Dharmendra Sharma, PS Patel Nagar,  
WSI Kiran Sethi, IO, PS Kamla Market  
along with victim.  
Ms. Deepika Dahiya, Amicus Curie for  
victim.

**CORAM**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present appeal is filed challenging the judgement of conviction dated 27.05.2023 (hereafter '**impugned judgement**') and order on sentence dated 11.07.2023 (hereafter '**impugned order on sentence**') passed by the learned Additional Sessions Judge ('**ASJ**'), (POCSO), Tis Hazari Courts, Delhi, in Sessions Case No. 57755/2016



arising out of FIR No. 674/2015 dated 25.08.2015 registered at Patel Nagar.

2. The learned ASJ by the impugned judgement, convicted the appellant for the offences under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO') and Section 323/506 of the Indian Penal Code, 1860 ('IPC').

3. By the impugned order on sentence the appellant was sentenced to undergo rigorous imprisonment for a period of twelve years and to pay a fine of ₹10,000/- for the offence under Section 6 of the POCSO Act, and in default of payment of fine, to undergo simple imprisonment for a period of 30 days. He was further sentenced to undergo simple imprisonment for a period of one year for the offence under Section 506 of the IPC and simple imprisonment for a period of one year for the offence under Section 323 of the IPC. The benefit of Section 428 of The Code of Criminal Procedure, 1973 ('CrPC'), has been granted to the appellant.

### **Brief Facts**

4. The FIR was registered under Section 324/363/376 of the IPC, and Section 6 of the POCSO Act, based on a complaint given by the mother of the four year old minor victim/ complainant, alleging that on 24.08.2015 her four year old daughter had gone to the nearby Khatta Wala Park, whereafter she returned home crying. On being asked, the victim stated that the appellant had taken her to the other park and bitten her when she started crying. The complainant noticed that she had bite marks on both her cheeks and near her chest area. The



appellant is stated to be of 45 years of age at the time and used to ply a rickshaw near Patel Nagar. He was stated to be residing with his brother namely– Mr. Dev Narayan Paswan, on rent in a room on the first floor of the victim's house. It is alleged that even on an earlier occasion on 05.08.2015 the victim had informed the complainant that the appellant had taken her to his room and locked the same. It is alleged that appellant removed the victim's clothes and his lower inner wear and inserted his penis in the victim's vagina and thereafter he excreted on her. It is alleged that when the complainant informed her husband regarding the said incident, an altercation broke between them regarding the carelessness on part of the complainant. In this regard, a complaint was made by the complainant against her husband, which led to the registration of the FIR No. 600/2015 under Sections 323/342 of the IPC. It is stated that when the appellant came to know that the husband of the complainant had been arrested in FIR No. 600/2015, he vacated the premises without prior notice and fled from there. The complainant stated that she was unable to make a complaint earlier due social stigma being the mother of three girls, and prayed for strict action against the appellant.

5. The appellant was arrested by the Police near Sanjay Park on the next day on 26.08.2015.

6. In her statement under Section 164 of the CrPC, the complainant stated that her daughter had narrated the incident that took place in the afternoon of 05.08.2015, when she had gone to use the washroom on the upper floor, the appellant, who was alone at the time made the



victim watch adult films on his mobile phone and asked her to remove her lower innerwear. She stated the victim told her that the appellant touched her private parts with his private parts and inserted his penis into the victim's vagina and fingered her. She further stated that she had gone to talk to the appellant to vacate the premises and informed about the incident to her husband. She stated that her husband did not support her and inflicted beatings on her, which led to the complaint made by her to the Police.

7. The minor victim supported the case of the prosecution in her statement under Section 164 of the CrPC.

8. Charges were framed against the appellant for offences under Section 6 of the POCSO Act and in the alternative, Section 376/363/324/506 of the IPC, as well as Section 10 of the POCSO Act.

9. The prosecution cited 20 witnesses in support of its case and two witnesses in the supplementary chargesheet. Out of 20 witnesses, 11 were admitted by the appellant at the time of admission and denial of documents conducted under Section 294 of the CrPC. The said witnesses included Sh. Sudha Mishra, Principal of the victim's school, Swati Singh, learned MM, Professor Rajiv Sood, Ms. Sangeeta Verma, Chairperson, CWC, Dr. Ruchi Sharma, Jr. Forensic/ Chemical Examiner (Biology) FSL and other formal witnesses. The appellant has further admitted the copy of the certificate mentioning date of birth of the victim duly attested by the School Principal, MLC of the appellant, copy of counselling report, copy of FIR, DD entry no. 12 A



dated 25.08.2015, PS Patel Nagar, FSL Result, among other admitted documents.

10. The appellant denied the allegations in his statement under Section 313 of the CrPC and contested that he was being falsely implicated on account of previous enmity with the complainant.

11. The appellant examined one witness namely– Mr. Dev Narayan Paswan as DW1, who is the brother of the appellant and used to reside with him at the rented premises.

12. The learned ASJ convicted the appellant of the offences under Section 6 of the POCSO Act and Sections 323/506 of the IPC, taking into consideration the testimony of the prosecution witnesses, especially, the victim and her mother as well as the medical evidence. It was noted that the victim had completely supported the case of the prosecution and her testimony is corroborated by that of her mother as well as the MLC Report. It was observed that the discrepancies in the statements of the victim were only minor in nature and not fatal to the case of the prosecution.

13. Learned counsel for the appellant submitted that the learned ASJ erred in not granting benefit of doubt to the appellant and convicting him mechanically without appreciating that the prosecution has been unable to establish its case beyond reasonable doubt and that the burden of the same is not upon the appellant to have proved his innocence beyond reasonable doubt.

14. She submitted that the ASJ failed to consider the statement of the appellant under Section 313 of CrPC wherein the appellant has



stated that there were some payment issues with the complainant as she was demanding ₹10,000/- from him, which he refused to give her, and therefore he has been falsely implicated in the present case. It is submitted that the statement of DW1 was also not given consideration, wherein he has stated that the complainant had demanded ₹10,000/- from the appellant which the appellant refused as he had incurred heavy expenses on the wedding of his daughter. She further submitted that the complainant had implicated her husband in a false case as he did not support the complainant in her ill-motive of luring money from the appellant.

15. The learned counsel submitted that there were material contradictions and infirmities in statements of the victim and the complainant recorded under Section 164 of the CrPC. She submitted that the victim has not mentioned any incident of sexual assault in her statement under Section 164 of the CrPC. She further submitted that the victim stated that she had gone to take rice from the upper floor of the house, whereas the complainant has stated that the victim had gone to use the toilet.

16. She submitted that neither any neighbour has been cited as a witness to corroborate the version of the victim, nor any CCTV footage of the place where the alleged incident took place, has been placed on record, and therefore, the same cannot be blindly relied upon in view of the inconsistencies and improvements in the victim's statements.



17. She further stated that despite the fact that the victim informed the complainant of the alleged incident on the same day, the complaint was lodged with a delay, which raises suspicion on the prosecution's case.

18. *Per contra*, the learned Additional Public Prosecutor for the State and Ms. Deepika Dahiya, learned *Amicus Curie* for the victim vehemently contested that the testimonies of the witnesses including that of the minor victim, had supported the case of the prosecution and the same alone is sufficient to confirm the conviction of the accused.

### **ANALYSIS**

19. At the outset, it is relevant to note that while dealing with an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction, this Court is required to reappraise the evidence in its entirety and apply its mind independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi & Ors. v. The State of Madhya Pradesh :Criminal Appeal No. 1350/2021*** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

*“9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in ***Majjal v State of****





*Haryaya [(2013) 6 SCC 799] , where the Court held:*

*'6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.*

***7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic.*** By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.' "

(emphasis supplied)

20. In the present case, the allegations levelled against the appellant are heinous in nature. It is the case of the prosecution that the appellant sexually assaulted and brutally bit the victim on both her cheeks and her stomach area, who was merely four years old at the time of the incident. It is alleged that on a previous occasion the appellant had also taken the victim inside his room and shown her indecent videos and





thereafter removed her clothes as well as his own and sexually assaulted her and excreted on her. It also alleged that the appellant threatened the victim of dire consequences if she informed about the said incident to her mother.

21. It is relevant to note that the appellant has been convicted for the offence under Section 6 of the POCSO Act and Sections 323/506 of IPC.

22. Section 6 of POCSO Act prescribes the punishment for aggravated sexual assault and attracts the presumption under Section 29 of the POCSO Act. The same reads as under:

*“29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”*

23. It is trite law that the said presumption only comes into play once the prosecution is able to establish foundational facts and it can be rebutted by discrediting the witnesses through cross-examination as well [Ref. ***Altaf Ahmed v. State (GNCTD of Delhi): 2020 SCC OnLine Del 1938***].

24. In the present case, the prosecution has sought to establish its case essentially through the evidence of the prosecution witnesses, especially the victim and the complainant, as well the medical evidence.

25. It is therefore imperative to peruse the statements tendered by the witnesses. In the complaint it was stated that the four year old



daughter of the complainant (PW2) had gone to the Khatta Wala Park, from where the appellant took her to another park and bit her and when she started crying, the appellant left her. The complainant stated that the appellant is around 45 years of age, who lived on rent in one room on the first floor of the house of the complainant and used to ply a rickshaw. She stated that on 05.08.2015 also the appellant took the victim to his room and removed her lower inner wear as well as his own and inserted his penis in the victim's vagina and excreted on her. She stated that when she informed her husband about the incident, an altercation ensued between them concerning the complainant's alleged carelessness towards her children. Subsequently, the complainant registered a complaint against her husband, resulting in the registration of FIR No. 600/2015 under Sections 323 and 342 of the IPC. The complainant explained that she was unable to file a complaint earlier due to the social stigma associated with being the mother of three daughters and requested strict action against the appellant.

26. In her statement under Section 164 of the CrPC, the victim (PW1) reiterated the facts as stated in the complaint and revealed that at the time of the incident, she had gone to the room of the appellant to take rice, when the appellant removed her clothes as well as his own and inserted his private part in the victim's private part and touch her there with his hands. She stated that he had also given her bite marks on both her cheeks and her stomach. She stated that when she started crying the appellant asked her to go and to not disclose the incident to her mother and threatened her of dire consequences.



27. In her testimony, the victim stated that the appellant had shown her some adult film and touched her. She stated that he did not remove her underwear but removed her lower clothes as well as all his clothes. She stated he put his penis on her urinal parts and bit her on both her cheeks and her stomach. She stated that all these acts were done by the appellant in the upper floor of her house and had threatened her from telling her mother. She stated that the appellant threatened her that if she said anything to her mother he would do what he did to her again. She stated that she had told everything to her mother, whereafter she was taken to Court and got bandages on her wounds. She also identified the appellant during the proceedings. She further identified the appellant during her examination.

28. The complainant was examined as PW2, who testified that she is a mother of four children and PW1 is her third child. She stated that she is the owner of the house where the appellant was living as a tenant in one room of the first floor from about 2-3 years prior to the incident. She stated that the appellant had gone away in the middle however, he returned after 4-5 months. She maintained her stance regarding the incident narrated by the victim on 05.08.2015, when the appellant took the victim to his room, he showed her an indecent video on his mobile and inserted his private part into the private parts of the victim. She stated that when he went to confront the appellant, he deleted the video from his phone and said that the victim herself played that video on the phone. She stated that when she informed her husband regarding the said incident, her husband told her to remain



silent and to not tell the incident to anyone due to social stigma. She stated that the refusal of her husband to make a complaint led to a quarrel between the two, wherein the husband of the complainant inflicted beatings upon the complainant, due to which she also sustained a head injury. She stated that when the Police arrived, she did not mention the incident regarding her daughter and only made a complaint against her husband. A perusal of the FIR No. 600/2015 reveals that the same was registered on a complaint made by the complainant, alleging that she was beaten by her husband due to an altercation regarding certain household expenses. The complainant further deposed that in the evening of 24.08.2015, her daughter returned home weeping and told her that she had gone to the park to play, when the appellant took her to another park and gave her bite marks on the cheeks and her chest. The complainant admitted that she did not call the Police that night and dialed 100 number the next day on 25.08.2015, whereafter the complainant and the victim were taken to the hospital.

29. The testimony of the complainant is also corroborated with the testimony of the victim, where during cross-examination she has stated that her father drinks alcohol and would beat her mother, for which he was also even sent to jail.

30. PW8 is the Investigating Officer who deposed about the statements under Section 161 of the CrPC, arrest of the accused on identification by the victim and her parents, the medical examination of the victim as well as the accused and registering of FIR. He stated



that the age of the minor victim was confirmed upon collection of documents from school records, in which her date of birth is 17.12.2010 (Ex. PX 1).

31. The age of the victim has not been challenged by the appellant in the present case. It has been argued on behalf of the appellant that the victim's evidence suffers from material improvements and the same does not inspire confidence, in the absence of any corroborative evidence such as CCTV footage of the place of the alleged incident and public witness from the neighbouring area. It has been argued that there are also contradictions between the evidence of the victim and the complainant.

32. It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same. The law on this aspect was discussed in detail by the Hon'ble Apex Court by ***Nirmal Premkumar v. State : 2024 SCC OnLine SC 260***. The relevant portion of the same is produced hereunder:

**"11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.**

***12. In Ganesan v. State<sup>4</sup>, this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.***

***13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in Rai Sandeep v. State (NCT of Delhi)<sup>5</sup>. The Court found totally conflicting versions of the***



*prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:*

*"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve*





*the other supporting materials for holding the offender guilty of the charge alleged.”*

*(underlining ours, for emphasis)*

14. In **Krishan Kumar Malik v. State of Haryana**<sup>6</sup>, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant.”

**15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”**

*(emphasis supplied)*





33. A perusal of the record reveals that the learned Metropolitan Magistrate, before recording her testimony, made a preliminary inquiry in order determine whether she was competent to give evidence, and after being satisfied that the victim appears normal, without any fear or pressure and is capable of giving rational answers to the questions put to her, went on to record her statement. On careful examination of the statements of the victim, it appears that her testimony is consistent with the contents of the complaint.

34. The argument with regard to the statement of the victim not containing any incident of sexual assault is devoid of any merit. Although, the victim in her statement under Section 164 of the CrPC, has not mentioned two separate incidents, that is, 05.08.2015 and 24.08.2015, when she was sexually assaulted by the appellant. However, perusal of her statement reveals that she categorically stated that the appellant had removed her lower inner wear as well as his own and placed his penis on her vagina and fingered her. Her statements are consistent on the point of the appellant biting her on both her cheeks and her stomach. Her statement is also in corroboration with the MLC, wherein bite marks have been observed on both her cheeks and her upper abdomen. The hymen was stated to be "*torn (old)*". The photographs of PW1 which are present in the lower Court record also show bite marks on both the cheeks of the victim as well as on her upper abdomen.



35. Although the victim stated that she had gone to take rice from the upper floor of the house, whereas the complainant has stated that the victim had gone to use the toilet. In this regard, the learned ASJ has rightly noted that the victim was only four years of age at the time of the incident and minor discrepancies in recalling of the incidents by such small children cannot be ruled out. The testimony of the victim is in corroboration with the evidence of the testimony of the complainant as well as the medical evidence.

36. It is also relevant to note that the victim in the present case is a minor girl who was only four years old at the time of the incident and when her statement under Section 164 of the CrPC was recorded. As rightly noted by the learned ASJ, it is difficult to fathom as to why the mother would instigate her minor girl child of merely four years of age to falsely allege commission of such grave offences upon her, in order to avoid some monetary issue.

37. In view of the above discussion, it will be useful to refer to the observations made by the Hon'ble Apex Court in the case of *State of H.P. v. Sanjay Kumar : (2017) 2 SCC 51*, wherein the Hon'ble Court had relied upon the evidence of the child victim who was raped when she was nine years and noted as under:

*“31.After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. **By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same***



as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See *Bhupinder Sharma v. State of H.P.* [*Bhupinder Sharma v. State of H.P.*, (2003) 8 SCC 551 : 2004 SCC (Cri) 31] ). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.

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33. At this juncture, we would also like to reproduce the following passage from the judgment of this Court in ***State of Rajasthan v. Om Prakash*** [*State of Rajasthan v. Om Prakash*, (2002) 5 SCC 745 : 2002 SCC (Cri) 1210] : (SCC p. 755, para 19)

‘19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted. The



*overturning of a well-considered and well-analysed judgment of the trial court on grounds like nonexamination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt was not called for. The minor contradiction of recovery of one or two underwears was wholly insignificant.’ ”*

(emphasis supplied)

38. The Hon’ble High Court of Calcutta in the case of **Animesh Biswas v. State of W.B. : 2023 SCC OnLine Cal 2633** has succinctly summarised the law on evaluation of the testimony of a child victim and observed as under:

*“34. In catena of decisions Hon’ble Apex Court held that the evaluation of the evidence of child witnesses, especially where the child is the victim herself/himself, is always a tricky affair. Combating, and, at times, conflicting, considerations come into play in such cases. On the one hand, there exists a presumption that a child of tender years would not, ordinarily, lie. The applicability, or otherwise, of this presumption, would necessarily depend, to a large extent, on the age of the child. No dividing line can be drawn in such cases; however, one may reasonably presume that a child of the age of four, or thereabouts, would be of an age at which, to questions spontaneously put to the child, the answer would ordinarily be the truth. As against this, the Court is also required to be alive to the fact that children are impressionable individuals, especially when they are younger in age, and are, therefore, more easily tutored. The possibility of a small child, whose cognitive and intellectual faculties are yet not fully developed, being compelled to testify in a particular manner, cannot be easily gainsaid. Even so, the prevalent jurisprudential approach proscribes courts from readily treating the evidence of child witnesses as tutored and, ordinarily, where a child is subjected to sexual assault, her, or his, statement possesses considerable probative value.*

*35. On the other hand, Hon’ble Apex Court reiterated that one of the cardinal principles to be borne in mind, while assessing the acceptability of the evidence of a child witness, is that due respect has to be accorded to the sensibility and sensitivity of the Trial Court, on the issue of reliability of the child, as a witness in the case, as such decision essentially turns on the observation, by the Trial Court itself, regarding the demeanour and maturity of the concerned*



child witness. An appellate court would interfere, on this issue, only where the records make it apparent that the Trial Court erred in regarding the child as a reliable witness. Where no such indication is present, the appellate court witness, where the Trial Court has found it to be credible, convincing and reliable. It went onto note that in the present case it is not disputed that the victim (Child witness) was not competent to depose to the facts and was not a reliable witness. Once 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 evening he absence of oath, the evidence of a child witness can be considered under Section 118 of the Indian Evidence Act, 1872 provided that such witness is able to understand the answers thereof. (Dattu Ramrao Sakhare v. State of Maharashtra, 1997 Latest Caselaw 447 SC)."

(emphasis supplied)

39. The appellant has raised the defence that he has been implicated due to prior enmity and quarrel between the appellant and the mother of the victim. As rightly noted by the learned ASJ, the appellant has not led any evidence and has been unable to create any doubt through cross-examining the witnesses in this regard.

40. Even if it is assumed, for the sake of arguments, that there was some monetary issue between the parties, as the complainant was demanding Rs. 10,000/- from the appellant which he refused to give her, and therefore he has been falsely implicated in the present case, it raises doubt upon the defence, when the only witness supporting the case of the defence is DW1, who is the real brother of the appellant. No other evidence has been adduced by the defence in support of their claim that the monetary issues with the complainant were the reason for his false implication in the present case.

41. Moreover, a perusal of the statements given by the complainant, clearly reveals that she has maintained from the very start that when



she narrated the incident that took place on 05.08.2015 to her husband, an altercation ensued between them, in regard to the complainant's alleged carelessness towards her children, due to which she also suffered injuries on her head. Subsequently, the complainant registered a complaint against her husband, resulting in the registration of FIR No. 600/2015 under Sections 323 and 342 of the IPC. Hence, the argument of the appellant that the complainant had implicated her husband in a false case as he did not support the complainant in her ill-motive of luring money from him is devoid of any merit.

42. In the case at hand, as rightly noted by the learned ASJ, the testimony of the victim's mother is sincere and also substantially corroborates and supports the version of the victim as well as the medical evidence. Apart from what was told to her by the victim, the same alone sufficiently suggests that the appellant sexually assaulted the victim and brutally bit her on both her cheeks and her stomach. A perusal of the MLC and the photographs of the victim that have been placed on record makes it apparent that the defence taken by the appellant does not justify the case at hand. Apart from the bare averments of the appellant that there was some monetary dispute between him and the complainant, there is nothing to support his defence that he has been falsely implicated due to prior animosity, leaving aside the testimony of DW1, who is the real brother of the appellant and is therefore an interested witness. Thus, the appellant has failed to raise any credible defence.





43. Minor discrepancies in relation to delay in lodging the FIR are not such that cast a doubt over the prosecution's case. Even otherwise, as rightly noted by the learned ASJ, the delay has been properly explained not only in the initial complaint made by the complainant but also in her testimony, that on 05.08.2015, when she narrated the incidents of the day to her husband, he started quarrelling with her instead of showing support and asked her to remain silent about the incident as it would attract social stigma upon their family. She has clarified in her testimony that she did not make a complaint immediately as she was scared of the social stigma that would be brought on her family having three daughters.

44. As noted above, although the Court has to be sensitive while considering the statement of a child victim in such cases, the reality of the impressionable nature of children and the possibility of them being tutored cannot be ignored. However, as noted above the testimony of the victim is reliable and could not be eroded in cross-examination and is duly corroborated by the evidence. The victim has stuck by her version throughout the trial, mere apprehension of the appellant that the victim has been tutored is not enough to disregard the victim's evidence. The said factor has to be established by showing motive for false implication, which the defence has failed to show in the present case.

45. In view of the same, the testimony of the witness inspires confidence and the appellant has been unable to show that the version of the victim is tutored. In such circumstances, the foundational facts





stand proved by the prosecution through the evidence of the victim and her parents, and the appellant has not been able to create any doubt to rebut the presumption under Section 29 of the POCSO Act.

46. Insofar as the sentence of the appellant is concerned, in the opinion of this Court, the learned ASJ has rightly appreciated the seriousness of the offence and taken into account that the victim was merely four years old at the time of the incident. This Court finds the quantum of sentence to be proportional with the crime as has been committed by the appellant.

47. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned judgment and order on sentence.

48. The appeal is dismissed in the aforesaid terms. Pending application stands disposed of.

**AMIT MAHAJAN, J**

**JULY 03, 2025**