

**HIGH COURT OF DELHI**

**Bench: Justices Suresh Kumar Kait and Manoj Jain**

**Date of Decision: May 14, 2024**

CRIMINAL APPELLATE JURISDICTION

CRL.A. 295/2021

CRL.A. 459/2020

**STATE ...APPELLANT (CrI. A. 295/2021)**

**VERSUS**

**P.D.D. ...RESPONDENT (CrI. A. 295/2021)**

**MISS P AND OTHERS ...APPELLANTS (CrI. A. 459/2020)**

**VERSUS**

**STATE OF NCT DELHI & ANR. ...RESPONDENTS (CrI. A. 459/2020)]**

**Legislation:**

Sections 6, 29, 30 of the Protection of Children from Sexual Offences Act (POCSO Act)

Sections 323, 506 of the Indian Penal Code (IPC)

Section 164, 313 of the Code of Criminal Procedure (Cr.P.C.)

**Subject:** Appeals against acquittal of respondent PDD charged with aggravated penetrative sexual assault on his minor daughter, threats, and physical assault on his wife and son.

**Headnotes:**

Criminal Law – Conviction under Section 6 of POCSO Act, Section 506 IPC, and Section 323 IPC – Appeal against Trial Court’s Acquittal – High Court Reversal of Acquittal based on Victim’s Testimony and Corroborative Evidence – Victim’s consistent testimony, supported by medical evidence and corroborative witnesses, held sufficient for conviction despite delay in FIR – Reversed acquittal due to Trial Court’s misinterpretation of evidence and undue emphasis on minor contradictions [Paras 1-23, 25-106].

Delay in Reporting – High Court held delay in filing FIR not fatal – Explained delay due to victim’s fear and familial pressure – Victim’s testimony found credible and consistent despite delay – Case law cited to support that delay in sexual assault cases, particularly involving family members, can be condoned if satisfactorily explained [Paras 24-43].

Credibility of Testimony – High Court found victim to be a witness of sterling quality – Testimony consistent with initial statements and corroborated by mother and brother – Minor discrepancies considered trivial and not undermining the overall credibility – Legal precedent cited supporting reliance on victim’s sole testimony in sexual assault cases [Paras 44-96].

Acquittal Reversed – High Court found Trial Court’s judgment based on conjectures and misinterpretation of evidence – Guilt of accused established beyond reasonable doubt based on credible and corroborative testimony of the victim – Appeals allowed and respondent convicted under relevant sections [Paras 97-106].

Decision – Conviction Ordered – Held – The appeal is allowed, and the acquittal is reversed. Respondent convicted under Section 6 of POCSO Act, Sections 506 and 323 IPC. Sentencing arguments scheduled – Directions for victim impact report and confirmation of interim compensation [Paras 107-111].

#### **Referred Cases:**

- Narender Kumar Vs. State of NCT of Delhi, AIR 2012 SC 2281
- Muzaffar Ali @ Mulla Vs. State, 2015 SCC OnLine Del 10367
- Rameshwar Vs. State of Rajasthan, 1951 SCC 1213
- Dinesh alias Buddh Vs. State of Rajasthan, (2006) 3 SCC 771
- State of Punjab Vs. Gurmit Singh, AIR 1996 SC 1393
- State of Himachal Pradesh Vs. Asha Ram, AIR 2006 SC 381
- Vishnu Vs. State, (2006) 1 SCC 283
- State of Uttar Pradesh Vs. Krishna Master & Others, AIR 2010 SC 3071
- State of Maharashtra Vs. Chandra Prakash Kewal Chand Jain, (1990) 1 SCC 550
- Raj Kumar Singh Vs. Raju Vs. State of Rajasthan, (2013) 5 SCC 722
- Jitender Sharma Vs. State (NCT of Delhi), 2019 SCC Online Del 8266
- Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, AIR 1983 SC 753
- Tulshidas Kanolkar Vs. The State of Goa, (2003) 8 SCC 590

#### **Representing Advocates:**

For the Appellants: Ms. Manjeet Arya, APP for State with SI Yamini Vats, PS Patel Nagar in CrI. A. 295/2021; Ms. Tara Narula and Mr. Harshvardhan Jain, Advocates CRL.A. 459/2020

For the Respondents: Mr. Kamlesh Kr. Mishra, Mr. Dipak Raj, Mr. Bibhuti Bhushan Mishra, Mr. Kailash Kr. Jha, Mr. Anubhav Gupta, Mr. Ravi Ranjan Mishra, Mr. Aditya, Ms. Shweta Priya, Mr. Anish Raj, Mr. Deep Raj, Ms. Renu, Ms. Shivani Verma, Ms. Samishti Solomons, Mr. Nitin Kr. Nayak, and Ms. Tripti Jugal, Advocates for R-2 in CrI. A. 295/2021 and CrI. A. 459/2020

## **JUDGMENT**

### **MANOJ JAIN, J**

1. Respondent PDD (name withheld) was charged and tried for committing aggravated penetrative sexual assault upon his own daughter and vide impugned judgment<sup>1</sup>, he has been acquitted of all the charges.

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<sup>1</sup> Judgment dated 07.06.2019 passed by Learned Trial Court in FIR No. 14/2013, PS Patel Nagar

2. Feeling aggrieved by the aforesaid judgment, State had filed petition seeking leave to appeal. Such petition was registered as CrI. L.P. 651/2019. Leave to appeal was granted on 06.10.2021 and resultantly, said petition was re-registered as Criminal Appeal No. 295/2021.

3. Simultaneously, the daughter of respondent, who would be referred to as victim in the present judgment, has also filed appeal against the same judgment. Her mother and brother are co-appellants. Their such appeal has been registered as Criminal Appeal No. 459/2020.

4. Since both the appeals emanate from the same judgment and since similar contentions have been raised therein, these are being disposed of by this common judgment.

### **FACTUL MATRIX**

5. Accused (respondent herein) used to work as security guard and his wife (PW3) was also working as security guard. They had two children, a daughter (victim herein) and a son (PW4).
6. Victim came to Police Station Patel Nagar on 19.01.2013 and revealed that her father had been sexually assaulting her for quite some time. She claimed that one day, when her father was jobless, he did not let her go to school and during noon hour, when she was alone at the house with him, as her mother was away to work and her brother in school, her father made her sleep along his side. He then touched her private parts and when she resisted, he rebuked her. He then sexually assaulted her. She divulged about the above incident to her mother but when her mother confronted him, he scolded her mother. He even asked her as to why she had told everything to her mother. She also revealed that her father had been, thus, exploiting her for last two years and sexually assaulted her lastly on 04.01.2013.
7. She stated to the police that on 18.01.2013, her father was deaddrunk and when her mother returned from her workplace, he hurled filthy abuses upon her and beat her up. Next morning, her brother (PW4) (son of respondent) was also not spared.
8. This eventually triggered her to rush to police station and to lodge a report.
9. Her statement was recorded by the police and FIR was registered.
10. Victim was sent for medical examination and documents regarding her age were collected. Statements of victim and her brother were also got recorded under Section 164 Cr.P.C.

11. Respondent was arrested, charge-sheeted and sent up to face trial.
12. He was charged for commission of offences under Section 6 of Protection of Children from Sexual Offences Act (POCSO Act), Section 506 IPC (for threatening victim) and Section 323 IPC (for beating his son and wife). He pleaded not guilty and claimed trial.
13. Prosecution examined thirteen witnesses viz. PW1 HC Hanuman (duty officer), PW2 (victim), PW3 (mother of victim), PW4 (brother of victim), PW5 Ct. Parveen (police official), PW6 Ct. Mukesh (police official), PW7 Ms. Aanchal (learned Magistrate who recorded the statement of victim under Section 164 Cr.P.C.), PW8 Ms. Poonam (Principal of the school of victim), PW9 W/Ct. Jyoti (police official), PW10 Ct. Pradeep (police official), PW11 Ct. Satpal Singh (police official), PW12 Dr. Prashant and PW13 SI Kiran Sethi (investigating officer).
14. Accused, in his statement under Section 313 Cr.P.C., pleaded innocence and claimed that he had been falsely implicated. He did not dispute the fact that his daughter was minor but claimed that it was a frivolous case and that he had been falsely implicated as there was discord between him and his wife. He stated that his wife had projected their daughter as victim and had come up with false allegation that he had raped her. He, however, did not lead any evidence in defence.
15. Learned Trial Court, while acquitting the respondent, went on to hold that prosecution story did not inspire confidence and was not worthy of any credence. It observed that there were gaps in the prosecution case and that there were several discrepancies and contradictions which made the prosecution version, highly improbable. It observed that there were numerous contradictions and inconsistencies which remained unexplained and that prosecution had failed to disclose the true genesis of crime.
16. Such order is under challenge.

### **RIVAL CONTENTIONS**

17. Learned APP has contended that learned Trial Court has not appreciated the evidence in the desired perspective and unwarranted weightage has been given to the contradictions, which were, even otherwise, trivial and superficial in nature. The prime contentions are as under: -

*i) The perpetrator of the sexual assault was none other than the father of the victim and the victim was in Class-VI when it happened for the first time.*

*Respondent had also threatened that he would kill her if she confided anything in her mother.*

*Resultantly, she could not muster any courage in divulging what she had been going through. Learned Trial Court ignored aforesaid aspect and rejected her version on the ground of delay in registration of FIR.*

*ii) If testimony of victim, her brother and mother is analyzed, it would clearly go on to indicate that they all are fully corroborating one another and there is no inherent infirmity or discrepancy or contradiction which may give rise to any suspicion.*

*iii) Legal position is very much settled and conviction can be based upon the sole testimony of any victim of sexual assault, only rider being that such testimony should be credible, cogent and unambiguous. Here victim is found to be a witness of sterling quality and, therefore, there was no occasion to have sought for any corroboration, more so when the assault had been committed within the four walls of the house. In such a peculiar situation, the court should not have rejected the testimony of the victim for nonexisting reasons.*

18. Almost similar contentions have been raised by learned counsel for the victim. It is contended that there can be no crime graver and more heinous than the present one where the father has assaulted his own daughter. It was nothing but absolute betrayal of trust. It is supplemented that the testimony of the victim, her mother and brother was in complete synchronization and even if there were slight or minor variations, those should have been rather overlooked by the Court keeping in mind the clear-cut and fully convincing testimony of the victim which did not require any kind of corroboration. It is argued that victim, on account of fear and threat given by her father, did not report the incident to anyone and, therefore, the delay stood explained. Moreover, there was no reason whatsoever for a school-going girl to have falsely implicated her own father. Even if there were minor bickering between her father and mother, that would not mean that she would go to such an extent and would indict her father with such heinous charges. Lastly, the testimony of the victim was fully trustworthy, straightforward and consistent throughout and, therefore, there was no reason to have disbelieved her.
19. Reliance has been placed upon *Narender Kumar Vs. State of NCT of Delhi: AIR 2012 SC 2281, Muzaffar Ali @ Mulla Vs. State: 2015 SCC OnLine Del 10367, Rameshwar Vs. State of Rajasthan: 1951 SCC 1213, Dinesh alias*

*Buddh Vs. State of Rajasthan: (2006) 3 SCC 771, State of Punjab Vs. Gurmit Singh and Others: AIR 1996 SC 1393, State of Himachal Pradesh Vs. Asha Ram: AIR 2006 SC 381, Vishnu Vs. State: (2006) 1 SCC 283, State of Uttar Pradesh Vs. Krishna Master & Others: AIR 2010 SC 3071, State of Maharashtra Vs. Chandra Prakash Kewal Chand Jain: (1990) 1 SCC 550 and Raj Kumar Singh Vs. Raju Vs. State of Rajasthan: (2013) 5 SCC 722.*

20. All the aforesaid contentions have been refuted and resisted by learned counsel for PDD.
21. Learned counsel for respondent has contended that learned Trial Court has analyzed the evidence very minutely and comprehensively and rightly came to the conclusion that there were glaring contradictions on record which had gone to the root of the matter and, therefore, case was not believable one. It is argued that false case has been foisted upon him because there was matrimonial discord and his wife used their daughter as a tool and a false case has been made after tutoring her. It is argued that delay has not been explained in any manner whatsoever and the testimony of victim, her brother and mother do not inspire any confidence, particularly in view of the material contradictions and inconsistencies in their statements which remained totally unexplained. Thus, both the appeals are liable to be dismissed as the prosecution has come up with totally improbable and unbelievable case.
22. We have given our thoughtful consideration to the rival contentions and carefully perused the entire record.
23. While analyzing the evidence in the backdrop of above contentions raised at the Bar, we need to evaluate various aspects of the case.
24. Firstly, whether delay in reporting the matter can be said to be fatal. It also needs to be seen whether sole testimony of victim of sexual assault is sufficient for returning finding of guilt or not. It also needs to be assessed whether the contradictions and discrepancies, as noticed by learned Trial Court, were material enough and had rendered the prosecution story unbelievable.
25. Fortunately, the fact that the victim was minor at the relevant time has not been disputed as PDD had admitted before the learned Trial Court that her date of birth was 08.01.2001. Relevant school record was also produced and was proved by the concerned witnesses. Since PDD never disputed during the trial that the date of birth of his daughter was 08.01.2001 and since alleged

period of sexual assault falls between January 2011 to 04.01.2013, the question of her being minor at the relevant period stands established beyond dispute.

### **IMPACT OF DELAY IN REPORTING THE MATTER**

26. Learned Trial Court held that there was gross delay in registration of FIR which proved to be fatal.
27. Of course, the purpose and object of insisting upon prompt lodging is (i) to have the pristine and original version about the manner and circumstance in which any offence is committed; (ii) to rule out possibility of any false implication; (iii) to ascertain the name(s) of the actual offenders and perpetrators; (iv) to contact and seek corroboration from witnesses and (v) to reach and preserve evidence.
28. We need not remind ourselves that we are dealing with a matter where a daughter has been raped by her own father inside her own house, not once but repeatedly. As per the case of prosecution, she was hardly 10 years old when she was sexually assaulted for the first time.
29. Indeed, the matter has been reported to the police after around two years of such first sexual assault but every delay cannot be branded fatal in a mechanical manner. The court has bounden duty to take into stock various factors viz. the social status of the parties, their cultural ethos, their economic condition, their educational background etc. before coming to any conclusion, either way.
30. More often than not, incident is not reported because of the fact that victim and her family members feel that their image and repute in the society would stand tarnished and their prestige would take a toll.
31. Thus, if delay is explained in satisfactory manner, the Court can always disregard and condone the same, provided the testimony of the victim is also found to be of sterling quality. Learned Trial Court made reference to *Tulshidas Kanolkar Vs. The State of Goa: (2003) 8 SCC 590*.

In the aforesaid case, Hon<sup>ble</sup> Supreme Court observed that delay in lodging FIR could not be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It observed as under: -

*“In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for*

*discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle.”*

32. Here, as per victim, she reported about the incident to her mother who eventually questioned respondent but she was snubbed by him.
33. It is not difficult to understand the dilemma of such mother as well.
34. Though she was conscious of the sexual assault upon her daughter but must be in a fix as the perpetrator was her husband. She reasoned with him but to no avail. Quite possibly, she kept mum as she did not want to jeopardize her own matrimonial life without realizing the eventual adverse consequences of her inaction upon the body and soul of her daughter.
35. In a patriarchal set up, which is still very much predominant in our country, such matters are either not reported at all or reported when it is beyond the tolerance of the victim. Here, victim did not see any ray of hope as her father, despite being questioned, did not mend his ways and scolded not only his wife but also the victim and in such a peculiar situation, victim kept on tolerating such sexual assault for approximately two years. Noticing that her father had beaten up her mother and brother, she felt that enough was enough and went to police station and gave complete account about as to what had been happening with her.
36. Victim in her statement under Section 164 Cr.P.C. categorically claimed that she had informed about the incident to her mother. In her deposition before the Court, she claimed that she did not immediately confide in her mother as she was under fear of her father. However, she testified that since her father continued to indulge in such sexual assault almost daily, after about six months, she apprised her mother who also could not do anything. Thus, according to her, she had confided in her mother, albeit, after around six months.



37. The tone and tenor of version of mother of victim also shows that she knew about the acts of her husband as she broke down when her daughter reported the matter to the police.
38. Brother of victim, examined as PW4, was also in thick of the things as he claimed that his sister had told him about the sexual assault upon her. He deposed that he revealed about the same to his mother prior to 18.01.2013 who told him not to talk about the same to anyone as it would ruin their life and reputation.
39. Of course, there is slight variation and deviation in the testimony of her mother and her brother about the fact as to when they learnt about such sexual assault for the first time from the victim but that by itself should not carry any adverse implication.
40. We may reiterate that we are not dealing with a case where the sexual assault was committed by some outsider and in such a situation, even if victim had reported the matter after around two years, it cannot be said that such delay is ruinous.
41. *State of Himachal Pradesh Vs. Sanjay Kumar* (supra) reminds us to take stock of the realities of life. It was observed as under:

*“Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevents such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism.*”

42. Learned Trial Court expressed its surprise as to how mere act of beating up was taken as more offending than the sexual offence by the victim. However, this does not make the case suspect. On the other hand, we strongly feel and believe that the incident of beating up merely acted as catalyst and was taken as „a saturation point“ for the victim and her family.
43. Therefore, delay cannot be said to be fatal in the given circumstances.

#### **WHETHER THE COMPLAINT IS MOTIVATED**

44. Admittedly, there used to be quarrel between her parents.

45. Though such discord never landed in any court, even if such fact is assumed for a moment, it would not mean that any daughter would frame her father for committing such heinous crime.
46. PW3, the mother of victim, deposed that she was doing the job of security guard and her husband was also working as security guard. She revealed in the Court that her husband used to beat her and her children severely since long and even used to ask her son to bring liquor for him. She, then, narrated about the incident which took place on night intervening 18.01.2013 and 19.01.2013. She deposed that when she returned from her job, her husband started beating her with danda and thereafter he gave beatings to her children also. She tried to rescue her children. Her son sustained serious injuries because of such beatings and then she asked her children to go to police station and call the police. Her children then went to police station. Police came to her house and thereafter she was taken to hospital for medical.
47. In her further testimony, she claimed that when police had inquired from her as to why her husband had beaten her and their children, she started crying and revealed that her husband had forcibly established physical relationship with her daughter which has ruined their life.
48. Undoubtedly, in her cross-examination, she claimed that she had not made any complaint to the police prior to the present complaint with respect to the quarrel and beatings and also claimed that her daughter did not inform about the sexual assault prior to 18.01.2013, however, fact remains that she was in the thick of things as in her examination-in-chief, she has, very categorically, claimed that she had sent her children to police station for lodging of report and when police came to her and made inquiries from her, she broke down and told about the past conduct of the respondent. Thus, if we take holistic view of her entire version, without unnecessarily emphasizing on one line in isolation, it would become evident that she already knew about the evil act of her husband.
49. As already noticed above, she was in a „catch-22“ situation as she also, somehow, wanted to save her matrimonial life. It is only when things went beyond her tolerance that she asked her daughter to report the matter to the police. In such a situation, it cannot be assumed that there was any kind of tutoring or that there was any motive to falsely implicate the accused.
50. Brother of victim has also corroborated the case of prosecution.

51. When he was examined during the trial, he was hardly 13 years of age and deposed that on the night intervening 18.01.2013 & 19.01.2013, his father returned to home from his job and after consuming liquor, he went to sleep. When his mother returned from her work and asked his father (respondent herein) as to what was to be cooked, his father became angry and started beating her. When he came out of the room, his father started beating him as well. His father then went inside the room and brought one *danda* and seeing above, his mother asked him and his sister to go downstairs. They went downstairs and met Rama Kant who was running a small shop nearby. He hid them in his shop. Accused, however, came down and started abusing Rama Kant in filthy language and started shouting at him. He further deposed that his father then started beating his mother with *danda* and hit her on her nose due to which she started bleeding. His mother then told that she would report the matter to the police to which his father replied that he was not afraid of police and rather took out his mobile phone from his pocket and gave the same to her for reporting the matter. Somehow, both the children were able to escape from the shop. Their father followed them up to some distance. He deposed that thereafter, they reached police station.
52. As per his further deposition, police had already been informed about the incident by son of Rama Kant uncle who had dialed 100. They, then, returned back to their house and police made inquiries from them. His mother was taken to hospital for medical examination and his father was arrested.
53. His deposition also indicates that he knew about the sexual assault upon his sister as in his examination-in-chief, he deposed that one day, his father asked whether he would go for cycling. Since he liked cycling, he replied in affirmative and went for cycling. However, when he returned, his sister told him that respondent had done "*galat kaam*" with her. He also deposed that his father had earlier given severe beatings to him also with „cylinder pipe“ and he used to beat him up on account of petty matters. He also deposed that his father used to ask him to bring liquor from the liquor shop.
54. His cross-examination does not contain anything which may indicate that his deposition is false or tutored.
55. He revealed that when his sister told him about "*galat kaam*" being done to her by father, he did not tell such fact to his mother same day, supplementing further that he had told her about the same prior to 18.01.2013. He also divulged that his mother then asked him not to tell about the incident to

anyone as that would ruin their life and reputation. He denied that accused had been falsely implicated at the instance of his mother as there used to be frequent quarrels between his parents and they wanted to live in peace.

56. Respondent, in his statement under Section 313 Cr.P.C., denied that he had committed any such act or that given any beatings to his wife and son. He simply claimed that he had been falsely implicated as there used to be quarrel between him and his wife. Admittedly, when his wife never ever reported about any domestic quarrel to the police and when no such case was filed in the Court by anyone, defence assertion that the case is motivated does not seem to be convincing and compelling.
57. Be that as it may, we have not been able to find out any angle of false implication.

### **ANALYSIS OF EVIDENCE**

58. Prosecution has examined thirteen witnesses in all and we need not lay emphasis on the fact that the outcome is, primarily, dependent upon the testimony of victim. She had been sexually assaulted by her father and even as per the case of prosecution, there is no other witness to such assault. Of course, the testimony of her mother and brother is also of some significance for finding out whether they have provided requisite corroboration to her version or not.
59. Let us take note of the testimony of victim.
60. She entered into witness box on 08.01.2014 and at that time, she was studying in Class-VIII. She deposed that when she was in Class-VI, her father was not doing any job and used to remain at home. One day, her father did not allow her to go to school and sent her brother to school.

She was watching TV at her home. Her father scolded her and asked her not to watch TV and to go to sleep. She told him that she did not want to sleep but since her father scolded her, she went to bed and slept. Her father came near her and started touching her body in inappropriate manner and when she objected, her father again scolded her. He pressed her mouth and put his private part in her urinating part as well as in her anus. Her father threatened her not to tell anything to her mother otherwise he would kill her mother. She deposed that since she was under the fear of her father, she did not tell anything to her mother. Her father, however, kept on doing similar „bad act“ with her almost, daily. After about six months, she told her mother

everything but her mother could not do anything. She deposed that, lastly, accused had indulged into such wrong act on 04.01.2013.

61. She deposed that in the morning of 18.01.2013, her father had given severe beatings to her brother which she learnt when she returned from school. She deposed that her mother was doing night shift that day and, therefore, she left home at about 4.00 PM. Her father returned from job at about 9.00 PM. He was under the influence of liquor. When her mother returned at about 11.00 PM from her work, she offered tea to her father. Her father started beating her mother and brother. They rushed downstairs to save themselves and were rescued by one Rama Kant uncle. She deposed that thereafter, she and her brother went to police station and then police came to their house.
62. If we compare her statement recorded during the trial with her two previous statements i.e. statement given to police (Ex. PW2/A) and statement given to learned Metropolitan Magistrate under Section 164 Cr.P.C. (Ex. PW2/B), we may though spot some deviations but these, being trivial in nature, do not go to the root of the matter.
63. There would rarely be a foolproof case where there is no deviation or omission or contradiction. Any victim of sexual assault, living under serious trauma, cannot be expected to give photographic version of the entire episode, particularly when such act was continuing for last around two years. Pith and substance of her all the versions remain same and consistent. In all such three statements, she deposed that she was being sexually assault by her father for last around two years and that last such sexual assault was made upon her on 04.01.2013.
64. We are mindful of the fact that she was hardly 12 years of age when she rushed to police station all by herself and in such a situation when her testimony was recorded in the Court, almost, after one year, slight variations are, even otherwise, expected. The duty of the Trial Court is to minutely analyze the evidence with full sensitivity and then to come to a conclusion whether the contradictions are grave enough, rendering the prosecution version improbable.
65. Moreover, the cross-examination conducted by the defence does not take us anywhere as there was no attempt or endeavour to confront her with her previous statements. Court cannot *suo moto* make use of previous statements and compare it with the testimony given in the Court for the purposes of finding out inconsistencies or contradictions, unless such

previous statement has been proved and the attention of the witness has been drawn towards such portion. Reference be made to *VK Mishra v. State of Uttarakhand*: (2015) 9 SCC 588.

66. Learned Trial Court has given weightage to the fact that in her cross-examination, she deposed as under: -

*“I cannot say if there would not have been any beating given to my brother and mother on 18.1.13, I would not have reported to the police”.*

67. This answer does not go on to portray that her version is false.
68. It only suggests that victim had, perhaps, resigned to fate as even her mother was in no position to help her out. However, noticing that her mother and brother had also been given beatings, she was forced to lodge report with the police in which she also revealed about the past activities of her father. We do not feel anything to be surprised by her above answer and, therefore, there was no reason to have given any importance to the same.
69. Thus, we do not find testimony of victim to be uninspiring or untrue from any angle whatsoever.
70. Learned Trial Court noted certain contradictions in the testimony of victim, her mother and brother and came to the conclusion that these were major and overwhelming which had shattered the veracity of the prosecution case by striking at its very roots.
71. These are tabulated in Para-86 of the impugned judgment.
72. We have carefully gone through the variances noticed by learned Trial Court and have no hesitation in holding that these are trivial and do not go to the root of the matter.
73. We are cognizant of the fact that the sexual assault was being committed upon victim for last two years by her own father and keeping in mind her young age as well as of her brother, some inconsistencies or variations are bound to occur.
74. The endeavour of the Court should be to find out whether material substance of the statement made during investigation and one recorded during trial are uniform and in synchronization or not. If there is material deviation or contradiction, obviously, the Court would keep such contradiction in mind. However, defence was also required to draw attention of the concerned

- witness to his or her previous statement before digging out any advantage from the same. Here, for the reasons best known to the defence, the attention of victim, her brother and mother was never drawn to their respective previous statements and in such a situation, we are afraid that defence cannot be permitted to agitate about such contradictions.
75. We have carefully gone through the alleged inconsistencies/contradictions noted by learned Trial Court.
76. It noticed that the fact, *when she was sexually assaulted for the first time her father did not let her go to school*, was not deposed by anyone else. However, there is no reason to be astonished as such fact was within her special knowledge only and, therefore, she alone was in the best position to have revealed the same.
77. The aspect related to beating up with “*danda*” on the night intervening 18<sup>th</sup> and 19<sup>th</sup> of January, 2013 has been mentioned by mother and brother of victim but in her testimony, the victim has not disclosed about the use of “*danda*”. However, this in itself would not mean anything significant as the victim has, admittedly, claimed in her deposition that her father had given severe beatings to her brother and mother. Mere omission of “*danda*” would not mean anything significant in the present context when in her statement under Section 164 Cr.P.C. she had, categorically, mentioned about the same. Learned Trial Court noted that according to the mother of victim, her son had received “serious injuries” but said fact has not been deposed by victim and her brother. This also does not matter much.
78. We may supplement right here that merely because a particular witness reveals additional fact during the trial, would not, *ipso facto*, mean that his testimony is liable to be discarded, being not in harmony with the prosecution’s story or with the other witnesses. The addition or omission of that fact alone, which goes to the root of the matter, is of some substance and the minor additional revelation of fact would not make the case of the prosecution unreliable.
79. Learned Trial Court also observed that the brother of the victim had revealed that he was given beatings with “cylinder pipe” when he was playing in the park and no such fact has been mentioned by the other two witnesses. However, learned Trial Court failed to take note of the fact that the trial was not with respect to that particular instance of beatings given in the park and that the present trial pertained to the sexual assault and with respect to the

incident which had taken place on the night intervening 18<sup>th</sup> and 19<sup>th</sup> of January, 2013

80. Thus, the contradictions, *inter se* the testimony of victim, her mother and brother, are found to be inconsequential.
81. The fact that accused used to beat his wife and children has been elaborated by all of them when their statements were recorded during investigation. It really does not matter that the same was not reiterated in so many words by victim and her brother during the trial.
82. In *State of Punjab Vs. Gurmit Singh*: (1996) 2 SCC 384, it has been observed that cases of sexual assault should be dealt with utmost sensitivity and the Courts are required to examine the broader probabilities of a case and should not be swayed by minor contradictions or insignificant discrepancies in the statement of prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.
83. Undoubtedly, it would have been an additional advantage if the investigating agency had made inquiries from the concerned watchman (chowkidar) and Rama Kant who had allegedly saved the children that day. But such omission, in itself, would not mean that the case of prosecution is liable to be discarded. Since police had also been informed about the incident by son of Rama Kant by dialing 100, copy of PCR form should have been produced on record but the lapse in this regard would not mean that there was no sexual assault by the respondent.
84. Incident of beating did take place on the night intervening 18.01.2013 & 19.01.2013. This fact stands corroborated from MLC of mother of victim and DD No. 4A (Ex. PZ-A). Such MLC has been proved as Ex. PZ-D which indicates that she was brought to Lady Hardinge Medical College by ASI Kiran and Lady Constable Parveen at 12.25 AM on 19.01.2013. She was having history of bleeding from nose and injury at right elbow joint. She was brought pursuant to the information given to Police Control Room (PCR). The MLC of brother of victim has also been proved as Ex PX-4 and, therefore, it stands established that the incident of beating had taken place on the intervening night of 18.01.2013 and 19.01.2013.
85. Learned Trial Court also observed that the prosecution had failed to prove the motive. It noticed that there was nothing on the record to show that the accused had committed the offences, as alleged by the prosecution. It added



- that he was a mature man and capable of understanding the implications of his acts and his denial was taken as sufficient. It also observed there did not appear to be any criminal intention and mens rea on the part of the accused and his defence appeared to be plausible.
86. We, however, cannot approve such observation which is neither borne out from the record nor tenable in law.
  87. Since the court was dealing with offence specified under POCSO Act as well, it should not have been oblivious to the presumptions enumerated under Section 29 and Section 30 of POCSO Act.
  88. Since the present prosecution was with respect to commission of offence under Section 5 of POCSO Act also, it was obligatory for the Court to have presumed that the person had committed such offence, unless the contrary was proved. The second presumption is rather much more rigorous. In terms of Section 30 of POCSO Act, if for any particular offence, the prosecution is required to establish *culpable mental state (which also includes motive)* on the part of the accused, the Court is, again, under obligation to presume the existence of such mental state though it shall be a defence for the accused to prove that he had no such mental state.
  89. The standard of proof of innocence that is expected from the accused in a case under the POCSO Act is only on the touchstone of „preponderance of probabilities“ as far as Section 29 of POCSO Act is concerned. Section 30 of POCSO Act travels much ahead as it stipulates that standard for rebutting the presumption about „culpable state of mind“ is that of „beyond reasonable doubt“ and not merely that of „preponderance of probabilities“ as opposed to section 29 of the POCSO Act.
  90. We are also mindful that the onus to rebut the presumption arises only after the prosecution has established the foundational facts. These presumptions can be rebutted in multiple ways. It can be through effective cross examination or by pointing out patent absurdities or inherent infirmities in the case or by showing material contradictions and omissions in the testimony of witnesses. Onus can also be discharged by adducing defence evidence or by entering into witness box under section 315 Cr.P.C. Here, the accused has not offered anything, except for baldly averring that he has been falsely implicated and by referring to certain contradictions which, we have already observed, have no worth.
  91. In view of the aforesaid statutory presumptions and since the foundational facts had been duly proved by the prosecution, the burden was, unmistakably,

on the accused to prove to the contrary. Moreover, in the context of the present case, *mens rea* does not seem to be prerequisite either. The defence, actually speaking, remained in denial mode and respondent did not even bother to divulge as to how and under what circumstances, his wife and son had received injuries and were persuaded to call PCR and were rushed to hospital.

### **WHETHER VICTIM IS A WITNESS OF STERLING QUALITY OR NOT**

92. We may make reference to *Jitender Sharma Vs. State (NCT of Delhi)*: 2019 SCC Online Del 8266 of Co-ordinate Bench of this Court. In that case also, sexual assault had been committed by a father upon his daughter and it was held that it was no longer *res integra* that conviction can be based on the sole testimony of victim in case of sexual assault/rape. It was observed that sole testimony of victim if found reliable can be the sole ground for convicting the accused. In the aforesaid judgment, it was observed as under:

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*The Hon'ble Supreme Court, in State of Rajasthan v. Om Prakash, reported as (2002) 5 SCC 745, dealing with a similar question in the case of a child rape, while upholding the conviction of the appellant therein and reversing the decision of the High Court in that behalf, relied upon earlier decisions and made the following observations:*

*"13. The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is a wellsettled proposition. In State of Punjab v. Gurmit Singh [(1996) 2 SCC384], referring to State of Maharashtra v. Chandra Prakash Kewalchand Jain [(1990) 1 SCC 550] this Court held that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. It has also been observed in the said decision by Dr Justice A.S. Anand (as His Lordship then was), speaking for the Court that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.*

*14. In State of H.P. v. Gian Chand [(2001) 6 SCC] Justice Lahoti speaking for the Bench observed that the court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being*

*relied on, then the testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined."*

*Justice Krishna Iyer, whilst documenting his observations on absence of injuries on the victim, as well as, importance of corroborative evidence in rape cases, in his celebrated judgment in Rafiq v. State of Uttar Pradesh reported as (1980) 4 SCC 262 has very eloquently observed as follows:*

*"5. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances. Indeed, from place to place, from age to age, from varying lifestyles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of precedential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggrieved.*

*6. When rapists are revelling in their promiscuous pursuits and half of humankind -- womankind -- is protesting against its hapless lot, when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative testimony, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable."*

93. In *State of HP v. Asha Ram* (supra), the victim was daughter of the accused and it was observed that there was no rhyme or reason as to why she would depose falsely so as to expose her honour and dignity and also expose the whole family, risking the out-casting or ostracization and condemnation by the family circle as well as by the society.

94. In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*: AIR 1983 SC 753, Supreme Court pointed out that in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. It observed as under: -

*"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?"*

95. It further enumerated factors which, generally, compel any such victim to not report the matter. These are as under: -

*"(1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the society or being looked down by the society including her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love*

*and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a traditionbound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.*

96. Be that as it may, the testimony of victim herein is sufficient in itself to bring home the charges.

### **CONCLUSION**

97. On careful perusal of the entire record, we are thus persuaded to hold that the testimony of victim inspires full confidence and there is no reason whatsoever to suspect or distrust her.
98. It seems that learned Trial Court got swayed because of delay in reporting the matter. Learned Trial Court also gave unwarranted weightage to the contradictions, which were superficial in nature.
99. The substance of the testimony of all the three witnesses appears to have „ring of truth“ as they all have corroborated one another.
100. We also do not find any reason to hold that it was a motivated or planted case. Moreover, we are not inclined to hold that merely because there were minor quarrels between the respondent and his wife, the victim would churn out a story claiming that she was being sexually assaulted for the last two years.
101. The wrongdoer was not any outsider or stranger.
102. Victim must have thought that she would find a „monastery“ in the lap of her father. Little did she realize that he was rather a „monster“.

103. Unfortunately, neither she nor her mother could muster enough of courage and report the incident to the police. Had they immediately rushed to the police, the victim might have been saved from perpetual trauma.
104. We are conscious of the fact that these are appeals against acquittal and the basic principle of presumption of innocence gets further strengthened by the fact of acquittal by the Trial Court and, therefore, such acquittal should not be disturbed if two views are possible. However, if on reassessment of evidence, the Appellate Court comes to the conclusion that guilt of the accused is established and such conclusion is the only inevitable conclusion, then mere fact that appeal is against acquittal would be immaterial.
105. We are, thus, of the firm view that learned Trial Court has misread and misinterpreted the evidence and the analysis of the evidence is based on conjectured inferences, necessitating us to interfere with such order of acquittal. Therefore, in view of apparent compelling reason that the finding recorded in order of acquittal is contrary to the evidence, we have no hesitation in reversing the same.
106. Consequently, we hereby allow both the appeals and hold the respondent (PDD) guilty for commission of offences punishable under Section 6 of POCSO Act and Sections 506 and 323 IPC.
107. List the matter on 24.05.2024 for arguments on sentence.
108. A copy of this order be supplied to PDD.
109. Let Victim Impact Report be also placed by Delhi State Legal Services Authority (DSLISA) within ten days from today.
110. We also note that vide order dated 17.01.2022 of the Predecessor Bench, while considering CrI. M.A. No. 13240/2020 (for compensation), directed the DSLISA to consider the representation made by the victim for interim compensation as expeditiously as possible. It is, however, not clear whether any interim compensation was awarded to the victim or not.
111. Let a report to that effect be also placed by next date of hearing.

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