



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

% Reserved on : 06.10.2025
Pronounced on : 14.10.2025

+ **CRL.A. 169/2019**

MOTI LALAppellant

Through: Mr. S.B. Dandapani, Advocate
(DHCLSC)

versus

STATERespondent

Through: Ms. Shubhi Gupta, APP for State with
SI Urvashi
Mr. Dhruva Bhagat, Advocate for
victim.
Mr. Himanshu Anand Gupta, Mr.
Siddharth Barua, Mr. Shekhar Anand,
Ms. Navneet and Ms. Mike Desai,
Advocates for DSLSA

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal filed under Section 374(2) Cr.P.C., the appellant has assailed the judgment of conviction dated 01.12.2018 and the order on sentence dated 21.12.2018 passed by the learned ASJ-06, West District, Tis Hazari Courts, Delhi, in SC No. 72/2018, whereby he has been convicted for the offence punishable under Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of ten years along with payment of fine of Rs.10,000/-, and in default of payment of fine, to further undergo simple imprisonment for ten months. The benefit of Section 428 Cr.P.C. was also extended to the appellant.



2. Brief facts as noted by the Sessions Court are as follows :-

“Brief resume of the allegations in the prosecution case is that one Sh. SH (the father of the prosecutrix, identity withheld) made a complaint Ex. PW4/A stating therein that on 02-10-2014 at about 5:30 PM, his daughter Ms. ‘V’, the prosecutrix, a minor girl of the tender age of 7 years was playing near his jhuggi and after some time, she came crying from one jhuggi and on inquiries, she had informed that one Moti Lai, their neighbour has inserted his penis into her anus and he found that there was blood on the panty of his daughter and blood was oozing from her anus, thereafter, he called the police at 100 number.”

3. The Trial Court framed charges against the appellant for the offence punishable under Section 6 POCSO and, in the alternative, under Section 376 IPC, to which he pleaded not guilty and claimed trial. The prosecution examined a total of 6 witnesses in support of its case, with the material witnesses being the prosecutrix (PW-2), her mother ‘S’ (PW-1) and father ‘SH’ (PW-4). Dr. Priyanka Kumari was examined as PW-3 in the context of the MLC of the prosecutrix, and the I.O. of the case, WSI Kiran Sethi, was examined as PW-6.

4. During her deposition, the child victim (PW-2) deposed that on the date of the incident, she was playing with her friend ‘N’. An uncle, who was residing nearby, called her on the pretext of offering Rs.20/- and took her to his home. The said person came from behind, removed her underwear, and did ‘galat kaam’. He committed the said ‘galat kaam’ from behind. She clarified that he had inserted his penis into her anus. She felt pain, and when she screamed, the said person gagged her mouth with his hand and offered her Rs.20/-. She returned home and narrated the incident to her friend, who then informed her brother. Her brother told their parents, and thereafter the police were called. The child victim identified the appellant as the person



who had committed the said act. The frock and underwear of the child victim, which were seized during her medical examination, were shown to her; however, she could not identify the same, stating that she did not remember. The clothes were marked as Mark MO-1 and MO-2.

In cross-examination, she stated that she had known the appellant from before. She denied the suggestion that the accused had used to visit her home or that her father had any prior quarrel with him. She clarified that when she was taken inside the house by the appellant no one else was present. The light was on, and the door was kept open. She stated that as she was scared, she did not initially inform her parents about the incident. She denied the suggestion of tutoring.

5. The mother of the child victim deposed that on the day of the incident, at about 4:30-5:00 p.m., her daughter was playing outside the house. After some time, her daughter came home crying and, on being asked, stated that the appellant had inserted his 'susu' into her anus. She also found her daughter bleeding from the anus.

In cross-examination, she stated that two more girls were playing with her daughter outside the house and that her husband was also present. The child victim had first disclosed the incident to her husband, who then called the police. Her statement was recorded at the hospital. She admitted that the *jhuggi* of the appellant was adjacent to their *jhuggi* and that the appellant was known to them prior to the incident. She denied the suggestion that her husband had wanted to purchase the *jhuggi* of the appellant and, upon his refusal, a quarrel had taken place between them, leading to the false implication of the appellant in the present case.

6. The father of the child victim, during his deposition, stated that when



he returned home, his son told him that the child victim was crying, and upon enquiring from his daughter, she told him about the incident, stating that the appellant had committed a wrong act with her by inserting his urinating part into her anus. He noticed blood spots on the underwear of the victim. The appellant was apprehended by members of the public, and the police were informed. He identified the frock and underwear of the child victim.

In cross-examination, a suggestion was given that there was one more *jhuggi* between the *jhuggi* of the appellant and that of the witness, which he admitted. He denied the suggestion that he had asked the appellant to sell his *jhuggi* to him, which was refused, and that, for this reason, he had used his daughter to falsely implicate the appellant.

7. The MLC of the child victim was exhibited as PX-13. The medical examination of the child victim was conducted on 02.10.2014 at about 7:30 p.m., with the alleged history recorded at her instance. In the medical examination, no external injury marks or vaginal bleeding was noticed, and the hymen was found intact. The MLC notes that the rugosities of the external anal sphincter were maintained. It however, records a 1 cm linear laceration on the perianal skin on the posterior side but no active bleeding was noticed.

8. As per the DNA Report, the DNA profile (STR analysis) generated from the source of exhibits '111', '112', and '113' (rectal examination of the victim), '2a' (baby's frock), and '2b' (baby's underwear) was found to be similar to the DNA profile generated from the source of exhibits '1n1' and '1n2' (blood sample of the victim).

9. Learned counsel for the appellant has contended that although the



parents of the child victim stated that they had seen bleeding, the MLC of the child victim does not record the same. While the mother had initially stated that she was informed about the incident by the child victim, she later stated that she came to know of it from her husband. The father of the child victim stated that he was told about the incident by his son. On the other hand, the child victim stated that she had first narrated the incident to her friend, who informed her brother, and he, in turn, informed their parents. It is next contended that the testimony of the child victim is also unbelievable, as at the time of the incident not only was the light in the room on but even the door was open, which is an unnatural conduct for any accused intending to commit such an offence. It was further contended that the seizure of the underwear and frock of the child victim is doubtful, as the child victim did not identify them as her clothes. It was also argued that the prosecution case is improbable, as the appellant's wife was present at the spot, and the MLC of the accused shows that he was unable to give a semen sample. In the alternative, learned counsel submitted that the present case would at best amount to an attempt under Section 18 of the POCSO Act.

10. Learned APP for the State as well as learned counsel for the complainant, on the other hand, defended the impugned judgment. It was submitted that not only do the findings recorded in the MLC support the allegations of the child victim, but the FSL report also records that blood was detected on the frock and underwear of the child victim, as well as on the slides and swabs collected from the rectal examination samples.

11. Though it has been alleged that the prosecution has not duly proved the age of the child victim, this aspect was not contested before the Trial Court. The age of the child victim is reflected in her medical examination,



her testimony, as well as the testimonies of her parents, all of whom unanimously stated her age to be 7 years. The appellant did not contest the age of the child victim in any manner before the Trial Court. The Trial Court has also held the victim to be a child. Even if the I.O. failed to collect documents in this regard, such defective investigation by itself would not enure to the benefit of the appellant. A gainful reference in this regard may be made to Ashok Kumar Singh Chandel Vs. State of Uttar Pradesh, reported as **(2022) 20 SCC 114**, wherein it has been held as under:-

“156. ... Even assuming that there is some defect in the investigation on this count, it will have no bearing on the prosecution case. This Court has observed in a number of cases that defective investigation by the investigating authorities by itself does not vitiate the case of the prosecution when there are credible eyewitness testimonies as well as other compelling pieces of evidence. In Karnel Singh v. State of M.P.³⁷ this Court held that : (SCC p. 521, para 5)

‘5. ... In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.’

157. Similarly in C. Muniappan v. State of T.N.³⁸ this Court held : (SCC p. 589, para 55)

‘55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there



is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial.’”

As such, in the absence of any contest or contrary material placed on record, this Court has no hesitation in holding that the child victim was 7 years old at the time of the incident and thus falls within the meaning of a “child” under Section 2(d) of the POCSO Act.

12. The contention that the seizure of clothes of victim is doubtful and the FSL report is irrelevant as the child victim had not identified her frock and underwear of the child victim is also without merit, as the said clothes were duly identified by the father.

13. The incident is stated to have occurred in the evening of 02.10.2014 at about 4:30-5:00 p.m. The first information about the incident was recorded through DD No. 17A at about 5:35 p.m. The PCR form recorded that ‘M’, aged about 55 years, had committed unnatural sex with ‘V’, aged about 7 years. The FIR was registered on the same day on the statement of the father of the child victim, who levelled allegations of anal penetration by the appellant. The child victim, in all her statements recorded during investigation and at trial, consistently stated about the act of anal penetration committed by the appellant.

14. Though there is some variance as to how the parents came to know of the incident, in view of the consistent and cogent testimony of the child victim, the same is insignificant. There is no delay in reporting the incident. The MLC, prepared on 02.10.2014, notes that a 1 cm linear laceration of the



perianal skin was observed on posterior side. To treat this injury, the victim was referred to Kalawati Saran Bal Hospital, New Delhi, for laceration management and immunization. The said report, prepared on the same day at 11.50 pm and exhibited as PX-2, notes a superficial tear at the anal canal at 5 o' clock position admeasuring 0.5 x 0.2 cm and the anal tone was found to be lax.

The appellant has claimed that his wife was present at the time of the incident; however, the same appears to be an afterthought, as nothing has been put forth to substantiate this contention. Neither does the said fact find any mention in the appellant's statement under Section 313 CrPC, nor was his wife examined as a defence witness. Moreover, the child victim has categorically deposed that when she was taken inside the house by the appellant no one else was present.

15. It was next contended that the alleged act could not have been performed by the appellant, as during his medical examination, no semen sample was produced. Indeed, it was initially noted at the time of medical examination of the appellant that he was unable to produce semen however, during a subsequent examination conducted on 16.10.2014, it was noted that the appellant developed an erection upon self-stimulation. In the opinion recorded by the concerned doctor, it was noted that there was nothing to suggest that the appellant was incapable of performing normal sexual intercourse. Though the said opinion was exhibited through the I.O., however, even for the sake of argument, given that the said opinion was not exhibited through the concerned doctor, the testimony of the child victim, supported by the medical and forensic examination, is by itself sufficient to uphold the conviction of the appellant.



2025:DHC:9156



16. The Court is not oblivious of the fact that the victim was only 7 years old at the time of the commission of the offence and her testimony was recorded on 04.09.2017, nearly three years after the incident. Keeping in view the cogent and credible testimony of the child victim, duly supported by the medical evidence, this Court finds no ground to interfere with the impugned judgment. Consequently, the present appeal is dismissed.

17. The personal bond furnished by the appellant stands cancelled and his surety is discharged.

18. A copy of this judgment be communicated to the Trial Court and the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 14, 2025

ga

This is a Court CopyTM of the judgment as appearing on the Court website.
Downloaded from www.manupatra.com