
(2025) 12 DEL CK 0026

Delhi HC

Case No: Criminal Appeal No. 1187 Of 2024

Sunil

APPELLANT

Vs

State Govt. Of Nct Of Delhi And
Anr.

RESPONDENT

Date of Decision: Dec. 17, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 161, 313, 428
- Indian Penal Code, 1860- Section 354
- Protection of Children from Sexual Offences Act, 2012- Section 8, 10

Hon'ble Judges: Manoj Kumar Ohri, J

Bench: Single Bench

Advocate: Abinash Kumar Mishra, Shubhi Gupta, Arman Roop Sharma, Aman Khan,
Lekhraj, Manish Sangwan, Tanya Gupta, Vedant Srivastava

Final Decision: Allowed

Judgement

Manoj Kumar Ohri, J

1. Vide the present appeal, the appellant seeks setting aside of the judgment of conviction dated 13.11.2024 and the order on sentence dated 30.11.2024 rendered in the contest of trial held in Sessions Case No.110/2017 arising out of FIR No. 816/2016 registered at P.S. Nand Nagri.

The Trial Court convicted the appellant for the offences punishable under Section 354 IPC and Section 8 POCSO. He was subsequently directed to undergo RI for a period of 3 years and 1 month along with paying a fine of Rs.2,000/-, in default whereof he would undergo 1 month SI, for the offence under Section 8 POCSO; and to undergo RI for a period of 1 year along with paying a fine of Rs.2,000/-, in default whereof he would undergo 1 month SI, for the offence under Section 354 IPC. Both sentences were directed to run concurrently and the benefit under Section 428 Cr.P.C. was granted to the appellant.

2. The facts as culled out from the Trial Court record are that the investigation was set into motion on 17.09.2016 when the complainant (father of the 10-year-old child victim) gave a written complaint that his minor daughter was molested by the appellant herein. It was stated that the complainant is a rickshaw puller and on the previous day, i.e., on 16.09.2016, at about 1.30 PM, he had gone along with his daughter to a bhandara in his neighborhood, where the appellant was also in attendance. At one point, the appellant put his hand on the waist of the complainants daughter while standing behind her and placed his hand on her chest. Initially, the complainant thought that the appellant had done the said act out of affection; however, in the night, the victim complained to her mother that the appellant had pressed her breast and she was feeling pain. The matter was thereafter reported to the police and the subject FIR was lodged. The statements of the child victim under Sections 161 Cr.P.C. and 164 Cr.P.C. were recorded. As there were no external or internal injuries, the complainant refused any medical examination of the child victim. On the chargesheet being filed, charges under Section 354 IPC and Section 10 POCSO were framed, to which the accused pleaded not guilty and claimed trial.

3. The prosecution examined the child victim as PW-1. She identified the appellant and stated that he used to live in her colony. On the date of incident, she had gone to the bhandara along with her father, where the appellant had come from behind and pressed her breast. She stated that she could not sleep that night due to the pain and confided in her mother about the same.

In cross-examination, she stated that she was not aware of the name of the appellant, and the same was told to her by her father on the day of the incident. She was otherwise aware of the appellant as he used to organise dance performances of children on occasions like Diwali. The bhandara was organised in the afternoon and there was a crowd of persons present; however, none of them were touching each other and they were all maintaining distance. The food was being served to persons after they sat down. She further stated that her father, as well as the father of one M were standing beside her. The victim stated that after eating bhandara, they had returned to their house. A suggestion of no incident having occurred and the appellant having been falsely implicated was given; however, the same was denied.

4. The victims father was examined as PW-4. He stated that he had gone along with his daughter to the bhandara, where the appellant came from behind and put his hand on the waist of the victim and then on her breast. In the night, the victim complained of pain in her breast and, on asking, stated that the pain was on account of the appellant having pressed her breast.

In cross-examination, a suggestion was given to the witness that the appellant was engaged in petty social work in the locality and used to help people with their problems. The witness admitted that a person by the name of Nimai lives adjacent to his house and that a dispute had occurred between them regarding Nimai

constructing a wall in front of the window of the witness room. He stated that the dispute had escalated and the police were also called. He further stated that since Nimai had been restrained from going ahead with the construction, the appellant had taken money from Nimai, undertaking to do the construction, and had started torturing the witness. He again said that the appellant had nothing to do with the construction carried out in Nimais house. He further stated that a Panchayat was held in the context of the said dispute; however, he did not remember whether the father of the appellant was a Panchayati in the same. A question was put as to whether the meeting was held prior or subsequent to the incident in question, to which the witness replied that he did not remember. A specific suggestion was given that the Panchayat had taken place on 25.11.2014, to which he stated that he did not remember. Another suggestion was given that he was deliberately not acknowledging the date of the meeting or recalling the name of the participants, and the same was denied. A question asking in whose memory the concerned bhandara was organized was put to the witness, to which also he stated that he did not remember. He admitted that people were served food while they were sitting on the floor. At one point in his cross-examination, he stated that he did not have food at the bhandara; however, he later stated that he took 5 to 10 minutes to eat. He admitted that his daughter neither raised any alarm nor told anything to him at that time. He denied that medical examination of the victim was refused as no incident had taken place. He denied the suggestion that the appellant had been falsely implicated as he had helped Nimai in the said construction work.

5. The mother of the victim was examined as PW-5 and stated about being told about the incident by the child victim in the night.

6. The appellant, in his statement under Section 313 Cr.P.C., denied the prosecution case and claimed false implication. He stated that in the year 2005, there had been a dispute between the appellant and the victims father. The victims father also had a dispute with his neighbor Nimai and while he had protested the construction being carried out by Nimai, the Panchayat people of the locality, including the appellants father, had allowed the construction, due to which the victims father had developed enmity against the appellant.

7. The appellant examined one Sunil Kumar Jha as DW-1 in his defence. The defence witness stated that on 15.09.2016 his father was unwell and admitted at Karuna Nursing Home, whereafter his father was referred to a bigger hospital, and that the appellant had accompanied him to take his father to RML Hospital and remained with him during the intervening night of 15/16.09.2016 till about 2.30 PM on 16.09.2016, when there was some improvement in the condition of his father. He further stated that the appellant had come to Karuna Hospital to see his father along with 10-12 people and when a question as to whether he could name the said 10-12 people was put to him, he stated that he could tell the names of some of the persons, and named

8. The organiser of the bhandara, Dilip, was examined by the appellant as DW-2. He stated that he had organised the bhandara on the terhvi of his grandfather, that the appellant had not come to attend the said function, and that no incident as alleged took place on the said day. He stated that he had remained present the entire time during the bhandara and had met everyone who attended.

In cross-examination, he stated that he was moving around as the function was organised in an open space and that he had attended to everyone who had come. He stated that no videography or photography was done. He reiterated that though the victim and her father had attended the bhandara, the appellant had not come.

9. The gravamen of the prosecution case revolves around the allegation of the appellant pressing the victims breast. Curiously, the victims father has deposed that he had seen the appellant coming from behind and putting his hand on the victims waist and on her breast; however, the victim has stated only that the appellant came and pressed her breast. The father of the victim has deposed that he initially thought that the appellants act of putting his hand on the breast of the victim was out of affection. The incident occurred at about 1.30. PM in the afternoon and no complaint was made at that stage. The victims mother has deposed that the victim did not inform her about the incident in question or about her experiencing any pain when she returned from the bhandara and only informed her late in the night that she was having pain in her chest. In cross-examination, the mother of the victim has stated that on the aforesaid coming to note, she had woken her husband at about 2.00 AM. If the incident had occurred as alleged and the appellant had pressed the breast of the victim at the bhandara, it would have resulted in pain immediately or soon thereafter. The complaint of severe pain being made 12 hours after the incident would be a realistic possibility only if the appellants act also resulted in an injury. However, there is no evidence of any injury on the person of the victim and, as noted above, the father had refused medical examination of the child victim stating that the victim had not suffered any internal or external injury.

10. The appellant had taken a defence that he was not present at the bhandara and was rather at the hospital, and in this regard, he examined Sunil Kumar Jha as a defence witness. The organiser of the bhandara, Dilip, was also examined as a defence witness, and he testified that the appellant had not attended the bhandara.

11. Considering that the victim did not immediately complain of any pain, that the same was reported to the victims mother 12 hours after the fact that the victim was not medically examined, that the appellant appears to be involved in the dispute between the victims father and his neighbour Nimai, and the testimony of the defence witnesses, this Court is of the considered view that the benefit of doubt goes to the appellant and as a result, he is acquitted of all charges.

12. The present appeal is allowed and the impugned judgment as well as order on sentence are set aside.

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

14. A copy of this judgment be communicated to the Trial Court as well as the Jail Superintendent concerned.