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

Judgment reserved on: 29.05.2018

% Judgment delivered on: 02.07.2018

\+ **CRL.A. 474/2018**

STATE (GNCT OF DELHI) ..... Appellant

Through: Mr. Rajat Katyal, Additional Public Prosecutor for the State with SI Sunil Kumar, PS – Govind Puri.

versus

SAMAY CHAND ..... Respondent

Through: Mr. Haneef Mohammad and Mohammad Mustafa, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE P.S. TEJI

J U D G M E N T

VIPIN SANGHI, J.

1. Upon grant of leave, the State preferred the present appeal against the judgment dated 09.06.2016 delivered by the learned Additional Sessions Judge -01, South East District, Saket Courts, New Delhi in Sessions Case No.79/2013 titled as *State vs. Samay Chand*, arising out of FIR No.19/2013 registered under Section 363/323/342/377 IPC at Police Station Govind Puri, Delhi, whereby the accused/respondent was acquitted from the charges leveled against him.

2. The facts in brief are that on 11.01.2013 at 2.48 hours, an information was received by the police about a quarrel at house no.330-B Block, Pocket-4, Navjeewan Camp, Govindpuri which was recorded vide DD No.46B (Mark-A). The said DD was marked to SI Ramakant (PW-13) for inquiry who reached at the spot and met the complainant. The complainant gave her statement that on that day at about 12 noon, her son 'S' aged 6 years was playing with another boy 'I' (also mentioned as 'M' in the impugned judgment) aged about 5 years on the roof, and after some time both of the boys were not found there. Searches were made to trace them and announcements were made through loudspeakers from Mosque, but they could not be found. At about 2 p.m., son of the complainant came weeping and told that they were playing on the roof when uncle Samay Chand– the accused, who was residing at the backside, came and allured them on the pretext of moving boxes and took them to his house where they were confined in a room. Then the accused removed the pants of the boys and also opened his pant to do wrong act with them. Accused tried to insert his penis into the anus of the son of the complainant, upon which they both started weeping. Accused tied a cloth (chunni) on the mouth of the complainant's son 'S' to keep him mum and also gave beatings on his hands by a stick. After hearing the announcement on loudspeaker, the accused let them go. On coming to know about the incident, people went to the house of the accused, upon which he tried to flee, but was caught and was given beatings. The IO met both the children who were found frightened and did not say anything. On the basis of the statement of the complainant (Ex. PW-1/A), FIR was registered.

3. Accused was arrested on the same day at 5:10 PM vide Ex. PW-1/B and the case property i.e the stick and cloth (chunni) were taken into possession vide Ex. PW-1/D and Ex. PW-1/E respectively. Accused was sent to the hospital for medical examination. The site plan was prepared at the instance of the complainant vide Ex. PW-13/B. Both the children were also medically examined –first on 11.01.2013 at 11:45 PM vide Ex. PW-8/A and Ex. PW-8/B, and thereafter on 12.01.2013 at 1 AM vide Ex. PW-7/A and Ex.PW-7/B. Statements of the children were got recorded under Section 164 Cr.P.C on 29.01.2013 vide Ex. PW-4/B and Ex. PW-4/D.

4. Victim 'S' in his statement under section 164 CrPC (Ex. PW-4/D) states that he and victim 'I' were playing on the terrace. The accused came to the terrace and and asked them for help in moving boxes and told them that he would give them 10 rupees for the same. He took him and 'I' downstairs to his room and shut the room. He made them watch TV and bolted the door. He tied the hands and legs of both the victims. Thereafter, the accused removed his pant and removed the pyjama of 'S'. Accused got oil and applied it on his anus. He then stated that he does not remember what the accused did to him, and 'I' will narrate whatever happened thereafter. The learned MM, recorded *"After this, the witness has started looking here and there in the chamber and he states that he does not want to say anything."*

5. Victim 'I', in his statement under section 164 CrPC (Ex. PW-4/B) stated that on that day, he was playing with 'S' and Lucky. The accused came and told them that if they remove boxes from his room, he will give them 10 rupees each. He and 'S' moved the boxes and went to his room.

They were playing at his house. Accused locked the door and tied the hands and legs of 'S', and tied a cloth on the eyes and hands of 'I'. 'I' took a knife and cut the cloth wrapped over his eyes. The accused had tied the eyes of victim 'S'. He saw that the accused put oil on the anus of victim 'S' and he put his penis in the anus of 'S'. The accused tried to remove his pant too, but was unsuccessful. 'S' was wearing a pyjama.

6. After completion of investigation, charge sheet was filed under Section 363/323/342/377 IPC and Sections 4 and 8 of the POCSO Act.

7. Charge for the offence punishable under Sections 4 & 8 of the POCSO Act and Section 363 IPC was framed against the accused to which he pleaded not guilty.

8. To prove its case, the prosecution examined 13 witnesses, including the complainant– mother of victim 'S' (PW1), the two victim children ('S'- PW2 & 'I'- PW3), PW-4 the learned Metropolitan Magistrate who recorded the statements under Section 164 Cr.P.C., PW5 and PW6 (fathers of the victim children) and the two doctors (PW7 & PW8).

9. In his testimony, the child victim 'S' (PW2)– who was seven years old, deposed that he and 'I' were playing at the terrace. Accused Samay Chand asked them to help him to fetch the boxes and he would give them Rs.10/-. 'I' asked PW2 to do the same. Accordingly, they accompanied the accused who took them inside the room. Accused removed the pant of PW2 and applied oil. The accused also tried removing the pant of 'I', but he started weeping so the accused left him. The accused let them go when there was an announcement made from the mosque. On being questioned by

the learned APP, PW2 stated that the accused had bolted the room from inside. After the accused applied oil on his anus, 'S' started crying. At this, the accused had beaten him by a wooden stick and tied his mouth by a piece of cloth. During cross-examination by the defence counsel, PW2 stated that the accused tied his mouth and also the mouth of 'I'. He further stated that neither his eyes, nor the eyes of 'I' were closed by the accused.

10. PW3, the other victim 'I', who was aged 6 years deposed that he and his friend 'S' were playing on the terrace. Thereafter, they both went to the room of the accused to keep the box. Accused tied his hands with a cloth (chunni) and hit on the hands of 'S' with a cane. 'I' untied the cloth by applying force. The accused had inserted his penis into the mouth of 'S'. Thereafter, the accused applied oil around the anus of 'S' by removing his trouser. He and 'S' kicked on the face of the accused and ran away from the spot. They both went to their respective houses. PW3 told the entire incident to his parents. His father called up the police and the police inquired from him about the incident.

11. PW1- mother of PW2-'S' deposed that 'S' aged about 6 years and 'I', son of her neighbor were playing together at the terrace. After sometime, grandmother of 'I' told her that 'I' was not around and asked about 'S', and she saw that 'S' was not there at the place where he was playing. They made efforts to locate them but they could not be traced. They got announcements made from the loudspeaker of the Mosque, after which her son 'S' came home weeping. Her son told that the accused Samay Chand took him and 'I' to his place on the pretext of removing some box and allured them saying that he would pay them Rs.10. The accused

locked them in the room. Her son further told that the accused removed his pyjama and applied oil on his anus and tried to insert his penis in the anus of her son. When her son wept and objected, the accused had beaten him with a danda. When he was crying, the accused tied his mouth with a piece of cloth and after the announcement made from the mosque, accused let them free. Public persons gathered there and had beaten the accused. A call was made to the police and police recorded her statement Ex.PW1/A.

12. After completion of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded in which he claimed that both the victims used to play on the terrace and used to make noise and disturb his old ailing mother. He objected to the complainant, and requested not to disturb her. On his objection, parents of the boy came and quarreled with him, threatening him that they will teach him a lesson; and he has been falsely implicated in the present case. He had not examined any defence evidence.

13. The learned Additional Sessions Judge acquitted the accused/ respondent from the charges framed against him, holding that the prosecution failed to establish its case. He has doubted the case of the prosecution since, according to him, certain witnesses were not examined; the version narrated by the parents of the two child victims about the time when they learnt about the incident and when they went to the police station did not match; The statement of the child witness 'S' as recorded under Section 164 Cr.P.C did not match with his statement recorded in Court; the child witness 'I'-PW3 had introduced a new fact about oral penetration with 'S', and that they unshackled themselves by kicking on the face of the

accused. Before the Ld. MM PW-3 had stated that the hands and feet of the victims were tied and his eyes were covered with cloth and he cut the cloth with a knife. He saw the accused insert his penis into the anus of the victim 'S'. The Ld. ASJ observes that 'I'-PW3 is a good story teller. Non-examination of any public witness about the announcement made from the mosque has been taken as a failure on the part of the prosecution. Being aggrieved by the judgment of acquittal, the State has preferred the instant appeal upon grant of leave.

14. Mr. Rajat Katyal, learned APP for the State argued that the impugned judgment suffers from perversity. The learned ASJ erred in determination of all the relevant issues in the case. It is argued that the trial court has failed to notice the corroboration of the statement of the victims found on record in the form of statements of their parents particularly, PW-1 and PW-6; medical evidence brought on record, viz. the MLC of PW-2 'S' PW-7/A dated 12.01.2013 and; the recovery of the stick and dupatta used by the accused – as per the statements of the two child victims. The two victims have categorically deposed against the appellant during their testimony and have even elaborated upon the role of the accused qua each of them. It is further argued that the statements of the victims recorded under Section 164 Cr.P.C. further corroborate the case of the prosecution.

15. On the other hand, learned counsel for the respondent/ accused argued that there are material contradictions in the testimony of the victims and their parents. The accused has been falsely implicated in the present case as he objected to the playing and creating noise by the victims. The victims are the children of tender age and possibility of they being tutored cannot be

ruled out. It is submitted that there is no error in the impugned judgment of acquittal, calling for interference by this Court.

16. Ld. Counsel for the respondent submits that there are discrepancies in the statements of the victims under section 164 CrPC and their depositions. He further submits that in Ex. PW-4/B, which is the statement of victim 'I' (PW-3) recorded under section 164 CrPC, he stated that the two children were playing with another child 'Lucky'. However, 'Lucky' was never examined. He submits that as per the version of the victims, the eyes of victim 'I' were tied with a cloth and, thus, it is highly unlikely that he could have seen what happened in the room. He further submits that according to PW-1, it was the grandmother of PW-3 who notified her about the children going missing. However, the grandmother of PW-3 has not been examined. He submits that the whole story is concocted only to falsely implicate the accused. He submits that PW-13 SI Ramakant, who was the IO of the case, in his cross examination admits the fact that he did not record any statement, which is contrary to the case of the prosecution. Ld. Counsel further submits that DD No. 46-B, vide which the information was received at the police station, only records a quarrel having taken place, which probablises the fact that the accused has been falsely implicated.

17. We have heard the learned counsels and have carefully perused the impugned judgment and the records of the case. We have considered the submissions of learned counsel and the evidences brought on record.

18. We are conscious of the principles applicable to examination of a judgment of acquittal in appeal. The Supreme Court has applied the said

principles and elaborated further on the same from time to time. In ***Ghurey Lal v. State of U.P.***, (2008) 10 SCC 450, after analyzing the earlier decisions, the Supreme Court in para 70 crystallised the principles that the High Court should follow if it is going to overrule, or otherwise disturb the Trial Court's acquittal. Para 70 of the said judgment reads:

> *"70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*
>
> *1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*
>
> *A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:*
>
> *(i) The trial court's conclusion with regard to the facts is palpably wrong;*
>
> *(ii) The trial court's decision was based on an erroneous view of law;*
>
> *(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";*
>
> *(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
>
> *(v) The trial court's judgment was manifestly unjust and unreasonable;*
>
> *(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

19. We proceed to examine the impugned judgment in the light of the aforesaid principles laid down by the Supreme Court.

20. To begin with, we find that there is a fundamental and serious lacuna in the approach of the learned ASJ in the matter of appreciation and evaluation of the testimonies of child witnesses. The learned ASJ has, in a mechanical, casual and cavalier manner dealt with the case. He observes:

"6. ... ... It is well settled principle of law that the evidence of a child witness must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. The court has to assess as to whether the statement of the victim before the court is the voluntary expression of the victim and that he was not under the influence of others."

21. No doubt, prudence demands that the evidence of a child witness must be evaluated carefully and with greater circumspect, because the child witness is susceptible to be swayed by what others tell him and he is an easy prey to tutoring. However, that does not mean that the Court has to begin with the presumption that the child witness is untruthful and unreliable. Unfortunately, that is the approach displayed by the Ld. ASJ in the present case. Despite the fact that there were several other pieces of evidence which

corroborated the core of the testimonies of the two child witnesses 'S' –PW2 and 'I'-PW3, the Ld. ASJ has completely ignored the said corroborative evidence.

22. At this stage, we may refer to our recent decision in ***State of NCT of Delhi Vs. Dharmender***, Crl. Appeal No.1184/2017 decided on 23.03.2018. The said appeal had been preferred by the State to assail the acquittal of the accused by the learned ASJ. Incidentally, it was the same learned ASJ who rendered the decision in ***Dharmender*** (supra) and in that case as well the testimony of child witness had been disregarded by the learned ASJ by adopting the same fundamentally erroneous approach of ignoring the corroborative evidence led by the prosecution. While disapproving the approach adopted by the learned ASJ, we observed as follows:

> *"44. The manner in which the learned ASJ has proceeded to deal with the matter exhibits a completely casual, cavalier and insensitive approach on his part. Offences relating to sexual abuse of children are amongst most heinous crimes. It is for this reason that the Parliament has framed the special law, namely, the POCSO Act, since the provisions contained in the IPC were found to be not adequate enough to deal with such like offences. The gravity of such offence, as perceived by the society and the law makers can be gauged from the severity of the punishment prescribed in the POCSO Act. Considering the fact that the POCSO Act relates to child victim, the law also raises presumptions under Sections 29 and 30 of the said Act against the accused – which demonstrates a distinct shift from the fundamental criminal jurisprudence that every person accused of an offence is assumed to be innocent unless proven guilty. We are dismayed that the learned ASJ has shown complete lack of sensitivity in dealing with the present case. On this aspect we are not yet finished and our following*

discussion will further demonstrate the reasons for our aforesaid conclusion.

45. The learned ASJ evaluated the testimony of the victim PW-11 in the background that "a child witness is susceptible to tutoring and his evidence must be evaluated more carefully and with greater circumspection and that evidence of a child witness must find adequate corroboration before it is relied upon". On this aspect, we consider it appropriate to notice some of the decisions of the Supreme Court.

46. We may first notice ***Rameshwar v. State of Rajasthan****, 1952 (3) SCR 377. In this case, the appellant was charged with committing rape of an eight year old girl. He was convicted by the Assistant Sessions Judge and sentenced. In appeal before the Sessions Judge, the learned Sessions Judge held that the evidence was sufficient for "moral conviction" but fell short of "legal proof" because, in his opinion, the law requires corroboration of the story of the prosecution in such cases as a matter of precaution, and the corroborative evidence – in so far as it sought to connect the appellant with the crime, was legally insufficient though morally enough. Accordingly, the accused was acquitted giving him the benefit of the doubt. The State appealed to the High Court and the High Court held that the law requires corroboration in such cases, but held that the statements made by the prosecutrix to her mother was legally admissible as corroboration, and considering that to be sufficient, the High Court set aside the acquittal and restored the conviction and sentence of the appellant.*

47. The Supreme Court, inter alia, considered the question whether the law requires corroboration of the statement of the victim/ prosecutrix in such like cases. The Supreme Court observed that the Evidence Act does not prescribe that the statement of the victim/ prosecutrix in the case of rape requires corroboration. The Supreme Court referred to Section 114 (b) of the Evidence Act – which states that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars, and Section 133 of the

Evidence Act – which states that an accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The Supreme Court observed that a woman, who has been raped, is not an accomplice. She is the victim of an outrage. If she consented, there is no offence unless she is a married woman, in which case questions of adultery may arise. However, adultery presupposes consent and so is not on the same footing as rape. The Supreme Court, inter alia, observed as follows in its decision:

> *"... ... In the case of a girl who is below the age of consent, her consent will not matter so far as the offence of rape is concerned, but if she consented her testimony will naturally be as suspect as that of an accomplice. So also in the case of unnatural offences.* ***But in all these cases a large volume of case law has grown up which treats the evidence of the complainant somewhat along the same lines as accomplice evidence though often for widely differing reasons and the position now reached is that the rule about corroboration has hardened into one of law. But it is important to under- stand exactly what the rule is and what the expression "hardened into a rule of law" means****." (emphasis supplied)*

48. Vivian Bose, J, who authored the judgment, observed that in this branch of law, the legal position is the same in India as in England. He relied upon ***The King v. Baskerville****, (1916) 2 K.B. 658.* ***Baskerville*** *(supra) was a case where the accused was convicted of committing acts of gross indecency with the two boys. The two boys were accomplices because they were freely consenting parties and there was no use of force. In* ***Baskerville*** *(supra), the learned Chie Justice observed:*

> *"****There is no doubt that the uncorroborated evidence of an accomplice is admissible in***

law..... But it has long been a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices, and, in the discretion of the judge, to advise them not to convict upon such evidence; but the judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence*.....*

This rule of practice has become virtually equivalent to a rule of law, and since the Court of Criminal Appeal came into operation this Court has held that, in the absence of such a warning by the judge, the conviction must be quashed..... If after the proper caution by the judge the jury nevertheless convict the prisoner, this Court will not quash the conviction merely upon the ground that the accomplice's testimony was uncorroborated." (emphasis supplied)

49. Justice Bose held that the law was exactly the same in India. He held:

"That, in my opinion, is exactly the law in India so far as accomplices are concerned and it is certainly not any higher in the case of sexual offences. The only clarification necessary for purposes of this country is ***where this class of offence is sometimes tried by a judge without the aid of a jury. In these cases it is necessary that the judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case.*** *I am of opinion that the learned High Court*

Judges were wrong in thinking that they could not, as a matter of law, convict without corroboration.

There is a class of cases which considers that though corroboration should ordinarily be required in the case of a grown-up woman it is unnecessary in the case of a child of tender years. Bishram. v. Emperor, A.I.R. 1944 Nag. 363 is typical of that point of view. On the other hand, the Privy Council has said in Mohamed Sugal Esa v. The King A.I.R. 1946 P.C. 3 at 5 that as a matter of prudence a conviction should not ordinarily be based on the uncorroborated evidence of a child witness. In my opinion, ***the true rule is that in every case of this type the rule about the advisability of corroboration should be present to the mind of the judge. In a jury case he must tell the jury of it and in a non-jury case he must show that it is present to his mind by indicating that in his judgment. But he should also point out that corroboration can be dispensed with if, in the particular circumstances of the case before him, either the jury, or, when there is no jury, he himself, is satisfied that it is safe to do so. The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, and in jury cases, must find place in the charge, before a conviction without corroboration can be sustained. The tender years of the child, coupled with other circumstances appearing in the case, such, for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be***

> ***present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand****". (emphasis supplied)*

50. Thus, as early as in 1952, the Supreme Court made the legal position clear that, firstly, a woman subjected to rape is not an accomplice and, secondly, the rule of corroboration is not a mandatory rule, but a rule of prudence and caution, which could be dispensed with in the facts and circumstances of a given case. All that is required is that it should be present to the mind of the Judge, that it is advisable to look for corroboration of the statement of the prosecutrix/ victim. The Judge may dispense with the need for corroboration if he thinks that it is safe to do so. The tender years of the child, coupled with other circumstances appearing in the case, for example, his demeanour and unlikelihood of tutoring and so forth may render corroboration unnecessary, but that is a question of fact in every case.

51. The Supreme Court then considered the nature and extent of corroboration required when it is not considered safe to dispense with it. Once again, the Supreme Court referred to ***Baskerville*** *(supra). The Supreme Court held that it is not independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the complainant (who is treated like an accomplice) is true, and that it is reasonably safe to act upon it. The independent evidence must not only make it safe to believe that the crime was committed, but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. However, this does not mean that the corroboration as to identity must*

extend to all the circumstances necessary to identify the accused with the offence. All that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witnesses story that the accused was the one, who committed the offence.

52. The Supreme Court proceeded to observe that the corroboration must come from independent sources, and that the testimony of one accomplice would not be sufficient to corroborate that of another. There may, however, be circumstances which may make it safe to dispense with the necessity of corroboration, and in such cases a conviction based on the statement of the victim/ prosecutrix, without corroboration, would not be illegal. The Supreme Court also observed that corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, "many crimes which are usually committed between accomplices in secret, such as incest, offences with females" (or unnatural offences) "could never be brought to justice".

53. The Supreme Court then proceeded to consider whether a previous statement of an accomplice/ complainant/ prosecutrix/ victim could be accepted as corroboration? In this regard, the Supreme Court drew the attention to illustration (j) to Section 8 of the Evidence Act, which reads - "The question is whether A was ravished. The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made are relevant."

54. The Supreme Court also referred to Section 157 of the Evidence Act, which reads:

> *"In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any*

authority legally competent to investigate the fact, may be proved."

55. The Supreme Court concluded that where the conditions prescribed in the said section are fulfilled, the statement of the prosecutrix/ victim would be legally admissible in India as corroboration.

56. The Supreme Court then considered the question whether the mother of the victim/ prosecutrix could be regarded as an "independent" witness. The Supreme Court held that there was no legal bar to exclude the mother of the prosecutrix/ victim from being considered as an independent witness, merely on the ground of their relationship. It observed:

> *"… … Independent merely means independent of sources which are likely to be tainted. In the absence of enmity against the accused there is no reason why she should implicate him falsely. It is true the accused suggested that they were on bad terms but that has not been believed by anyone".*

57. The Supreme Court held that the testimony of the mother provided independent corroboration connecting the accused with the crime in the facts of the case, and considering the conduct of the victim/ prosecutrix and her mother from start to finish, the Supreme Court held that no corroboration beyond the statement of the child to her mother was necessary.

*58. In **Prakash & Anr. v. State of Madhya Pradesh**, (1992) 4 SCC 225, the fourteen year old minor was the brother of the deceased. The minor Ajay Singh was stated as an eye witness to the crime. The Trial Court discarded the evidence of the minor Ajay Singh, being influenced by the fact that he was of tender of age and that he was likely to be tutored. The Supreme Court did not accept this reasoning of the Trial Court. The Supreme Court observed:*

> *"11. … … In discarding the evidence of the brother of the deceased namely Ajay Singh the*

> *learned Additional Sessions Judge was influenced by the tender age of Ajay (about 14 years) and was of the view that he was likely to be tutored. We do not think that a boy of about 14 years of age cannot give a proper account of the murder of his brother if he has an occasion to witness the same and* ***simply because the witness was a boy of 14 years it will not be proper to assume that he is likely to be tutored.*** *The High Court has given very convincing reasons for accepting the evidence of Ajay Singh as an eyewitness of the murderous act and we do not find any infirmity in the finding made by the High Court ... ...". (emphasis supplied)*

59. Thus, it cannot be assumed that a witness who is a minor is tutored. There should be evidence/ material on record to conclude that a child witness has been tutored. At the same time, the Court has to be satisfied that there is no likelihood of the child witness being tutored.

60. In ***Ratansinh Dalsukhbhai Nayak v. State of Gujarat****, (2004) 1 SCC 64, the child was an eye witness to the murder of the two deceased persons. Relying on the testimony of the child witness, the Trial Court convicted the accused under Section 302 IPC and, accordingly, sentenced them. Before the Supreme Court, the appellant placed reliance on* ***Arbind Singh v. State of Bihar****, 1995 (4) SCC 416 to contend that where the Court finds traces of tutoring, corroboration is a must before the evidence of the child witness could be acted upon. The Supreme Court referred to* ***Dattu Ramrao Sakhare v. State of Maharashtra****, (1997) 5 SCC 341, wherein it had been held:*

> *"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 even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to*

understand the questions and able to give rational answers thereof. ***The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.*** *" (emphasis supplied)*

61. The Supreme Court went on to observe:

"The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. ***The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous.*** *This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that* ***if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness****". (emphasis supplied)*

62. While dealing with the merits of the case before it, the Supreme Court held that there was no reason for false implication by the child witness. The Trial Court on careful

examination was satisfied about the child's capacity to understand and to give rational answers. That being the position, it cannot be said that the child witness had no maturity to understand the import of the questions put to her, or to give rational answers. The child witness had been cross-examined at length and she stood her ground. The Supreme Court held that the evidence of the child witness was credible, which revealed her truthful approach and that her evidence had the ring of the truth. Consequently, the Supreme Court accepted the said evidence of the child witness and dismissed the appeal.

63. In ***State of Madhya Pradesh v. Ramesh & Anr.****, 2011 (3) Scale 619, the daughter of the deceased, aged about eight years, was a witness to the crime. On the basis of the statement of the child witness, the two accused were convicted under Section 302 IPC. Accused no.2 was convicted with the aid of Section 120B IPC. The High Court, however, reversed the said judgment and acquitted the accused on the premise that the eye witness PW-1 was a child witness and was, therefore, disbelieved. The Supreme Court reversed the decision of the High Court and restored the conviction of the accused. On the aspect of admissibility of the evidence of a child witness, the Supreme Court referred to several earlier decisions. The relevant passage from this decision of the Supreme Court being instructed, is reproduced herein below:*

> *"6. In Rameshwar S/o Kalyan Singh v. The State of Rajasthan, AIR 1952 SC 54, this Court examined the provisions of Section 5 of Indian Oaths Act, 1873 and Section 118 of Evidence Act, 1872 and held that every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. There is always competency in fact unless the Court considers otherwise.*

The Court further held as under:

> *".....It is desirable that Judges and magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. But whether the Magistrate or Judge really was of that opinion can, I think, be gathered from the circumstances when there is no formal certificate...."*

7. In Mangoo & Anr. v. State of Madhya Pradesh, AIR 1995 SC 959, this Court while dealing with the evidence of a child witness observed that ***there was always scope to tutor the child, however, it cannot alone be a ground to come to the conclusion that the child witness must have been tutored. The Court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring****.*

8. In Panchhi & Ors. v. State of U.P., AIR 1998 SC 2726, this Court while placing reliance upon a large number of its earlier judgments observed that ***the testimony of a child witness must find adequate corroboration before it is relied on. However, it is more a rule of practical wisdom than of law. It cannot be held that "the evidence of a child witness would always stand irretrievably stigmatized. It is not the law that if a***

witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring*."*

9. In Nivrutti Pandurang Kokate & Ors. v. State of Maharashtra, AIR 2008 SC 1460, this Court dealing with the child witness has observed as under: "The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

10. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross examination whether the defence lawyer could bring anything to indicate that the child could not differentiate

between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness must be able to understand the sanctity of giving evidence on a oath and the import of the questions that were being put to him. (Vide: Himmat Sukhadeo Wahurwagh & Ors. v. State of Maharashtra, AIR 2009 SC 2292).

11. In State of U.P. v. Krishna Master & Ors., AIR 2010 SC 3071, this Court held that ***there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the Court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the Court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature****.*

12. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from untutored part, in case such

remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. (Vide: Gagan Kanojia & Anr. v. State of Punjab, (2006) 13 SCC 516)". (emphasis supplied)

64. The Supreme Court, in view of the aforesaid legal position, summarized the law in the following words:

"13. In view of the above, the law on the issue can be summarized to the effect that ***the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition****". (emphasis supplied)*

65. Thus, the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the Court may rely upon his evidence. Evaluation of the evidence of a child witness requires more care and greater circumspection, because he is susceptible to tutoring. Only in case there is evidence on record to show that the child has been tutored, the Court may reject his statement partly or fully. An inference as to whether the child has been tutored or not, can be drawn from the content of his deposition."

23. In the aforesaid light, we proceed further to appreciate the evidence led by the prosecution. We may, firstly, notice the demeanor of the victim 'S' – which is noticed by the learned MM as well while recording his statement under Section 164Cr.P.C. The victim 'S' was so embarrassed, that he did not want to narrate the incident himself, and he avoided to do so. He told the learned MM that 'I' would narrate it, as he did not want to talk about it. He avoided eye-contact with the learned MM, as noticed by her. The deposition of PW-2 shows that he continued to suffer the shame and embarrassment even when his statement was recorded in Court, which was about six months after the occurrence had taken place. He, therefore, did not narrate the incident with as much detail, as PW-3 did. The testimony of PW-1 the mother of 'S' indicates that 'S' confided in his mother and told her the incident as it happened upon his return to his home, which she narrated before the police while recording her statement under Section 161 Cr.P.C. (Ex.PW-1/A) and in her testimony before the Court.

24. Unfortunately the Ld. ASJ has not displayed the sensitivity expected of him in noticing the aforesaid aspects, despite the fact that the Ld. MM specifically noticed and recorded the demeanor of the victim 'S' at the time when his statement under Section 164 Cr.P.C. was recorded. He also failed to notice that the child victim 'S' continued to suffer embarrassment and shame even when he recorded his statement before the Court and that, in any event, from the statement of the two child witnesses, it clearly emerged that the accused did remove the pant of the child victim 'S', and applied oil on his anus.

25. The trial court did not find the testimonies of the victims and their parents reliable. The Ld. ASJ discredits PW1 by observing that she entertained "new fact" that the accused assured the children that he will give them money and she also introduced the grandmother of 'I' in the incident and stated that the grandmother of 'I' informed that 'I' was not found on the terrace.

26. In our view, the Ld. ASJ while making these observations has ignored the evidence brought on record. Firstly, in statement under Section 161 Cr.P.C. Ex.P1/A, the complainant PW1 stated that 'S' had informed her when he came back weeping, that the accused-Samay Chand took the victims 'S' and 'I' "*behla phuslakar"* to his house. Thus, the allurement given by the accused to the two child victims was disclosed by PW1 in her initial statement. She may not have stated, in specific terms, that the accused offered Rs.10 to the children for helping to move his boxes but, in our view, it is neither here nor there. Pertinently, the two child witnesses recorded their statement under Section 164 Cr.P.C. sometime after the incident, wherein they consistently narrated that the accused had offered them Rs.10 for helping him move his boxes. Merely because PW1 may have elaborated and clearly disclosed about the allurement given by the accused to the two child victims while recording her statement in Court- which she did not do while recording her statement under Section 161 Cr.P.C. (and generally recorded the said fact), the same does not tantamount to an improvement in her statement by PW1, which could justify disbelieving her statement.

27. It is well settled that the initial statement recorded under Section 161 Cr.P.C./ Rukka, or even the FIR, are not meant to be encyclopedia of the entire incident. It the crux of the allegations made in the statement which are material and deserve attention. There was no question of doubting the statement of PW1 merely because, while recording her statement before the Court, she elaborated and disclosed about the grandmother of 'I' informing her that 'I' – who was playing with 'S', was not to be seen. She stated in her statement Ex.PW1/A that the two children were playing together at about 12 noon and after some time both were found missing and she as well as "*Manish ke gharwale*" – which would include the other relatives of the child 'I' , started searching for the children. Unfortunately, it appears to us that the approach of the Ld. ASJ has been to focus and pay undue attention to completely irrelevant and inconsequential aspects. He has failed to separate the wheat from the chaff.

28. The testimony of both the victims of the incident is quite natural and trustworthy. They have narrated the incident which had taken place with them in plain and simple language.

29. We do not agree with the submission of the accused that non examination of the child named Lucky and grandmother of 'I' is fatal to the case of the prosecution, as neither of them were witnesses to the crime. Pertinently, PW-6, who is the father of 'I', in his testimony states that on 11.01.2013 when he came back home for lunch from his workplace, his neighbour (PW-1) told him that the children were not present at home for the last one hour, and they both tried to locate their respective wards, and also got announcements made from the mosque. Thereafter, the children

came back weeping. This is so stated by PW-1 as well. The fact that they were weeping also shows that they were subjected to some trauma. This shows that the two families were looking for the children together and non examination of the child Lucky, or grandmother of 'I'; thus, has no bearing on the case of the prosecution. The fact that the two children/ child victims were playing on the terrace is not even disputed by the defence. In fact, the defence of the accused was that the children while playing on the terrace were creating ruckus which was disturbing his aged mother, and that is what led to a dispute between him and the parents of the two children. Thus, there was no necessity for the prosecution to examine Lucky. It is not obligatory for the prosecution to examine each and every witness even though he/she may not materially contribute to the case of the prosecution. Both Lucky, and the grandmother of 'I', were inconsequential witnesses in the matter of proving the case of the prosecution.

30. The Ld. ASJ has also doubted the case of the prosecution on the premise that while PW5- the father of 'S', had deposed that after he returned to his house at 5.00PM, he, his son, the child 'I' and his father PW6 went to the police station and the accused was also in the police station at that time, whereas, PW6 had not deposed that he went to the police station with the two children and PW5. Once again, we find the approach of the Ld. ASJ to be extremely shallow in the matter of appreciation of evidence. Pertinently, in the cross examination of PW5, it was not suggested to him that when he returned to his home at 5.00 PM, he, his son 'S', the other child 'I' and his father PW6 did not go to the police station and did not find the accused-Samay Chand sitting in the police station. In these circumstances, in our

view there was no occasion for the Ld. ASJ to doubt the testimony of PW5, or the testimony of PW6. Pertinently, PW6 was present at home when the children returned after the incident. Therefore, he has narrated the facts and circumstances witnessed by him from that stage onwards. He may not have stated about the visit to the police station later in the evening, but his silence on the said aspects cannot be used to discredit PW5. His silence cannot be taken to mean that he contradicts the statement of PW-5.

31. We may observe that so far as the child 'I' is concerned, it appears that he may have imagined some of the facts when he claimed that his eyes were covered and he used a knife to cut himself free. When his statement was recorded before the Court, he also claimed oral penetration by the accused in the mouth of 'S', and that he and 'S' kicked on the face of the accused and ran away from the spot. Even if these aspects are ignored, the crux of the statement of 'I' at the two stages, namely – one recorded under Section 164 Cr.P.C., and the one recorded before the Court are consistent. It is well settled that the entire statement of the witness need not be rejected if on a perusal of the same, it appears to the Court that some part of it is reliable on account of its corroboration.

32. On going through the statements made by PW-2 and PW-3 in court, as well as their statements made otherwise, which we have taken note of hereinabove, we find that they all corroborate each other on the following points:

a. The two victims 'S' and 'I' were playing on the terrace;

b. That the accused took both the boys to his room on the pretext of moving boxes (peti) and alluring hem by offering Rs.10 to them;

c. The boys accompanied him and went to his room. The accused bolted the door of the room from inside;

d. The accused removed the pants of victim 'S';

e. The accused applied oil on the anus of victim 'S';

f. The accused tied the children with a cloth (chunni), recovered from his house;

g. Both the children started crying;

h. The accused tied chunni on their mouth & gave beating to 'S' by using a stick on his hands;

i. Both the victims fled away from the house of the accused after the announcement from the mosque;

j. Thereafter, both the victims went to their respective houses crying.

33. These material allegations have been consistently deposed by the two child victims and the same have duly been corroborated by PW-1, mother of victim 'S' and PW6 – father of 'I'. Similar deposition has been made by PW5-Vinod (father of victim 'S'). The MLC of victim 'S' also corroborates his statement that the accused hit him on his hands with a stick – which too was recovered from the place of occurrence.

34. 'S' and 'I', the child victims were examined by the doctor on 12.01.2013 at 1 AM vide Ex. PW 7/A and Ex. PW-7/B respectively and the same were proved by PW-7 Dr. Munish Sharma. The doctor on examination of 'S' observed the following injuries:

> *"(i). A grazed abrasion, reddish in color of size 5×0.2cm is present over dorsal surface of left hand.*
>
> *(ii). A reddish contusion, obliquely placed of size 10×0.5cm is present over lateral aspect of middle one third of Right thigh.*
>
> *Father denied the consent for local examination of Master (name withheld)."*

35. Although the parents of the victims had declined the local examination of the victims, the injuries found on the body of victim 'S' corroborate the testimonies of the two victims, wherein they both stated that the accused had hit 'S' with a cane and tied the children with a cloth.

36. In the instant case, the testimony of both the victims (PW2 and PW3) have been corroborated by their statements recorded under Section 164 Cr.P.C. duly proved by the then learned Magistrate (PW4) vide Ex.PW4/B and Ex.PW4/D. They are also corroborated by the statements of PW-1 and PW-5. They are corroborated by the MLC of victim 'S' and by the recoveries of dupatta and stick from the room of the accused. In our view, the testimony of victims (PW2 and PW3) alone were sufficient to convict the respondent/ accused. The evidence available on record further corroborates the testimonies of the victims, and the prosecution has been able to establish its case beyond reasonable doubt.

37. Ld. Counsel for the accused submits that the I.O. of the case, PW-13, in his cross examination on behalf of the accused has admitted that he was not the author of the complaint and the same was made by a neighbor of the complainant, who was not examined as a witness. We do not agree with this contention of the accused. Pertinently, PW-13 mentions that the complaint was written by a neighbor on the spot itself, and no suggestion was put to PW-13 that the facts stated in the complaint were false or concocted later on. Thus, we are of the opinion that this circumstance does not come to the aid of the accused.

38. The accused has taken the plea that he was falsely implicated, because of the resistance he showed to the victims playing on his terrace. This plea of the accused does not find favour with us. Nothing has come on record to point at any previous quarrels between the families on this issue. The accused has led no evidence to substantiate the same. Apart from his *ipse dixit*, there is no basis to accept the said defence. We may observe that the accused never mentioned this fact to the I.O. of the case during the investigation, and it was stated only in Court when the accused cross-examined the prosecution witnesses under Section 313 Cr.P.C. All the witnesses have deposed against this defence of the accused during trial.

39. Learned counsel for the respondent has placed reliance on a judgment of Division Bench of this Court in ***State (Govt. of NCT of Delhi) Vs. Mullah Muzib***, Crl. L.P.62/2015 decided on 09.02.2015. In the said decision, this Court took note of ***Hamza Vs. Muhammedkutty,*** (2013) 11 SCC 150, which relied upon another decision in ***Panchhi Vs. State of U.P.,*** (1998) 7 SCC 177, wherein the Supreme Court has observed that as a rule of

practical wisdom, the evidence of child witness must find adequate corroboration. In our view, this decision does not come to the aid of the accused since there is ample corroboration of the statements of the child witnesses in the present case.

40. Section 29 of the POCSO Act states that where a person is prosecuted for committing or abetting or attenuating to commit any offence under sections 3,5,7 and section 9 of said 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*". Section 30 of the POCSO Act raises a statutory presumption of culpable mental state of the offender. The same reads:

> "*30. Presumption of culpable mental state.-*
>
> *1. In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*
>
> *2. For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.*
>
> *Explanation.- In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.*"

41. There is sufficient material on record to raise the presumption under Section 29 of the said Act in the face of the statements of the victims 'S' and

'I' recorded before the learned MM under Section 164 Cr.P.C.; the statement of the mother of the victim 'S' (PW-1) recorded before the police under Section 161 Cr.P.C. (Ex. PW-1/A); the testimony of PW-1 before the Court, the statements of the victims PW-2 and PW-3 before the Court; the testimony of PW5 and PW-6- the fathers of PW-2 and PW3 respectively before the Court; the MLC of 'S' (Ex.PW-7/A); the seizure memo of the stick (Ex.PW-1/D) and the seizure memo of Chunni (Dupatta) (Ex.PW-1/E). Thus, it was for the accused to rebut the presumption by producing proof before the Court that he was not guilty of the offence of aggravated sexual assault. The accused has, however, miserably failed to rebut the said statutory presumption which the Special Court was bound to raise against the accused.

42. The evidence brought on record does not, however, establish beyond all reasonable doubt the commission of the offence of penetrative sexual assault. Though, PW-3 – the victim 'I' did state in his statement recorded under Section 164 Cr.P.C. that the accused committed the offence of penetrative sexual assailt by inserting his penis into the anus of the victim S, the victim 'S' (PW-2) did not say so either in his statement recorded under Section 164 Cr.P.C., or in his statement before the Court. PW-1 the mother of the victim 'S' was the first in whom the victim 'S' confided. PW-1 recorded her statement under Section 161 Cr.P.C. contemporaneously. In the said statement, she stated that the accused attempted to insert his penis into the anus of the victim 'S'. Even before the Court, while deposing as PW-1, she repeated the same statement. Moreover, the MLC of the victim 'S' also does not corroborate the charge of penetrative sexual assault, since

there was no injury found on the anus of the victim 'S'. It is also not supported by the MLC of the accused, since he was not found to have suffered injuries on his private part, which could have been caused during anal intercourse with the child aged 6 years. However, the act of applying oil on the anus of the victim 'S' brings the offence under Section 7 of the POCSO Act. Section 7 of the POCSO Act reads as follows:

> *"7. Sexual assault.- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."*

43. Considering the fact that both the victims 'S' and 'I' were only 6 and 5 years of age respectively, the offence qualifies as a case of aggravated sexual assault as defined in Section 9(m) of the POCSO Act. From the evidence brought on record, the offence of aggravated sexual assault defined in Section 9 read with Section 7 of the POCSO Act clearly appears to be made out beyond all reasonable doubt.

44. The respondent accused is clearly guilty of the offence under Section 363 IPC, since he enticed the two minor victims aged 6 and 5 years out of the keeping of the lawful guardian of the said minors without the consent of the guardians of the said minors. It has come in evidence that the accused asked the minors to help him to move his boxes and lured them by offering Rs.10. He took them in and bolted them inside before committing the heinous crime. It was not his defence that he had the consent of the parents/ elders/ guardians of the two minor children.

45. In view of the aforesaid discussion, we set aside the impugned judgment and hold the respondent/accused guilty of having committed the offence under Section 363 IPC and under Section 9 read with Section 7 of the POCSO Act, and convict him for the said offences.

46. The appeal is allowed accordingly.

(VIPIN SANGHI)
JUDGE

(P.S. TEJI)
JUDGE

JULY 02, 2018

HIGH COURT OF DELHI
सत्यमेव जयते