* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+ Crl.A. No. 93/2019 and Crl.M(Bail) 168/2019

Judgment reserved on : 21.01.2020
Date of decision : 25.02.2020

MANOJ TYAGI @ MONU .....Appellant
Through: Mr.Krishan Kumar, Advocate
versus

THE STATE (GOVT. of NCT, DELHI) ..... Respondent
Through: Mr. Sanjeev Sabharwal, APP for State with SI Vikrant, PS Geeta Colony.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant Manoj Tyagi @ Monu vide the present appeal assails the impugned judgment dated 25.07.2018 and the impugned order on sentence dated 27.07.2018 of the learned ASJ-01, Judge, Special Court POCSO, KKD, Delhi vide which the appellant in relation to the charges framed against him qua the alleged commission of an offence punishable under Section 10 of the POCSO Act, 2012 with an alternative charge of the commission of the offence punishable under Section 367 of the Indian Penal Code, 1860 was held guilty and convicted for the offence punishable under Section 367 of the Indian Penal Code, 1860 and Section 10 of the POCSO Act, 2012 and was sentenced to undergo the minimum Rigorous Imprisonment for a period of five years for the offence

punishable under Section10 of the POCSO Act, 2012 and to pay a fine of Rs.3,000/- and in case of non-payment of the fine, to further undergo Simple Imprisonment for a period of 15 days in default with the appellant having also been sentenced to undergo minimum Rigorous Imprisonment for a period of five years for the offence punishable under Section 367 of the Indian Penal Code, 1860 and to pay a fine of Rs.3,000/- and in case of non-payment of the fine, to further undergo Simple Imprisonment for a period of 15 days in default with all the sentences having been directed to run concurrently.

2. The DLSA was directed vide the impugned order on sentence dated 27.07.2018 to pay compensation to the tune of Rs.50,000/- under Rule 7 (2) of the POCSO Rules, 2012 r/w Section 33 (8) of the POCSO through funds maintained under the Victim Compensation Scheme for mental torture and agony suffered by the victim due to the offence committed by the accused.

3. Along with the appeal was Crl.M.A.1839/2019 seeking condonation of 86 days delay, which application was allowed vide order dated 28.01.2019.

4. Notice of the appeal and the accompanying application Crl.M.B.168/2019 seeking suspension of sentence during the pendency of the appeal was accepted on behalf of the State. The TCR was requisitioned and nominal roll was also called for from the Superintendent Jail, Delhi. Vide order dated 17.10.2019, it was considered appropriate that the appeal is heard finally. Production warrants were thus issued to the Superintendent Jail, Delhi for

production of the appellant. The TCR having been requisitioned and received, submissions were made on behalf of either side on 21.01.2020. Written submissions were also submitted on behalf of the appellant.

5. The charges framed against the appellant on 19.05.2018 were to the effect that on 14.11.2014 at around 9.50 p.m. at house No.1123/35, Multani Mohalla behind Satsang Bhawan, Geeta Colony, the appellant had allegedly kidnapped the victim K, aged 10 years in order that he may subject him to unnatural lust or knowing it to be likely that he would be so subjected to unnatural lust and had thereby committed an offence punishable under Section 367 of the Indian Penal Code, 1860 with the appellant having also been charged of having at that time, date, place forcibly put off the trouser of the victim and also removed his trouser and then grappled with the victim with sexual intent, who was aged 10 years at the time of the incident and of thus having committed an offence punishable under Section 10 of the POCSO Act, to which the charge of allegations, the appellant herein is indicated to have pleaded not guilty and claimed trial on 19.05.2018.

6. As per the FIR in the instant case which was lodged on 15.11.2014 at 2:20 am on the complaint received by the Duty Officer vide DD No.40A, SI Sunil with Constable Om Pal No.1970 East reached the house at H.No.91/47B, 9 Block, Geeta Colony, Delhi where the complainant R meet the police personnel and gave his statement Ex.PW4/A vide which he stated that at about 9:45 pm on 14.11.2014 when he was present at his house, his son K aged 10

years whilst playing came to him and asked for some money to buy something (chij) and so he gave his child Rs.5 which he took to the grocery shop in front of the lane and after about half an hour, the child K came back crying and told him that just as he left the grocery shop with a toffee then the accused i.e. the appellant herein caught hold of his hand and took the child K inside his house and made the child hold the object through which he urinated,- in his hand and started sticking to the child and when the child started crying, he the accused i.e. the appellant herein made the child wear his clothes and left him outside and the child then reached home and told his father everything, on which, R, the father of the child K took K to the house of the accused/ appellant herein and caught hold of him and at that time, he was intoxicated. Mr. R stated through his statement that the accused i.e. the appellant herein had molested his child with bad intent and that R then handed over the accused i.e. the appellant herein to the police.

7. The investigation conducted by SI Sunil on the spot as detailed in the Rukka Ex.PW8/B, minor child K also corroborated the aspect of his having been molested by the accused i.e. the appellant herein and also identified the appellant as being the person who had sexually assaulted him whereupon, the minor child was taken to SDN Hospital for medical examination and the FIR was got registered under Section 8 of the POCSO Act, 2012.

8. Ex.PW 5/A, the Delhi Police Control Room Form-1 on the record indicates the receipt of a call by the PCR at 00.01.02 second from the mother of the child on 15.11.2014 when she stated that her

son K, aged 10 years had been taken away by Monu s/o Sumer Tyagi (i.e. the appellant herein) to his home and that he shut the gate and when the child made a noise, people collected and he ran away. The minor child K was produced before the learned Municipal Magistrate-01 on 15.11.2014 by the Investigating Officer SI Sunil for the recording of the statement of the minor child K under Section 164 of the Cr.PC, 1973 and the statement of the minor child K, who was aged 10 years was recorded without oath after the learned MM-01 ascertained the feasibility of recording the statement of the said minor child and after having satisfied herself that the victim was not under any coercion or force and would make his statement voluntarily.

9. In his statement under Section 164 of the Cr.PC, 1973 dated 15.11.2014, the minor child stated that the day before at 9 pm, he had taken money from his father to buy something from the shop and at that time, the person living in his lane i.e. the appellant herein caught hold of his hand and picked him up and forcefully took him inside his house and put down the pant of the child as well as his own pant and caught hold of the child very tightly and stuck his body with that of the child and then the child started crying and on which, the accused i.e. the appellant herein made the child wear his pant and left him, on which, the child ran away from there and went home and told his mother the whole incident and then his mother went to the house of the accused i.e. the appellant herein and there was a quarrel and after sometime, his father also reached the spot and thereafter the accused

i.e. the appellant herein ran away from the spot. He further stated that the police had been called by his mother to the spot.

10. On examination on 24.02.2016 as PW-1, the victim i.e. K stated that his age was 12 years on his statement recorded without oath he stated as under:

> *"While I was studying in 5th standard, some days before Diwali my father came home after doing his job. I took money from my father for taking chocolate and went to a shop situated in our lane. One Monu/Manu uncle wo is residing in a house in front of that shop was standing outside his house. He called me and asked me to bring milk for him. Thereafter he dragged me inside his house. He caught my hand and hugged me tightly and misbehaved with me. I relieved myself and ran towards my house. I narrated the entire incident to my mother. My mother took me to the house of Mannu uncle. My mother gave 2-3 slaps to Monu uncle. The shopkeeper aunti from whom I had purchased chocolate came there and she told my mother that Monu uncle had already purchased milk from her shop on that day. My mother called police. Police officials came there and took Monu uncle with them.*
>
> *After registration of case, once I came to Court and gave Statement before the Judge aunti.*
>
> *...*
>
> *...*
>
> *I can identify the accused if shown to me. At this stage, accused is taken out from the screened room and shown to the witness through video camera. Witness correctly identified the accused as Monu uncle and states that he is the same person who misbehaved with him.*
>
> The learned APP for the State thereafter sought time to put certain leading questions to the witness and which prayer was allowed and thereafter the witness as follows:
>
> *Mannu/Monu uncle had tried to remove my pant/ trouser but I resisted the same and started weeping. I then managed to escape from his clutches. It is incorrect that Monu uncle*

removed his pant and the pant worn by him after dragging me inside his house. Monu uncle had removed my trouser to the level of knees when I managed to pull it up forcefully. It is incorrect that after removing his clothes and taking off my pant, Monu uncle gave his private part into my hand and caught my private part in his hand and thereafter hugged me tightly (chiptachiptikarnelage). It is incorrect that I told my father and the police that accused Monu misbehaved with me in this manner. At this stage statement of the victim recorded u/s 161 Cr.P.C. mark X is read over to him from portion A to A who denies having given any such statement to the police."

11. Through his statement on oath during the cross-examination before the Court as PW-1, the minor child K in his deposition dated 24.2.2016 stated that whilst he was studying in the standard V, some days before Diwali his father had come home after his job and he, the child K, had taken money from his father for taking chocolate and went to a shop situated in the lane and at that time the petitioner named Monu @ Manoj uncle who was residing in front of the shop was standing outside his house and called the child K and asked him to bring the milk whereafter the accused, i.e., the appellant herein dragged him inside his house and caught hold of the hand of the child K and hugged him tightly and misbehaved with him. The child K further stated that he relieved himself and ran towards his house. The child on the date of deposition when he was examined by the Trial Court i.e., 24.2.2016 stated that he was in standard VI at that time and that he was aged 12 years. He further stated that he narrated the entire incident to his mother and his mother came to the house of Manoj uncle, i.e., the accused, i.e., the appellant herein and gave 2 or

3 slaps to the accused, i.e., the appellant herein, and the shopkeeper aunty from whom the child had purchased the chocolate came there and she told his mother that Monu uncle had already purchased milk from her shop on that day and then his mother called the police and the police officials came there and took the accused, i.e., the appellant herein with him. The minor child K further stated that after the registration of the case, once he had come to the Court and had given his statement bearing his signatures which he identified. He stated that the EX.PW-1/A was the statement that he had made before the Judge aunty under Section 164 of the Cr.P.C., 1973, dated 15.11.2014. The minor child K further stated that he could identifythe accused if shown to him and the accused i.e., the appellant herein is indicated to have been taken out from the video conferencing screened room and shown to the witness i.e., child K through the video camera and the minor child correctly identified the accused as being Monu uncle whom he said was the same person who had misbehaved with him, i.e, the minor child K.

12. The Additional Public Prosecutor for the State sought to put leading questions to the witness which was allowed and in response to the queries put to the child by the Additional Public Prosecutor for the State, the child K stated that Monu uncle tried to remove his pant but he had resisted the same and had started weeping and stated that he had managed to escape from the clutches of the accused, i.e., the appellant herein. The child further denied that Monu uncle i.e, accused, i.e., the appellant herein, had removed his pant and the pant worn by him after dragging him inside his house. The child further

stated that Monu uncle i.e.. the accused, i.e., the appellant herein, removed his trousers to the level of his knees when the child Kanaged to pull it up forcefully. The child K denied that after removing his clothes and taking off his pant, the accused, i.e., the appellant herein, gave his private part into the hand of the child K and caught the child K's private part in his hand and thereafter hugged him tightly (chipta chipti karne lage). The child K denied that he told his father and the police that the accused Monu, i.e., the appellant herein, had misbehaved with him in this manner and was thus apprised of his statement under Section 161 of the Cr.P.C. which was read over to the child K which he denied having made.

13. On being cross-examined by the learned counsel for the accused, i.e., the appellant herein, the child K stated that his father works in a garment factory and leaves for work about 10:00 a.m. and returns back at about 7:00 p.m. and sometimes his father also comes early and after giving him some money to purchase chocolate his father had left home and was somewhere in the street. The child further stated that he had narrated the incident first to his mother only and lateron his father was also apprised of the same. The child K stated that he told his mother that the accused, i.e., the appellant herein, i.e., Monu uncle had asked him to bring milk for him from the nearby shop and on that pretext he had called him and had caught hold the hand of the minor child in front of his house and took him inside the house. The child K further stated that there was no person at the house of Monu uncle at that time. However after the incident he had narrated the same to his mother and that his mother came to

the house of the accused, i.e., the appellant herein, and some other persons had also gathered there. The child K further stated that the police did not make any enquiry from those persons and had recorded his statement in the street and apart from the statement of the child K there was no other statement recorded at that time by the police. The child K further stated that on the day when his statement was recorded by the Judge aunty his father had come along with him and stated that the accused, i.e., the appellant herein had also come on that day. The child K further stated that on that day he told that the police had accompanied them. The child K further denied that he had given the statement to the Judge aunty as tutoredby the police uncle. The child further stated that the house of the accused, i.e., the appellant herein was situated at a distance of 3-4 houses from his house and he had purchased the chocolate from the shop situated near the house of the accused, i.e.,the appellant herein and that the accused, i.e., the appellant herein, had dragged him inside his house and at the time he did not shout ashe could not visualize the intentions of the accused,i.e., the appellant herein. The child K further denied that nothing of such a kind had happened or that the accused did not commit any wrong with him or that the accused, i.e., appellant herein had been falsely implicated due to some past quarrel between his father and the accused, i.e., the appellant herein. The child K further denied that his father in connivance with the police had falsely implicated the accused, i.e., the appellant herein.

14. PW-2, Ms. S, i.e. the mother of the child K in her examination-in-chief stated that she had four children, i.e., two daughters and two

sons and that the child K, i.e., the victim was her elder son and stated in her deposition recorded on 1.4.2016 that about two years back though she could not remember the exact date when her child K was about 10 years of age and was studying in 4th standard, the child K returned home during night hours after he had gone to purchase some household article in the lane and started weeping and on being asked the child K told her that the accused Mannu/Monu, i.e., the appellant herein, present in the Court had called the child K to his house and after taking off his pant and the pant of the victim child, the accused, i.e., the appellant herein, made the victim i.e., the child K to hold his penis and thereafter the accused made the victim child K lay on the bed and tried to do anal intercourse with the child and on this after pushing the accused, the victim child K had returned back home. The witness S further stated that the victim child K had told her that the accused, i.e., the appellant herein was under the influence of liquor at that time and that she went to the house of the accused, i.e., the appellant herein, whichwas locked from inside. PW-2 S further stated that she knocked at the door and when the accused, i.e., the appellant herein opened the same, she slapped him and then informed the police at 100 number and the police reached at the spot and apprehended the accused and thereafter the police had taken the victim and her husband along with them.

15. During her cross-examination, *inter alia,* the witness S deposed that the police had not made inquiries from the neighbours/public persons who had gathered outside the house of the accused when the police had come to the spot after 11.p.m.. The

witness S further stated that the police officials had made enquiries from her but no signatures of hers were obtained on any paper and that she could not state whether the statement of hers was recorded and she further stated that only inquiries were made by the police. The witness S admitted that a quarrel had taken place between her husband and the accused, i.e., the appellant herein about 4-5 years back but denied that the accused, i.e., the appellant herein had been falsely implicated in this case due to enmity.

16. PW-4 R, the father of the minor child testified to the effect that on 15.11.2014 at about 9:30-9:45 p.m. when he returned home from his job and was standing in the lane outside his house and he wanted to have some eatable (chij) he had given him Rs.5/- and the child had left for the grocery shop in their lane after taking Rs.5/- from him and after about 30 minutes, the child K came weeping and went inside and told to his wife that the accused Manoj, i.e., the appellant herein, present in the Court, who lived in their neighbourhood tried to do unnatural sex with the victim child K after taking off the clothes of the victim child K and that his wife told him about this and made a call to the police on which the police came to the spot and he along with the police had gone to the house of accused and the accused was apprehended from his house. On being put a leading query, the witness R stated that the day of the incident was 14.11.2014 and the FIR was registered on 15.11.2014.

17. This witness R on being cross-examined by the counsel for the accused, i.e., the appellant herein, denied that the police had obtained his signatures on any blank papers and denied that a quarrel had

taken place between him and the accused, i.e., the appellant herein some days prior to the date of the incident. The witness R further denied that the accused, i.e., the appellant herein had been falsely implicated in this case due to the enmity. The witness R stated that the police did not make any inquiry from the public persons in his presence.

18. The witness PW-5 SI Rakesh Kumar No. 2797-D, posted at Central Police Control Room, Police Headquarters, Delhi on 14.11.2014, testified to have received a call at 11:31 p.m.regarding the rape with a minor. The witness PW-5 further stated that he recorded the same and sent the PCR van No. Romeo 29 at 11:34 p.m. at the spot and testified to the effect that he had filled the PCR form EX.PW-5/A as per which the contents thereof were to the effect:

> *23:27:28 Dispatch 14-Nov-2014 23:31:36 Extn.No.102*
>
> *CPCRDD No. 14 Nov.141020640*
>
> *Mohit Verma Record(ii) Phone No. _____*
>
> *Residential Address: jhuggi Geeta Colony*
>
> *Incident Information : 9 YRS KE BACHHE KE SATH 40 YRS KE ADMI NE RAPE KIYA HAI*

However it is mentioned in the new situation found time setup it is recorded as:

> *" Received from MPV: 131=15/11/2014 00:01:02 = LADY S W/O R INKA LADKA K AGE 10 YEARS KO MANU S/O SUMER TYAGI APANE GHAR LE GAYA JAISE HI GATE BAND KIYA LADKE NE SHOR*

KARDIYA PUBLIC KI GHERING HO GAI AUR MANU GHAR SE BHAG GAYA MOKA SHO WITH STAFF 15/11/2014 00:01:11 C/ROOM INFORMED 15/11/2014 00505= RAPE KOI NAHI"

19. PW-6 ASI Ranvir Singh, testified to the effect that he was on duty in the Control Room at Chanel no. 102 on the intervening night of 14-15.11.2014 and that on that day at 23.27 hours he received a call that at a Jhuggi at Multani Mohalla, Geeta Colony, *9 saal ke bachhe ke sath ek admi ne rape kiya hai*.", and that he filled the PCR form-1 and passed on the information to Romeo net. The witness had brought the certified copy of the form-1 which is EX.PW-6/A as attested by the ACP concerned.

" Received from MPV: 131=15/11/2014 00:01:02 = LADY S W/O R INKA LADKA M AGE 10 YEARS KO MANUS/O SUMER TYAGI APANE GHAR LE GAYA JAISE HI GATE BAND KIYA LADKE NE SHOR KARDIYA PUBLIC KI GHERING HO GAI AUR MANU GHAR SE BHAG GAYA MOKA SHO WITH STAFF 15/11/2014 00:01:11 C/ROOM INFORMED 15/11/2014 00505= RAPE KOI NAHI HUWA"

20. The witness Constable Ompal examined as PW-7 and PW-8 SI Sunil Kumar, the Investigating Officer,in their testimonies corroborated the prosecution version in *toto* and denied that the accused i.e., the appellant herein had been falsely implicated in the instant case.

21. Both the witnesses PW-7 and PW-8 testified to the effect that the complainant R, i.e., the father of the child, had produced the

accused before them and that the Investigating Officer SI Sunil Kumar had made inquiries from the child and his mother. SI Sunil Kumar testified that he had made inquiries from the child and his mother. However PW-7 and PW-8 both stated that no inquiries were made by the Investigating Officer from the public persons who had gathered outside the house of the accused, i.e., the appellant herein with it having been explained by the Investigating Officer that he made no enquiries from the public persons as they were agitating. *Inter alia,* the Investigating Officer has testified to the effect that he had got the minor child examined at the SDN Hospital and had also produced the child before the CWC on the morning of 15.11.2014 and the CWC had given the custody of the child to his father on the same day and that he had also produced the child before the Court for the recording of his statement under Section 164 Cr.P.C., 1973,. *Inter alia*, the Investigating Officer testified to the effect that having verified the age proof of the victim from the Principal of RSKV School, Jheel Khuranja, he obtained the age certificate dated 3.12.2014 as per which the date of birth of the victim child is 6.4.2004, which certificate was admitted by the accused, i.e., the appellant herein, in his statement under Section 294 Cr.P.C., 1973 and the same is EX.PW-8/F.

22. During the course of the trial, the learned counsel for the accused qua the proceedings under Section 294 of the Cr.p.C. admitted the recording of the statement of the victim under Section 164 Cr.P.C. by the learned MM concerned; of the recording of the

formal FIR and the DD No. 40A by the DO ASI Rampal Singh as well as the age proof documents of the victim.

23. However, through his statement under Section 313 of the Cr.P.C., the accused i.e., the appellant herein denied all incriminating evidence led against him and stated that he had been falsely implicated in the case by the parents of the victim due to previous enmity and stated that the child had given a false and tutored statement at the instance of his parents.

24. As regards the query put to the accused/appellant herein vide question No.10 which reads to the effect:

> " *Q.10 It has further come in evidence against you that on the basis of certificate Ex.PW8/F issued by Principal, Rajkiya Sarvodaya Bal Vidyalaya, (admitted by accused) victim was born on 06.04.2004 and was 10 years 7 months old at the time of incident. What you have to say?*

It was responded to by the accused, i.e., the appellant herein as under:

A. It is a matter of record.

ANALYSIS

25. *Inter alia,* the accused stated that PW-4 i.e., the father of the child had previous enmity with him and he picked up quarrels with him and used to abuse his late parents and the PW-4, i.e., R, the father of the victim threatened him to falsely implicate him in a case.

26. On a consideration of the entire available record and a perusal of the impugned judgment of the learned Trial Court and the contentions raised on behalf of the accused, i.e., appellant herein and the submissions made on behalf of the State, it is apparent that the

statement that the minor child K has made during his examination under Section 164 Cr.P.C. and his statement made in Court corroborate the factum that the minor child had been forcibly taken away by the accused, i.e., the appellant herein to his house on the night of 14.11.2014 after 9 p.m. when the child had gone to buy some eatable from the shop in the lane near his house and that the accused, i.e., the appellant herein at that stage had taken of his pant and that of the child and had brought the pant of the child to the level of his knees and that when the child K managed to pull up his trousers forcibly as he started weeping, the child K managed to escape from the clutches of the accused, i.e., the appellant herein. There is variation, however, in the statements under Section 164 Cr.P.C. of the minor child in relation to the accused, i.e., the appellant herein having stuck his body against that of the child.

27. As laid down by the Division Bench of this Court in ***Court on its own Motion V. State***: Crl.Ref. No. 2/2016 a verdict dated 4.8.2018 vide paragraphs 82 to 84 which read to the effect:

> *"82. Some children and young people may disclose when asked or after participating in an intervention or education program (Shackel, 2009). Others may initially deny that they have been abused if asked directly, or say that they forget, only to disclose later. Children and young people may disclose, only to retract what they have said later; however, this is relatively uncommon. The child or young person might say he or she made a mistake, lied, or that the abuse actually happened to another child. In cases with a higher likelihood of actual abuse, recantations are low (4-9%; London et al., 2005). However, the stress of disclosing*

and receiving potentially negative responses from caregivers may lead some children to recant in an attempt to alleviate the stress (Hershkowitz, Lanes, & Lamb, 2007).3

83. A recent qualitative study of disclosure among 60 young men and women in the United Kingdom observed eight forms of disclosure: direct, indirect verbal, partial verbal, accidental direct/verbal, prompted, non-verbal/behavioural, retracted and assisted. Partial disclosures were characterised by minimisation of the abuse, disclosing abuse of another person or disclosing other forms of abuse such as physical assault. Prompted disclosures were made in response to a direct inquiry about abuse while assisted disclosures involved a young person disclosing to another young person with the help of a friend. The authors note that children use a variety of techniques to disclose including direct or ambiguous verbal statements and non-verbal disclosure in the form of writing letters, reenacting abuse type situations or drawing pictures for adults. Physical or bodily signs of child sexual abuse can include stomach aches, encopresis, enuresis, adverse reactions to yoghurt or milk (due to resemblance to semen), or soreness in the genitals (Jensen, 2005). Emotional signs can encompass fear, anxiety, and sadness, acting out without immediate cause, mood swings and reluctance to visit the perpetrator. Behavioural signs include sexualised playing with dolls, sexual experimentation, excessive masturbation, or drawing sexual acts (Finkelhor, 1994; Jensen, 2005).

84. Where children are concerned, the disclosure normally would tend to be a process, rather than a single incident or episode. It would take multiple interviews for an investigator or an interviewer to even establish trust in the

mind of the child. Unfortunately, we have been unable to evolve any guidelines with regard to investigation and prosecution of cases of child sexual abuse which are the subject matter of POCSO Act, 2012, though the Central Government has suggested the following in the POCSO Model Guidelines :

"The dynamics of child sexual abuse are such that often, children rarely disclose sexual abuse immediately after the event. Moreover, disclosure tends to be a process rather than a single episode and is often initiated following a physical complaint or a change in behaviour. In such a situation, when the child finally discloses abuse, and a report is filed under the POCSO Act, 2012 more information will have to be gathered so that the child"s statement may be recorded.

Information so obtained will become part of the evidence.

However, given the experience that the child has gone through, he is likely to be mentally traumatised and possibly physically affected by the abuse. Very often, law enforcement officers interview children with adult interrogation techniques and without an understanding of child language or child development. This compromises the quality of evidence gathered from the child, and consequently, the quality of the investigation and trial that are based on this evidence.

The interviewing of such a child to gather evidence thus demands an understanding of a range of topics, such as the process of disclosure and child-centred developmentally-sensitive interviewing methods, including language and concept formation. A child

development expert may therefore have to be involved in the management of this process. The need for a professional with specialized training is identified because interviewing young children in the scope of an investigation is a skill that requires knowledge of child development, an understanding of the psychological impact sexual abuse has on children, and an understanding of police investigative procedures.

Such a person must have knowledge of the dynamics and the consequences of child sexual abuse, an ability to establish rapport with children and adolescents, and a capacity to maintain objectivity in the assessment process. In the case of a child who was disabled/ physically handicapped prior to the abuse, the expert would also need to have specialised knowledge of working with children with that particular type of disability, e.g. visual impairment, etc.",

the dynamics of child sexual abuse create a situation that children rarely disclose sexual abuse immediately after the event and that the set disclosure tends to be a process rather that a single episode and is often initiated following a physical complaint or a change in behavior and as observed vide paragraphs **85 to 90** of the said verdict which read to the effect :

> *85. Mr. Dayan Krishnan, ld. Senior Counsel and amicus curiae has also placed the "Guidelines on Prosecuting Cases of Child Sexual Abuse" issued by the Director of Public Prosecutions, Crown Prosecution Services, in October, 2013 which contains the following guidelines :*

"The statement taking stage

35. Particular care should be given when deciding how to take the victim's statement. A video recorded interview (and subsequent use of the live link in court) is often the most appropriate means but may not always be so. For example, if the abuse of the victim has been filmed and the victim does not want to be videoed as a consequence.

Xxx xxx xxx

38. A victim of child sexual abuse may not give their best and fullest account during their first recorded (ABE) interview or statement. This may be for a variety of reasons: they could have been threatened; they might be fearful for themselves or their family; the offending may have been reported by others and they may be reluctant to cooperate at that stage. They might not have identified themselves as a victim or they could be fearful that the police will not believe their allegations. They may initially distrust the police and could well use the interview to test the credibility of the police.

39. The account given may take a number of interviews, with the child

> *or young person giving their account piecemeal, sometimes saving the 'worst' till last, having satisfied themselves that they can trust the person to whom they are giving their account."*

86. There is no reason why the same practice cannot be followed in India. This leaves the question of how to interpret the multiple statements made by the witness/victim.

87. In para 40 of the above guidelines, the Crown Prosecution Services (CPS), has taken the following view :

> *"40. Carefully thought out patient intervention by the police and other agencies can ultimately disrupt and break the link to the offender(s). A seemingly contradictory initial account is therefore not a reason in itself to disbelieve subsequent accounts given by the victim and these contradictory accounts should instead be seen as at least potentially symptomatic of the abuse."*

88. The law allows the investigating agencies to record multiple statements of the victims. There is no prohibition on recording multiple statements by the police.

89. We may at this stage also advert to the provisions of Section 164 (5)(A) of the Cr.P.C. which mandates

> *that the statement of a victim under Section 354, 354A-D, 376(1) and (2) as well as Section 376A-E or Section 509 of the IPC shall be recorded as soon as the commission of the offence is brought to the notice of the police.*
>
> *90. A seemingly contradictory initial account is not a reason in itself to disbelieve the subsequent accounts by the victims. The multiple statements placed by the investigating agency should be carefully scrutinized by the Trial Courts in order to ensure that complete justice is done.",*

and that thus seemingly contradictory initial accounts are not a reason in itself to disbelieve subsequent accounts by the victim and that the statements that have been made by the victim have to be carefully scrutinized by the Court and it is thus essential to observe that likewise the seemingly contradictory subsequent accounts to a statement made initially by the minor child is not a reason in itself to disbelieve both the initial or the subsequent statement of the child victim.

28. Thus it is apparent that the minor variations in the statements made by the child at different stages of the investigation and the trial does not retract in any manner from the veracity of allegations levelled against the accused, i.e., the appellant herein, in view of corroboration of all circumstances of the incident also through the statement made by the parents of the minor child and it is thus held that there is no infirmity in the impugned judgment dated 25.7.2018 nor there is infirmity in the impugned sentence dated 27.7.2018. This

is so in as much as the minor child through his statement under Section 164 of the Cr.P.C. dated 15.11.2014 also has not stated that the accused, i.e., the appellant herein had given his private part into the hand of the child and has also not stated through his statement during examination by the Court that the accused, i.e., the appellant herein had taken the private part of the child in his hand. The child K through his statement under Section 164 Cr.P.C. however categorically stated that the accused, i.e., the appellant herein had tried to remove his pant/trousers but the child had resisted the same and had escaped from the clutches of the accused, i.e., the appellant herein.

29. The statement under Section 164 of the Cr.P.C. of the minor child dated 15.11.2014 and the statement of the child in his examination before the Court recorded two years after the incident on 24.2.2016 are thus categorical in relation to the factum of a sexual assault having been inflicted on a minor child K by the accused, i.e., the appellant herein. Even though the aspect of the private part of the child having been caught hold by the accused, i.e., the appellant herein and having made the minor child K catch hold of the private part of the accused, i.e., the appellant herein, are not brought forth, nevertheless, as observed herein the act of the accused, i.e., the appellant herein falls within the ambit of sexual assault inflicted in terms of Section 2(i) of the Prevention of Child from the Sexual Offences, 2012 (POCSO) which defines the sexual assault as being:

> *" 2 (i) " Sexual assault" has the same meaning as assigned to it in section 7" ,*

whereby thus in terms of Section 7 of the Prevention of Child from Sexual Offence, Act, 2012, which reads to the effect:

> *"Section 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**."*
> ***(emphasis supplied)***

30. It is brought forth through the statement of the child recorded during the cross-examination on 24.2.2016, that the accused, i.e., the appellant herein, had called him and asked him to bring milk for him and thereafter the accused, i.e., the appellant herein had dragged him inside his house and caught his hand and hugged him tightly and misbehaved with him, the said act of the accused, i.e., the appellant herein as described by the minor child in different forms at different stages apparently falls within the ambit of the " Sexual assault" described under Section 7 of the Prevention of Child from Sexual Offences Act, 2012 already observed herein above, in as much as it cannot be overlooked that the child has repeatedly asserted to the effect that the accused, i.e., the appellant herein, misbehaved with him and that he made him, i.e., the child, take of his trousers upto the level of his knees and had taken of his trousers as well, it is apparent thus in the circumstances that the act of the accused, i.e., the appellant herein had essentially been committed with an intent to

commit the sexual assault on the child described in terms of Section 3 and 5 of the POCSO Act, 2012 and the learned Trial Court has rightly drawn the presumption of the commission of the offence. The factum of the child being aged less than 12 years of age though sought to be refuted during the arguments addressed in the present appeal in view of the date of birth of the minor child as being 6.4.2004 having not been refuted through the admission of the school certificate issued by the Principal of the Rajkiya Sarvodaya Bal Vidyalay, JheelKhuranja, EXPW-8/F on behalf of the accused under Section 294 of the Cr.P.C., the age of the child on the date of the incident i.e., 14.11.2014 as being less than 12 years of age stands established beyond a reasonable doubt.

31. The factum of the commission of the act by the accused, i.e., the appellant herein of forcibly having dragged the minor child K into his house on the night of 14.11.2014 at around 9:30-9:45 p.m. and of having hugged the child tightly and taken of the trousers of the said child upto the level of his knees and taken off his own trousers having been established beyond a reasonable doubt through the statement made by the child K under Section 164 Cr.P.C. on 15.11.2014, the day after the incident as well as through his statement before the Court on being examined almost two years later on 24.2.2016 established the commission of an act of sexual offence in terms of Section 7 read with Section 29 and 30 of the POCSO Act, 2012 which insists the drawing of a presumption against the appellant being in culpable mental state in relation to the commission of the

sexual assault on the minor child in terms of Section 7 of the POCSO Act, 2012.

32. On behalf of the appellant it has been sought to be contended that the act committed by the appellant as brought forth even though the MLC of the minor victim examined at the SDN Hospital does not indicate the sign of any penetration or any injury of external genital of the child and thus indicated the lack of absence of any aggravated sexual assault on the child. Qua the said submissions, it is essential to observe that in terms of Section 9 (m) which provides to the effect:-

> *" Section 9 (m) whoever commits sexual assault on a child below twelve years; or" ,*

whoever commits an offence which falls within the ambit of aggravated sexual assault on the minor child thus the accused, i.e., the appellant herein has rightly been convicted by the learned Trial Court for the commission of an offence punishable under Section 10 of the POCSO Act, 2012 which prescribes the punishment for aggravated sexual assault being imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

33. The contentions sought to be raised on behalf of the appellant that at the most, the accused, i.e., the appellant herein, could have been convicted for an offence under Section 7 of the POCSO Act for which the punishment lay under Section 8 of the POCSO Act, 2012, in as much as it was sought to be contended as adverted to herein above that there was no aggravated assault on the minor child in the

absence of any penetration of the organs of the accused, i.e., the appellant herein, it is essential to observe that the very factum that the Legislature has provided for the definition of aggravated sexual assault to include the commission of sexual assault as prescribed in Section 7 of the POCSO Act, 2012 with a child below the age of 12 years as being an aggravated sexual assault, the reliance placed on behalf of the accused, i.e., the appellant herein, on the verdict of the Hon'ble High Court of Sikkim in ***Deepak Darjee v. The State of Sikkim;***(Crl.A. No. 29 of 2015 a decision dated 18.7.2016) is not in facts *pari materia* with the facts of the instant case in as much as the provisions of Section 9 (m) of the Protection of Children from Sexual Offences Act, 2012 do not appear to be adverted to in the said verdict relied upon on behalf of the appellant.

34. Though the appellant had sought to contend that he has been falsely implicated due to any enmity between the father of the minor child and the accused, i.e., the appellant herein, the same has been categorically refuted by the father of the minor child R and merely because the mother of the minor child had stated there had been an incident of a quarrel several years prior to the date of the incident, with her brother the same does not suffice to exonerate the accused, i.e., the appellant herein of the charges of commission of aggravated sexual assault on the minor child aged less than twelve years, stands established.

35. As regards the contention that had been raised on behalf of the accused, i.e., the appellant herein that the variant testimonies of the minor child set at naught the prosecution version and that the

possibility of the minor child having been tutored by the parents cannot be overlooked, the same cannot be accepted.

36. The available record of the deposition of witnesses during trial inclusive of the statement made by the minor child establishes the commission of the offence punishable under Section 367 of the Indian Penal Code, 1860, also against the appellant in as much as the act of kidnapping of the minor child from the legal guardianship of his father and dragging him into the house of the accused, i.e, the appellant herein, for commission of an aggravated sexual assault on the minor child was undoubtedly done in order to exercise undue sexual assault inflicted on the minor in terms of Section 12 of the POCSO Act, 2012. In the circumstances, the conviction of the appellant in terms of Section 367 of the IPC and Section 10 of the POCSO Act, 2012 is upheld.

37. The conviction of the accused i.e., the appellant herein in terms of Section 10 of the POCSO Act, 2012 describes mandatory imprisonment of not less than 5 years but which may extend to 7 years with an additional mandatory liability of payment of fine.

38. In the circumstances, there is no merit in the appeal and thus cannot be faulted with and thus the appeal by the accused, i.e., the appellant herein against the impugned judgment and the impugned order on sentence, is thus dismissed and thus the appellant shall undergo the sentence imposed vide the impugned order on sentence dated 27.7.2018 which is to the effect:

> *"Convict is sentenced to undergo minimum rigorous imprisonment for a period of 05 years for offence punishable u/s*

10 POCSO Act and is directed to pay fine of Rs. 3,000/-. In case of non payment of fine, he will undergo further 15 days simple imprisonment in default.

Convict is sentenced to undergo minimum rigorous imprisonment for a period of 05 years for offence punishable u/s 367 IPC and is directed to pay fine of Rs. 3,000/-. In case of non payment of fine, he will undergo further 15 days simple imprisonment in default.

Both the above sentences shall run concurrently."

39. However, in terms of the verdict of Supreme Court in ***"Phul Singh Vs. State of Haryana"*** in Criminal Appeal No. 506/1979 decided on 10.09.1979 and directions laid down by us in ***"Sanjay vs. State"2017 III AD (Delhi)24*** dated 20.02.2017 so that the ***"carceral period reforms the convict***" as also reiterated by this Court in ***"Randhir @ Malang vs. State"*** in Crl. A. No.456/2017, ***"Chattu Lal vs. State"*** in Crl.A. No.524/2017, ***"Afzal vs. State (Govt. of NCT of Delhi)"*** in Crl.A. No.996/2016, ***"Billo Vs. State NCT of Delhi***" in Crl. A.378/2017***,"Dinesh Chand Vs. State (Govt. of NCT of Delhi***)" in Crl.A. No.330/2018, ***"Rinku @ Ram Prasad Vs. State***" in CRL.A.865/2019 and ***"Sanjeev Kumar vs. State (NCT of Delhi***)" in Crl.A. No.643/2019, it is essential that the following directives detailed hereunder are given so that the sentence acts as a deterrent and is simultaneously reformative with a prospect of rehabilitation.

40. The concerned Superintendent of the Jail, New Delhi where the appellant shall be incarcerated for the remainder of the term of imprisonment as hereinabove directed shall consider an appropriate programme for the appellant ensuring, if feasible:

- ***appropriate correctional courses through meditational therapy;***

•educational opportunity, vocational training and skill development programme to enable a livelihood option and an occupational status;

• shaping of post release rehabilitation programme for the appellant well in advance before the date of his release to make him self-dependent, ensuring in terms of Chapter 22 clause 22.22 (II) Model Prison Manual 2016, protection of the appellant from getting associated with anti - social groups, agencies of moral hazards (like gambling dens, drinking places and brothels) and with demoralised and deprived persons;

• adequate counselling being provided to the appellant to be sensitized to understand why he is in prison;

• conducting of Psychometric tests to measure the reformation taking place and;

• that the appellant may be allowed to keep contact with his family members as per the Jail rules and in accordance with the Model Prison Manual.

41. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent, Tihar Jail, New Delhi to this Court till the date of release, of the measures being adopted for reformation and rehabilitation of the appellant.

42. The Trial Court Record be returned.

43. Copy of this judgment be supplied to the appellant and be sent to the Superintendent Jail, Delhi for compliance.

ANU MALHOTRA, J.

FEBRUARY 25, 2020/vm/SV