



2026:DHC:5821



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

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Judgment Reserved on: 20.07.2026
Judgment pronounced on: 23.07.2026

+ **CRL.A. 1197/2018**

ASHOK

.....Appellant

Through: Mr. Rohan J. Alva and Mr. Anant
Sanghi, Advocates (DHCLSC).

versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Neeraj, PS Nihal Vihar.
Mr. Harsh Srivastava, Amicus Curiae
with Mr. Fardin Khan, Advocate for
victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.), the sole accused in Sessions Case No. 81 of 2013 on the file of the Special Judge (POCSO), Additional Sessions Judge-07, West District, Tis Hazari Courts, Delhi, assails the judgment dated 23.08.2018 and order on



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sentence dated 25.08.2018, as per which he has been convicted and sentenced for the offences punishable under Section 376, Part-I of Section 506 of the Indian Penal Code, 1860 (IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that around 12:00 p.m. on 29.11.2012 at Prem Singh ka Makaan near the main Ranhola Bus Stand, Opposite Holy Convent Secondary School, New Delhi, the accused criminally intimidated PW2, a minor girl aged seven years, and committed aggravated penetrative sexual assault upon her. Hence, as per the charge-sheet/final report, the accused is alleged to have committed the offences punishable under Section 376(2)(f) IPC and Section 4 of the PoCSO Act.

3. On the basis of Ext. PW1/A FIR/FIS of PW1, given on 30.11.2012, crime no. 251/2012, Nihal Vihar police station, that is, Ext. PW5/A was registered by PW5, Assistant Sub-Inspector. PW9, Women Sub-Inspector, conducted investigation into the



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crime and on completion of the same, filed the charge-sheet/final report alleging commission of the aforementioned offences.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court as per order dated 22.04.2013 framed a Charge under Section 376, Part II of Section 506 IPC and Section 6 of the PoCSO Act, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 9 were examined and Exts. CW1/A, PW1/A-B, PW2/A, PW4/A, PW5/A-B, PW6/A, PW7/A-C, PW8/A-B, PW8/1 and PW9/A-D were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and



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maintained his innocence. He submitted that he has been falsely implicated by PW1, the mother of PW2, in connivance with his landlord (PW3), who had a grudge against him.

7. After questioning the accused under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 CrPC is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89: 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to him.

8. No oral or documentary evidence was adduced on behalf of the accused.

9. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court,



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vide the impugned judgment dated 23.08.2018 and order on sentence dated 25.08.2018, held the accused guilty of the offences punishable under Section 376, Part-I of Section 506 IPC and Section 6 of the PoCSO Act. In the light of Section 42 of the PoCSO Act, no separate sentence has been awarded for the offence punishable under Section 376 IPC. The accused has been sentenced to rigorous imprisonment for a period of 10 years as well as fine of ₹30,000/- and in default of payment of fine, to simple imprisonment for two months for the offence punishable under Section 6 of the PoCSO Act and to rigorous imprisonment for a period of 01 year for the offence punishable under Part-I of Section 506 IPC. Aggrieved, the accused has preferred the present appeal.

10. It was submitted by the learned counsel for the appellant/accused that there are materially different versions of the offence at different stages of the proceedings. In Ext. PW5/A FIS/FIR, the allegation was of penile penetration. However, no



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description of the alleged act was given in Section 164 Cr.P.C. statement of PW2. In her testimony, PW2 initially described the act as finger penetration/digital rape, but during her cross-examination, the version changed to penile penetration. The material inconsistencies strike at the very root of the prosecution case.

10.1. It was also submitted that Ext. CW1/A arrest memo does not corroborate the testimony of the prosecution witnesses regarding arrest. While Ext. CW1/A arrest memo records that the accused was apprehended at about 06:15 p.m. from the Rishal Garden picket, PW1, the mother of PW2, deposed that the accused was arrested from his residence at about 11:00 p.m. PW8, the father of PW2, stated that he himself apprehended the appellant and brought the latter to the police station. This is also inconsistent with the version in Ext. PW5/A FIR, wherein it is alleged that the accused fled from the spot when PW1 confronted her. Further, the prosecution failed to examine material witnesses, namely, the



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halwai and the brother of PW2, who could have thrown light on the alleged incident.

10.2. It was further submitted that although Ext. PW8/A MLC records that the hymen “*appeared to be torn*”, PW8 deposed that it was possible for the hymen not to be torn. PW8 admitted that the observations recorded in the MLC do not constitute a conclusive opinion of sexual assault. Ext. PW8/A medical evidence does not conclusively support the prosecution case.

10.3. The learned counsel for the appellant submitted that the competency of PW2, the child witness, was not assessed by the trial court before recording her testimony, as required under Section 118 of the Indian Evidence Act, 1872. PW2 was approximately seven years of age at the time of her deposition, yet no proper preliminary examination was conducted to ascertain whether she possessed sufficient intelligence and understood the duty to speak the truth.



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10.4. It was lastly submitted that PW2 identified the appellant for the first time during her deposition before the trial court. No Test Identification Parade was conducted, and the dock identification, made for the first time in court, is unreliable. Therefore, it was prayed that the impugned judgment be set aside and that the appellant be given the benefit of doubt. In support of the arguments, reference was made to the dictums in **BH vs. State NCT of Delhi 2026 SCC OnLine Del 2593; Gajender Singh v. State NCT of Delhi 2025 SCC OnLine Del 9196** and **Pradeep v. State of Haryana, (2023) 19 SCC 221**.

11. *Per contra*, the learned Additional Public Prosecutor submitted that the impugned judgment suffers from no infirmity warranting interference by this Court. It was submitted that, given the tender age of PW2, Ext. PW8/AMLC records the hymen as torn and also notes blood spotting on the labia majora, which is indicative of sexual assault and corroborates the testimony of PW2. It was further submitted that Ext. PW1/A FIR/FIS of PW1



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shows that the accused was identified by PW1 soon after the incident. Therefore, it cannot be contended that the accused was identified for the first time before the trial court.

12. The learned counsel appearing for the victim submitted that the appellant had not established any plea of alibi or any other circumstance that could probabalise his innocence. As per Section 313(1)(b) Cr.P.C. statement of the accused, four to five persons were present in the room at the time of his arrest. Despite disputing the prosecution case, the accused has not examined any of the said persons to support his case. Further, the prosecution had examined sufficient witnesses to establish its case and, therefore, no adverse inference ought to be drawn merely because some witnesses were not examined. The learned counsel further submitted that PW2 had consistently identified the appellant before her parents and the Court. Moreover, there was no apparent motive for PW1, the mother of PW2, to falsely implicate the accused in such a serious



offence. It was prayed that the appeal be dismissed and the conviction and sentence imposed by the trial court be upheld.

13. Heard both sides and perused the record.

14. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment calling for an interference by this court.

15. I shall make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW1/A, the FIS/FIR of PW1, the mother of PW2, the victim, recorded on 30.11.2012, reads thus: *“On 29.11.2012 at around 12:00 p.m., I sent my daughter (PW2) to the halwai’s shop to get samosas. My third son, aged 4 years, also went with her. I had given ₹5/- to her (PW2). When a considerable amount of time had passed, and my daughter (PW2) and son had still not returned, I went out to look for them. I reached Pappu Halwai’s shop and enquired with the people nearby, describing the appearance of my children. A person told me that he had seen two*



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children matching their description in the alley adjacent to Pappu Halwai's shop. I walked into the alley, and after going a little further, I saw my daughter (PW2) coming towards me crying. A short distance away, my son was standing there. I scolded my daughter (PW2), asking why she had gone for playing when she had been sent to get samosas. I then returned home with my children. However, my daughter (PW2) continued crying softly for a long time after we got home. I suspected that something was wrong and that something untoward had happened to her. When I questioned my daughter (PW2) about it, she did not say anything at first but later told me that a man put his private part into her private part. (एक आदमी ने अपनी पेशाब करने वाली जगह को मेरी पेशाब करने वाली जगह मई डाली है) At around 05:30 p.m., my husband reached home, and I told him everything. For a long time, my husband and I were pondering whether or not to disclose the matter to anyone, as it was a question of our honour and respect in



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society. However, my husband and I gathered courage and, along with our daughter (PW2), went to Prem Singh's house near Ranhola Bus Stand, opposite Holy Convent Sec. School, New Delhi. On the ground floor in a room, a man was sleeping, whom my daughter (PW2) identified as the man who did the wrong act on her. Upon learning that the man's name was Ashok, I asked him how he had dared to commit such a heinous act on my daughter (PW2). Hearing this, he fled from there. After that, my husband and I went to the police station. Legal action should be taken against that person named Ashok."

16. Ext. PW2/A Section 164 Cr.P.C. statement of PW2, the prosecutrix, seen recorded by the Metropolitan Magistrate on 20.12.2012 reads thus:- On a Sunday, an unknown man (the accused) approached her while she was playing on the road. The man asked her to accompany him to his home. When she refused, he grabbed her, threatened to kill her and throw her away, and forcibly took her to his house. Once inside, he slapped her. When



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she attempted to run away, he locked the gate and told her to stay there. When she again refused, he locked the gate. He undressed her pants and jeans, took off his own pants, and committed a wrong act (*ganda kaam*) with her. He was wearing jeans. He climbed on top of her stomach and continued committing wrong acts against her for approximately two hours. When the man finally released her after about two hours, she broke the door of his gate using a brick and managed to escape. She immediately ran to her own house and narrated the incident to her mother. Her mother had the man arrested, and he is currently in jail. She wants the man who committed wrong acts against her to be punished.

17. PW2 when examined before the trial court, identified the accused. She deposed that an uncle (the accused) took her to his room while she and her brother were eating *samosas*. Once inside the room, the accused removed her pants and inserted his finger into her private part. She began to cry and ran out of the room. She returned to her house and told the incident to her mother



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(PW1), who then called the police. The police made inquiries with her in the presence of her mother (PW1) and then took her to the hospital. Upon further questioning by the prosecutor, PW2 admitted that the accused had put his private part into her private part and had threatened to kill her.

17.1. PW2, in her cross-examination, initially deposed that she had seen the accused for the first time in the court and that the accused had not taken her to his room. She immediately thereafter deposed that she was lying (*aaj mai jhuth bol rahi thi*). On further questioning, PW2 further deposed that it was infact the accused who had taken her to his room. She had not seen the accused again after the incident until she saw him in the court. She was taken to the police station on the night of the incident, accompanied by her mother (PW1) and was taken to the hospital by the police on that same night. The incident occurred on a Sunday.

18. PW1, the mother of PW2, deposed that on 29.11.2012, at about 12:00 noon, she sent her daughter (PW1) along with her



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son to purchase *samosas* from a nearby shop. When PW2 did not return home till about 04:00 p.m., she went out in search of her daughter (PW2). A person in the *gali* informed her that her daughter (PW2) and her son were seen near the shop of Pappu Halwai. She accordingly went towards the said place and found her son in the *gali*, while her daughter (PW2) was also coming in the *gali*, weeping. On enquiry, her daughter (PW2) did not say anything initially. She returned home with both her children. However, her daughter (PW2) continued to cry at home. On further enquiry as to whether anything wrong had happened to her, her daughter (PW2) told her that, “*ek admi ne apni pishab karne wali jagah ko meri pishab karne wali jagah mein dali hai*”. At about 05:00 p.m., she called her husband and informed him of the incident. Thereafter, both of them, along with their daughter (PW2), went to the place where the alleged incident had occurred. A person present inside the room was identified by her daughter (PW2) as the person who had assaulted her. PW1 identified the



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accused before the trial court. She accompanied her daughter (PW2) to the hospital for the medical examination. They led the police to the room of the accused, who was apprehended at about 11:00 p.m. on the same day.

18.1. PW1, in her cross-examination, stated that she is unaware of the room number of the accused. The shop of Pappu Halwai is situated at a walking distance of about 05 to 10 minutes from her house, and Pappu Halwai was known to her. Her daughter (PW2) was taken to the hospital at about 11:30 p.m. on the same day. The room occupied by the accused is situated in two-storeyed premises. The accused used to reside there alone, while about twelve boys resided in the adjacent rooms. Several boys were present in the premises when they went to the room of the accused. The room of the accused is situated at a distance of about 10 to 15 steps from the shop of Pappu Halwai.

19. PW3 deposed that he had given one of the rooms in his house for rent to the accused.



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20. PW8 (he should have been PW9, but wrongly recorded by the trial court as PW8), Dr. Ashoo Gupta, Specialist (Gynae), Sanjay Gandhi Memorial Hospital, Delhi, deposed that Dr. Ankita had worked under him as a Junior Resident during his tenure in the Gynecology Department at Sanjay Gandhi Memorial Hospital, Delhi. He is familiar with the handwriting and signature of Dr. Ankita. He identified the handwriting and signature of Dr. Ankita in Ext. PW8/A MLC No. E-106558 of PW2. The observations recorded in the MLC were written by Dr. Ankita. PW8 was unable to identify the handwriting or signature of Dr. Subhash. However, he admitted that as per the MLC, Dr. Subhash had referred the victim for a gynecological opinion after observing that there was no fresh external injury seen in the medical examination.

20.1. PW8 in his cross-examination, admitted that he had no direct personal knowledge of the case. He admitted that the MLC does not record any injury on the victim (PW2). However, the MLC does note the presence of a slightly old blood stain at the



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labia majora, which is unusual in a seven-year-old child. When asked about the age of the blood stain, PW8 deposed that the MLC indicated the sexual assault occurred on 28.11.2012, while the victim's (PW2) medical examination took place on 30.11.2012 and so, the blood stain could have been two days old, though he could not confirm whether it might have been older than two days. When asked to comment on why the doctor who examined PW2 had recorded in the MLC that the *"hymen appears to be torn"*, PW8 answered that he had no comments on the same. When further asked thus:- *"Since in the MLC, it has been mentioned that the hymen appears to be torn, is there a possibility that it was not torn? Ans:- It could be a possibility. Voltd. It is also mentioned in the MLC that the patient was not allowing the examination"*. When asked if any observation in the MLC indicated sexual assault, PW8 answered that the medical observations regarding the blood stain and the hymen appearing to be torn, when evaluated alongwith the history of sexual assault provided by the victim's mother (PW1),



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were indicative of sexual assault. When asked if the medical findings alone, without taking into account the history provided by the mother (PW1), could establish a case of sexual assault, PW8 answered that it could possibly be a case of sexual assault.

21. The question that arises is whether the aforesaid evidence is sufficient to find the accused guilty of having committed the offences punishable under Part I of Section 506 IPC, Section 376 and Section 6 of the PoCSO Act beyond reasonable doubt. The defence has not disputed the age of PW2 before this Court. Accordingly, the prosecution has successfully established that PW1 was a ‘child’ within the meaning of the PoCSO Act.

22. The prosecution case primarily rests upon the testimony of PW2, PW1 and PW8 as well as on the medical evidence. A careful reading of Ext. PW2/A statement under Section 164 Cr.P.C. and the testimony of PW2 before the trial court shows that she has remained consistent on the core aspect that the



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appellant/accused took her to his room, subjected her to penetrative sexual assault and threatened her. The inconsistencies pointed out by the learned counsel for the accused regarding the exact manner of penetration are not of such magnitude as to demolish the prosecution case. Certain amount of discrepancies or inconsistencies in the testimony of a child witness is natural, particularly when the witness is as young as seven years old and is deposing after a considerable lapse of time, in the case on hand after about two years of the incident. The testimony of PW1 corroborates the immediate disclosure of the incident by PW2 to the former. Moreover, the testimony of PW1 and PW2 has not been discredited in any way.

23. The defence of the accused is that he has been falsely implicated by PW1 in connivance with PW3, his landlord, as the latter bore a grudge against him. However, the accused has never such a case when PW3, his landlord, was examined. Not even a suggestion is seen put to PW3 that the latter harboured a grudge



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against the accused for some reason(s). Hence, in the absence of any plausible explanation or explanation for that matter or materials to discredit the prosecution witnesses, the version put forth by the prosecution remains trustworthy.

24. Ext. PW8/A the MLC of PW2 records that the hymen appeared to be torn and notes the presence of an old blood stain at the labia majora. The absence of external injuries does not negate the occurrence of sexual assault. I have already referred to the testimony of PW8 in detail. The learned counsel for the appellant/accused, referring to the testimony of PW8 wherein he admitted that as the MLC only says that “*hymen appears to be torn*”, there could be a possibility that the hymen was not torn, submitted that this answer of PW8 is yet another aspect to doubt the prosecution case. I am afraid I am unable to agree to this argument because while appreciating the testimony of a witness, the testimony has to be read as a whole and stray sentences are not to be extracted and read out of context. As noticed earlier, PW8



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has also deposed that taking into account all aspects recorded in the MLC, a case of sexual assault is certainly made out.

25. Further, it is well settled that medical evidence is primarily corroborative in nature and cannot override reliable ocular testimony. As held in **Solanki ChimanbhaiUkabhai v. State of Gujarat, AIR 1983 SC 484**, ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence (See also



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Rangnath Shamrao Dhas v. State of Maharashtra, (2009) 4 SCC 33: 2009 KHC 4471).

25.1. As held by the Apex Court in **Ram Swaroop v. State of Rajasthan, 2008 Cr. L.J2259**, when there is a variance between medical evidence and ocular evidence, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only in a given case the Court has to draw adverse inference. Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitness's version to be true. A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those



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injuries or post mortem features which he noticed in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice. Similar view has been expressed in **Mange v. State of Haryana, (1979) 4 SCC349; State of U.P. v. Krishna Gopal AIR 1988 SC 2154; Ram Dev v. State of U.P.(1995) Supp. (1) SCC 547; State of U.P. v. Harban Sahai (1998) 6 SCC 50 and Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606.**

25.2. In the case on hand, the medical evidence is neither inconsistent nor does it rule out all possibilities whatsoever of the incident as spoken to by PW1.



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26. As far as the argument regarding inconsistency in the place or time of arrest is concerned, the same has not affected the case in any manner. It is well settled that defective investigation cannot be made the basis for acquitting the accused if, despite such defects and failures on the part of the investigation team, a case is made out against the accused. (See **State of U.P. v. Hari Mohan, 2000 KHC 1753: (2000) 8 SCC 598**). If the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the Court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt. (See **Ganga Singh v. State of M.P., 2013 KHC 4515: (2013) 7 SCC 278**).

27. Another argument advanced was regarding the non-examination of independent witnesses. Mere non-examination of every witness to the incident cannot result in an adverse inference



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when the evidence actually adduced is cogent, credible and sufficient to establish guilt beyond reasonable doubt. Moreover, evidence has to be weighed and not counted.

28. It was further submitted by the learned defence counsel that the trial court failed to properly assess the competency of PW2 before recording her testimony. PW2, being a child witness, there is every possibility of the witness being tutored. Hence, the testimony of PW2 cannot be relied on for the purpose of proving the prosecution case. In support of this argument, reference was made to the dictum in **Pradeep** (*supra*). Section 118 of the Evidence Act declares every person to be competent to testify unless the Court considers that, by reason of tender years, extreme old age, disease or any other similar cause, such person is incapable of understanding the questions put to him or of giving rational answers. Explanation to Section 118 states that a lunatic is not incompetent to testify, unless he is prevented by his lunacy



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from understanding the questions put to him and giving rational answers to them.

28.1. The competency of a child witness depends on the satisfaction of the trial court as to the child's understanding and ability to depose; non-administration of oath is not fatal; and though courts must remain alive to the possibility of tutoring, there is no bar in law to base conviction solely on the testimony of a child witness who withstands cross-examination. (See **State of Rajasthan v. Chatra, 2025 SCC OnLine SC 566**).

28.2. In **Pradeep** (*supra*), it was not only because the Apex Court found that a proper voir dire had not been conducted by the trial court, but it was also found for reasons recorded therein as why the prosecution case was doubtful.

29. In the case on hand, it is seen from the records that the trial court was satisfied that PW2 was able to give rational answers to the questions put to her and thereafter, her testimony was recorded. Moreover, the defence never seemed to have had a case



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that PW2 was an incompetent witness unable to understand the questions put to her. On the other hand, the defence counsel seems to have conducted a full fledged cross-examination of the witness. Nothing has been brought out in her cross-examination to indicate that she lacked the intellectual capacity to understand the proceedings or was incapable of giving truthful answers. The defence has also no case that sufficient time or opportunity had not been given to properly cross-examine PW2.

30. It was further submitted by the learned defence counsel that the identification of the accused by PW2 is doubtful as she admitted that she had seen the appellant/accused for the first time before the trial court. In the absence of a TIP, the identification cannot safely be relied upon, goes the argument.

31. The testimony of PW1 establishes that immediately after the occurrence, PW2 accompanied her parents to the room where the accused was residing and identified him as the person who had committed the offence. PW1 has consistently deposed



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that, upon being confronted, the accused fled from the spot. Further, the identity of the accused is never seen disputed during the trial. Nothing has been brought on record to suggest that the accused was falsely or incorrectly identified or that PW2 had some reason(s) to falsely implicate him.

32. On a cumulative appreciation of the oral and documentary evidence, this Court finds no reason to disbelieve the testimony of PW2. The findings recorded by the trial court are based on proper appreciation of evidence and do not suffer from any perversity or illegality, warranting an interference by this Court.

33. The appeal *sans* merit is dismissed.

34. Application(s), if any, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 23, 2026

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