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

Reserved on: 16.02.2026
Pronounced on: 16.03.2026

+ **CRL.A. 341/2021**

STATE

.....Appellant

Through: Mr.Aman Usman, APP with SI
Anjali, PS Jafrabad

Versus

FAHIMUDDIN @ FAHIM

.....Respondent

Through: Mohd. Shamikh, Adv. along
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed challenging the order dated 26.09.2019 passed by the learned Additional Sessions Judge-1/Special Judge (POCSO), Shahdara District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Trial Court') in Sessions Case No.632/16, arising out of FIR No.141/13 under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO'), registered at Police Station Jafrabad, acquitting the respondent.

2. It is the case of the prosecution that on 18.05.2013, the victim



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along with her mother, came to the police station and made a complaint against the respondent stating that while the victim is now living with her parents at the maternal grandmother's house, on 17.05.2013 when she was sleeping in her room on the first floor of the house where the alleged incident took place, at about 06:30 AM, the respondent, who is the son of her uncle (father's brother) and lived in the adjacent room, came to her room and sat in between her both legs and touched her private part due to which she woke up. The respondent then fled away by making a gesture to the victim to remain silent. The victim disclosed the entire incident to her mother who brought her to the police station. The victim was medically examined but she refused for her internal medical examination. Her statement under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') (Ex.PW1/B) was recorded on 20.05.2013.

3. On filing of the Charge-Sheet, the following charges were framed against the respondent on 04.02.2015:

"That on 17.05.2013 at about 6.30 AM, at House No, 472, 1st floor, Gali No. 21, Jafrabad, Delhi within the jurisdiction of PS Jafrabad, you touched the private parts of the minor prosecutrix (aged 17 years) d/o Sh. Gyasuddin and thereby committed offence punishable u/s 376 IPC and within my cognizance.

Secondly, on the above said date, time and place, you sexually assaulted the aforesaid minor prosecutrix by touching her private parts and thereby committed offence punishable u/s 4 POCSO Act and within my



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cognizance.”

4. The prosecution, in support of its case, examined 10 witnesses, including the victim as PW-1. Interestingly, the mother of the victim was not examined as a witness.

5. Statement of the respondent under Section 313 of the Cr.P.C. was recorded by the learned Trial Court on 23.02.2018, in which he claimed innocence and set up a defence that he had been falsely implicated by the victim at the instance of her family members to pressurize his family to vacate the premises they were occupying.

6. The respondent also examined Mr.Naimuddin as DW-1. The said witness is the uncle of the victim as also the respondent.

7. The learned Trial Court, considering the evidence led before it, by the impugned order observed that while the offence was alleged to have taken place on the first floor of the building, the victim admitted that there was no construction on the first floor. She also admitted that there was a dispute between her father and the father of the respondent over the house. She admitted that there were 13-14 members staying in the said house and there used to be frequent fights between her family and family of the respondent.

8. The learned Trial Court further observed that though the victim states that she told her mother about the incident on the same day and at the same time, there was a delay in making the complaint to the police, which assumes importance especially in light of the fact that there was a dispute between the families of the victim and the respondent.



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9. The learned Trial Court also relied upon the statement of DW-1, where he states that though he was not a witness to the incident, there were disputes between the families of the victim and the respondent.

10. Based on the above observations, the learned Trial Court concluded that the prosecution has failed to prove the charge against the respondent.

11. Aggrieved of the same, the State has filed the present appeal.

12. In spite of service of notice, none has appeared for the victim.

SUBMISSIONS OF THE LEARNED APP FOR THE STATE

13. The learned APP submits that the learned Trial Court has failed to appreciate that the victim (PW-1) had remained consistent not only in her complaint and the statement recorded under Section 164 of the Cr.P.C., but also in Court. He submits that merely because there was some dispute between the family of the victim and the family of the respondent, it is no ground to discard the testimony of the victim which, in his submission, is sufficient to find the respondent guilty of the charge and to convict him.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT

14. On the other hand, the learned counsel for the respondent submits that the fact of dispute between the families of the victim and the respondent, stands proved, not only from the testimony of DW-1, but also from the testimony of the victim herself.

15. He further submits that the victim, at the time of the alleged offence, was not only sleeping with her mother, but also with her



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father and her brother in the same room. None of them witnessed the alleged incident. He submits that there was also a delay in reporting the incident to the police.

16. He submits that therefore, clearly the respondent was being framed for putting pressure on his family to settle the dispute between the families.

ANALYSIS AND FINDINGS

17. We have considered the submissions made by the learned APP as also by the learned counsel for the respondent. We have also perused the records.

18. In the present case, the entire case of the prosecution is dependent on the statement of the victim (PW-1). Though she states that the incident happened in the house on the first floor, in her cross-examination, she admits that there is no first floor in the building. She also admits to the dispute between her family and the family of the respondent. From her statement, it also becomes evident that there are two rooms in the house, with one being occupied by the family of the respondent and the other by the family of the victim. The family of the victim consists of her parents and her brother. They all were in the same room, however, none noticed the respondent. In fact, though the first complaint of the incident is stated to have been made by the victim to her mother, the mother was not examined.

19. Furthermore, PW-9 who was the police witness who prepared the site plan of the alleged place of occurrence and recorded the statement of the victim, in his cross-examination has stated that the



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said plan was prepared without visiting and inspecting the room. He further contradicts the PW-1 by stating that the house had a ground floor and first floor. He also stated that he could not tell the area of the house and that he did not conduct any investigation regarding the alleged property dispute between the family of the victim and the respondent.

20. It is settled law that though the statement of the victim can be sufficient to prove the charge against the accused, however, such statement must inspire confidence and there should be an absence of circumstances which militate against its veracity. Reference in this regard may be had to the judgments of the Supreme Court in **Krishan Kumar Malik v. State of Haryana**, (2011) 7 SCC 130; and in **Rai Sandeep @ Deepu v. State (NCT of Delhi)**, (2012) 8 SCC 21, wherein the Supreme Court, in the context of basing the conviction solely on the testimony of the alleged victim, observed as under:

“22 [Ed.: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./48/2012 dated 18-8-2012.] . In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case



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of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

21. Applying the above test to the facts of the present case, given the surrounding circumstances and the place where the alleged offence is alleged to have taken place, it cannot be said that the prosecution has been able to make out a case against the respondent beyond all



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reasonable doubt. The benefit of doubt must flow to the respondent.

22. In view of the above, we find no merit in the present appeal. The same is, accordingly, dismissed.

23. The bail bonds of accused are cancelled and his surety is discharged.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

MARCH 16, 2026/ns/ik