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

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*Reserved on: 27.05.2024
Pronounced on: 01.07.2024*

+ **CRL.A. 192/2024 & CRL.M.(BAIL) 380/2024**

PINTU DAS Appellant

Through: Mr. Badal Dwivedi and Ms. Barkha Tiwari, Advocates

versus

STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State along with Mr. Karan Khurana and Mr. Hari Shankar Sharma, Advocates
Mr. Mohit Mathur, Senior Advocate with Mr. Vikram Singh Panwar, Mr. Rajesh Mishra, Mr. Suyash Sinha and Mr. Harsh Gautam, Advocates for the victim.

**CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

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SWARANA KANTA SHARMA, J.

1. The present case unfolds the story of a child victim who had to suffer offence of voyeurism, sexual harassment and outraging of her modesty within the four walls of her home at the hands of one of their helping staff employed by her father. It also unfolds the dangers of a small device of mobile phone being used in commission of the present offence and the potential dangers of the electronic devices being used for commission of such offences.

2. The present criminal appeal preferred by the appellant seeks setting aside of the impugned judgment dated 20.10.2023 and order on sentence dated 11.01.2024, passed by learned Additional Sessions Judge-05 (POCSO), North District, Rohini Courts, Delhi (*'Trial Court'*), in case arising out of FIR bearing No. 115/2018, registered at Police Station Mukharjee Nagar, for offences punishable under Sections 354C and 509 of the Indian Penal Code, 1860 (*'IPC'*) and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (*'POCSO'*) *vide* which the appellant has been sentenced to



undergo simple imprisonment for a period of 03 years and pay a fine of Rs. 1,000/-.

FACTUAL BACKGROUND

3. The case set out by the prosecution is that the present FIR came to be registered upon a complaint filed by the father of the victim on 22.02.2018. The victim along with her father had lodged the present complaint on the premise that on 22.02.2018, at about 08:00 AM, while she was changing clothes in her room, she had felt that someone was peeping through her window and that this had happened several times. In order to confirm the same, she had gone outside the room near the said window, and had seen that her household help i.e. appellant Pintu Das was coming from the side of the window with a mobile phone in his hand. She had asked him as to what he was doing there. He had answered in a nervous state that he was doing some work. Thereafter, she had gone to school to collect her Class 12th Admit Card along with her mother and had not disclosed about this incident to her. After coming back from school, the victim had gone to the room of Pintu Das, where he was alone and was watching a video on his mobile phone and upon seeing her, he had got up from his bed and had dropped his mobile phone on the bed. The victim had immediately picked up the mobile phone and had seen her own video being played on it. Thereafter, she had shouted and called her mother and father. When they had come to that room, they had seen three videos of her, on the mobile phone of the appellant wherein, in one of the videos the victim was not



wearing her lower. She was only wearing her underwear which was of orange color and a top of powder pink colour. She was getting ready for school and was talking to her friends while changing. In the second video, she was standing in front of the window with just her underwear worn and was about to wear her jeans. In the third video, she was standing in front of the mirror wearing her jeans and bra of black colour and she had walked towards her closet and wore a shirt of black colour. The victim was utterly shocked to see her videos. On the basis of complaint containing these allegations, the FIR bearing No. 115/2018 came to be registered under Sections 354C/509 of IPC and under Section 12 of POCSO Act on 22.10.2018.

4. The statement of the victim was recorded under Section 164 of the Cr.P.C by the learned Magistrate. After completion of investigation, charge-sheet was filed. The charges were framed under Sections 354C/509 of the IPC and Section 12 of POCSO Act. The accused had pleaded not guilty and had claimed the trial. After the conclusion of the trial, the accused was convicted in the present case resulting in the filing of the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

5. **Ms. Barkha Tiwari, learned counsel appearing on behalf of the appellant** argues that the impugned judgment as well as the order on sentence has been passed in a pre-judged manner without applying judicial mind. It is argued that the impugned judgment is a non-speaking judgment since the learned Trial Court has failed to consider the facts of the case and has also not considered the



submissions of the appellant at the time of final arguments. The learned Trial Court has not appreciated the fact that the appellant was falsely implicated in the present case and that the prosecution has failed to prove the present case against the appellant beyond doubt. It is submitted that the father of the victim had gone to the Police Station along with the appellant after planting the material upon the appellant and has thus falsely implicated him in the present case. It is argued that there are major discrepancies and contradictions in this case and a story has been concocted to falsely implicate the appellant. It is further argued that the learned Trial Court has failed to consider that PW-1 has herself admitted in her cross-examination that she had not seen the appellant recording her video, and that her father had not made a phone call in front of her to the Police as she and her mother had gone to another room to watch the video. It is further argued that the Police had not been called to the home and rather, the father and the victim had gone to the Police Station along with the appellant. It is also argued that in her cross-examination, PW-1 had admitted that she had not opened the mobile phone and checked the SIM card and the memory card specifically. Thus, the statement in her cross-examination reveals that it is a concocted story full of contradictions and it is apparent that her parents had planted the mobile phone which does not even belong to the appellant. It is also argued that it is a major contradiction that the victim had stated in her statement that she was changing clothes at 08:00 AM and was aware that someone is making her video, however she had informed about it at 02:00 PM. It is also argued that the learned Trial Court has failed to consider



that PW-4 mother of the victim has admitted in her cross-examination that in her statement to the Police, she had informed that her daughter had given a shirt for ironing at 08:00 AM and that she had gone with her daughter, at 08:15 AM to her school for getting her admit card and had come back at about 11:30 AM from the school. It is also stated that this Court should take note of the fact that in the same cross-examination, she has also stated that she had heard her daughter screaming at 02:00 PM, and on that day, at about 03:30-4:00 PM, her husband and the victim had gone along with the accused to the Police Station. It is thus stated that the statements of PW-1 and PW-4 regarding the time of incident have major contradictions as the victim has stated that she was changing clothes at 08:00 AM, and as per PW-4, at 08:00 AM, she had given shirt to the appellant for ironing.

6. It is argued on behalf of the appellant that the learned Trial Court has failed to consider that PW-8 Investigating Officer, has admitted in her cross-examination that she had not conducted investigation regarding the ownership of the mobile phone or the SIM cards in question. It is also argued that the findings of the impugned judgment are contrary to law and facts of the case, which have been given without analyzing the evidence properly. It is also argued that the impugned judgment is liable to be set aside since only the family members and the victim are the witnesses and there is no independent witness to the story which makes it suspicious. It is also argued that the learned Trial Court has failed to consider the possibility of tampering of Pen Drive Ex.P-1 which was already kept



in unsealed envelope during the Examination-in-Chief of PW2 i.e. Dr. Jagjeet Singh, SSO, FSL Rohini, Delhi when he was recalled *vide* order dated 09.12.2022. It is also argued that the father of the victim wanted to terminate the services of the petitioner and due to the same, he has falsely implicated the petitioner in the present case and that the videos in question were in fact planted by the father of the victim to falsely implicate the appellant. Therefore, it is prayed that the present appeal be allowed and the appellant be acquitted in this case.

7. Without prejudice to the aforesaid contentions, learned counsel has further argued that if at all this Court is inclined to uphold the conviction of the appellant, a lenient view be taken regarding the sentence awarded to the appellant. In this regard, it is argued that the appellant belongs to a poor family and he was aged about 22 years at the time of incident, and today, he is aged about 27 years. It is further stated that the appellant is the only bread earner in his family, however, he has been awarded maximum imprisonment under Section 354C of IPC i.e. three years. Therefore, it is prayed that the sentence of the appellant be reduced to a minimum of one year.

SUBMISSIONS OF COUNSEL FOR THE VICTIM AND THE LEARNED APP FOR THE STATE

8. **Sh. Mohit Mathur, learned Senior Counsel appearing on behalf of the victim**, who is assisting the learned APP for the State, draws this Court's attention to the statement of accused recorded under Section 313 of Cr.P.C. and the answers given by the appellant and submits that he had only answered that the



allegations against him were wrong and no defence as such was raised by him. It is further pointed out that the appellant had refused to lead any defence evidence and now before this Court, new arguments have been raised by the defence counsel which had not been raised before the learned Trial Court. It is further argued that it is a preposterous suggestion given on behalf of the appellant that the father of the victim herein would have prepared those inappropriate videos since he did not want to pay salary to the appellant who was his domestic help. It is further submitted that the learned Trial Court has delivered a well-reasoned judgment and has dealt with all the arguments and contentions raised on behalf of the accused. It is also stated that the FIR in this case was filed on the same day of incident and thus, there was no delay in reporting the case to the police. Further, the forensic report and testimony of the expert witness have endorsed the view that the dates of incident and the date of making of videos are the same. It is further submitted that there is presumption under the POCSO Act against the accused, which in this case, the accused had failed to rebut with any evidence. While concluding his arguments, Sh. Mathur submits that as far as the prayer of the appellant for leniency in sentence is concerned, the trauma suffered by the victim was so to the extent that she had to be sent abroad to continue her studies and the act of the appellant had made her feel unsafe even at her home. Therefore, it is prayed that the present appeal be dismissed.

9. **Sh. Naresh Kumar Chahar, learned APP appearing on behalf of the State**, on the other hand, argues that the victim and the



parents of the victim have fully supported the prosecution's case and the deposition of the victim is fully corroborated by the testimonies of her parents and other witnesses. Further, the Police witnesses have also supported the prosecution's case, and the electronic evidence has been duly proved. It is stated that it is not in doubt that the mobile phone in question belonged to the accused/appellant. It is also argued that the age of the victim has also been proved beyond doubt, and that there is no delay in registration of the FIR. Learned APP also argues that the videos retrieved from the mobile phone of the accused, as per FSL result fully corroborate the version of the victim. The learned APP for the State thus argues that the prosecution has been able to prove its case beyond reasonable doubt, and that the appellant was convicted on the basis of the facts and according to law. Therefore, it is argued that there is no occasion to interfere with the impugned judgment of the conviction or the order on sentence.

10. This Court has heard arguments addressed on behalf of both the parties, and also perused the material placed on record including the trial court record.

ANALYSIS & FINDINGS

Relevant Provisions of Law

11. Since the appellant has been convicted and sentenced under Section 354C, 509 of IPC and Section 12 of POCSO Act, it would be apposite to refer to the said provisions. Section 354C of IPC is reproduced as under:



“354C. **Voyeurism.** - Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.-For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.-Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.”

12. This Court, in case of *Sonu v. State* 2023 SCC OnLine Del 1955, has analyzed the Explanation 1 of Section 354C of IPC by way of following observations:

“11. Explanation 1 to Section 354C clarifies the meaning of ‘private act’. When the definition of voyeurism is read alongwith the explanation, it would include within its ambit, an act of watching carried out by the perpetrator in a place used by a woman/victim where she is engaged in a ‘private act’ which, in the circumstances, would reasonably be expected by her to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear, or where she is using a lavatory, or where she is doing a sexual act that is not of a kind ordinarily done in public, and she has reasonable expectation that she would not be observed by the perpetrator or any other person at behest of the perpetrator; or where she



consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated.”

13. The appellant herein has also been convicted under Section 509 of IPC, which reads as under:

“509. **Word, gesture or act intended to insult the modesty of a woman.**—Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine”

14. Further, the appellant also stands convicted for offence of sexual harassment, which is punishable under Section 12. Section 11 of POCSO Act, which defines the offence of sexual harassment, is extracted hereunder:

“11. **Sexual harassment.**—A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or



(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves “sexual intent” shall be a question of fact.”

Appreciating the Rival Contentions raised before this Court

15. While dealing with the argument of the learned counsel for the appellant regarding the **discrepancies in the timing of the commission of offence**, this Court has gone through the testimonies of PW-1 and PW-4. The victim testified that the offence in question had taken place at 8:00 AM, when she was changing clothes and had suspected having noticed somebody standing outside the window. The victim in this case was in her late teens and was still studying in school. The discrepancies pointed out by learned counsel for the appellant that though the victim has testified that she had noticed someone making a video at about 08:00 AM when she was leaving for her school, whereas the mother of the victim i.e., PW-4 mentions the time for leaving for the school to be about 8:15 AM, is without merit since human memory can falter, especially in situations of extreme distress and to hold that the discrepancy in the timing of the alleged offence of about 15 minutes is sufficient to make the testimony of the victim and her mother doubtful will be not only travesty of justice in a case of sexual harassment of a child but will also be against the settled principles of criminal jurisprudence. Further, the other minor discrepancies in the deposition of the material witnesses regarding the time of making call to the police, the child informing about the incident in question to the parents also



cannot be termed as material discrepancies. This Court cannot lose sight of the fact that in case a **child and her parents are caught in such a situation** as in the present case, they cannot be expected to look at their watches and note down the exact minutes or seconds of the incident in question but to **concentrate on the traumatized child**, make efforts for ensuring that the accused does not escape and the matter is brought to the notice of the police.

16. While deciding such cases, one must also consider how a reasonable person or a victim of sexual harassment will react in such circumstances. It will also be equally important to take note of the fact as to how the child victim of sexual harassment in her late teens and her shocked and unprepared parents would react and what they will do in such circumstances. In the present case, the record reveals that the child **victim was under utter shock and distress**, and as per the statement of her father, the victim was screaming after having found her inappropriate videos in the mobile phone of the appellant. Thus, it is clear and should be taken note of that the family must have been undergoing mixed emotions of shock, distress, embarrassment, and many indescribable emotions after seeing her inappropriate videos on the mobile phone of their domestic help, who the victim had caught red-handed watching it. It is impossible to describe these emotions and reactions in words. In this background, this Court observes that the Courts deciding such cases cannot make decisions mechanically by calculating the exact timings testified by the witnesses. Instead, the Courts have to take note of the proximity of such timings and how the entire incident took place and progressed,



based on the entirety of the circumstances of the case. In this regard, the learned Trial Court has committed no error while not attaching much value to the minor discrepancies in the timing of the incident testified by the victim and her mother.

17. What is foremost in the mind of this Court is that the victim child in this case was changing clothes because she had to go to her school to collect her admit card for her Class 12th Board Examination. She had noticed the appellant making a video and had later found him standing outside with a mobile phone in his hand. The mother of the victim stated that they had left for the school around 8:15 AM and had returned by 11:30 AM. The victim as well as her father deposed that the appellant herein was caught at about 2:00 PM by the victim since she had suspected him of indulging in suspicious activities. The victim had suspected the appellant's activities at about 8:00 AM. This suspicion as per her statement had kept troubling her, leading her to the room of the appellant after she had sensed something was amiss. It was only when she had caught the appellant red-handed playing her inappropriate videos prepared by him that she had screamed for help, prompting her parents to come to the room of the appellant. There is no denying that the child victim went to school on the day in question, had collected her admit card, and had caught the accused after returning home from school. Therefore, the minor variations in the timings as argued by the learned counsel for the appellant do not cast a veil of doubt on the testimony of the victim child or her mother and other material witnesses.



18. The argument that there is **no evidence collected by the Investigating officer to prove that the SIM cards and the mobile phone in question belonged to the accused**, is of no help to advance the case of the accused since the accused by way of his defence also could not bring anything on record to prove that it belonged to the father of the victim, as suggested by him. The fact that the phone in question was found in the possession of the appellant, who was watching videos of the child victim prepared by him by using the same phone cannot be ignored or brushed aside. Further, the call details found in the mobile phone were related to the appellant. These facts duly proved by the prosecution are sufficient in light of the rest of the corroborative statements of the three witnesses to prove beyond reasonable doubt that the mobile phone was found in possession of the accused belonged to him and was used to record the inappropriate videos of the child victim. Having stated so, the argument of the learned defence counsel for the appellant in this regard is rejected as being meritless.

19. As far as the **electronic evidence** in this case is concerned, this Court notes that the FSL report and the expert witness examined i.e., PW-2 during the course of the trial have supported the case of prosecution. In this regard, the learned Trial Court has also held as under:

“The duration of each of the videos is about 1.0 to 2.0 minutes. PW-2 Dr Jagjeet Singh Sr. Scientific Officer, FSL Rohini in his testimony has mentioned that he had retrieved the data from the mobile phone, one Airtel make SIM Card and one Micro SD HC memory card and stored the same in the pen drive and had also given the certificate under Sec. 65 B of Evidence Act in



this regard. During cross examination, he denied the suggestion that the videos in the pen drive are manipulated videos. The fact that all the videos are of the same date and are made consecutively when the victim was indulged in the private act of changing her clothes and that the videos are not the manipulated one are found sufficient to corroborate the testimony of the victim beyond any reasonable doubt. The testimony is completely corroborated with the three videos.”

20. Having gone through the records of the case, this Court is of the opinion that no fault can be found with the above-mentioned findings of the learned Trial Court.

21. It is also important to note that the three inappropriate videos found in the mobile phone of the appellant were correctly identified by the victim during the recording of her testimony.

22. Another argument of the learned counsel for the appellant that **only the family members of the child victim have deposed in the present case and that there is no independent witness** also is liable to be rejected at the outset, since in a case as the present one, the **parents of the child victim and the victim are not expected to call an independent witness from the neighbourhood** to stand there and watch the videos first so that they can stand in the Court of law as legal witnesses. The expected reaction of a reasonable person, child victim and her traumatized parents is to first, inform the Police and seek help, and to make the child victim feel safe, protected and secure. The present case reveals through the testimonies of the witnesses that the sequence of events that had followed after the alleged incident is the reasonably expected behaviour and reaction of the victim and family of the victim.



23. Further, the argument of the learned counsel for the appellant that **the child victim had not seen her father calling the police and therefore her testimony is doubtful**, is also without merit. The victim has testified that she and her mother had gone to another room to watch the videos found in the mobile phone of the accused, which is a natural reaction of a mother protecting her traumatized child. It is likely that the mother wanted to ascertain how many inappropriate photographs and videos of her daughter were in the appellant's mobile phone. It is not relevant as to whether the father of the child victim had made a phone call to the police in the presence of the victim since it is not in dispute that a call was made to the police after the incident in question.

Victim shaming and family shaming of victim as a defence

24. The other contention of the learned counsel for the appellant that the **videos in question were prepared and planted by the father of the victim since he did not want to pay the salary of the appellant**, is not only **meritless** but also **insensitive**. It is **unthinkable** that a father will prepare three inappropriate videos of his school-going daughter and plant it in the phone of domestic help, and thereafter make it a subject of FIR, only because he did not want to pay a paltry sum of money to his domestic help. In this regard, the findings of the learned Trial Court cannot be faltered with.

25. Further, **accepting this argument would amount to encouraging not only victim-shaming but also family shaming of the victim** which cannot be allowed by any Court of law. The



grounds in the pleadings in this regard and the oral arguments before this Court by the counsel for the appellant that the victim was used by her father and the victim along with her father had conspired to prepare the alleged videos to save themselves from paying salary to their domestic help, would rather reflect as to how the child-victims and their families may further be doubted and shamed in a Court of law when no such evidence exists.

26. This cannot be allowed by the Courts of law, and the Court must uphold the dignity and rights of not only the child victims but also their families, ensuring they are shielded from further victimization.

27. The criminal adjudicatory justice system has a paramount duty to protect the most vulnerable, particularly children, from any form of **secondary trauma** caused by unjust accusations or demeaning narratives. The Court must, therefore, take a **firm stand** against any attempts to malign the character of child victims or **use victim shaming and victim family shaming as tools and pawns in legal strategies**.

28. While cases of sexual assaults and outraging the modesty of children are decided by Courts of law, it is not the facts in isolation which have to be considered and analyzed by the Courts, but the social context of such facts and circumstances of a victim as well as the accused are of critical importance to be kept in mind while analyzing the testimonies of the witnesses.



Judicial pronouncements and their impact on victims and community in Child Sexual Assault and Harassment Cases

29. Judicial pronouncements in cases of child sexual assault, particularly those involving voyeurism, play a critical role in addressing the harm inflicted upon victims and in shaping community norms and attitudes towards such heinous crimes.

30. The jurisprudence developed through judicial pronouncements not only provides justice and a sense of relief to the victims of sexual harassment but also serves as a **deterrent to potential offenders**, thereby contributing to the broader societal and judicial effort to protect children from such harassment.

31. **For victims, judicial pronouncements that recognize and articulate the profound impact of voyeurism on them and their families put a healing balm on the wounds of sufferance from such harassment and assault. This is equally crucial for their psychological healing. This acknowledgement in cases where such offences are proved beyond reasonable doubt, assures the victims that their experiences have been accepted to be true and the trauma undergone by them has not only been recognized by the criminal justice system but it also recognizes the gravity of the violation they have endured. The broader community also feels the impact of judicial pronouncements in these cases. Strict legal actions against perpetrators act as a deterrent, discouraging potential offenders by demonstrating that the legal system is proactive and uncompromising in dealing with such crimes.**



Argument for taking a lenient view in favour of the appellant considering his age

32. Learned counsel for the appellant also argued that **a lenient view may be taken with respect to the sentence awarded to the appellant** in case the conviction of the appellant is upheld by this Court. It was argued that the appellant belongs to a poor family and this Court must also consider that the appellant herein was only 22 years of age at the time of incident, but he has been awarded the maximum sentence in this case.

33. In the present case, the minor victim was preparing for her Class **12th Examination**. The incident in question had taken place on the day she had gone to collect her admit card. Children appearing for their class 12th examination are often **under immense stress**, as these exams are crucial for their future careers and studies. The incident, which **profoundly affected** the victim, must be understood in this context too as such trauma suffered by her at the same time when she had to appear for her class 12th examination would have certainly **affected her studies** and this Court is in agreement with the argument of the learned senior counsel for the victim child. **The fact that the child remained traumatized for a long time is evident from the necessity of sending her to a foreign land for her further studies.**

34. **This Court shudders to think** of the eventuality in case the videos were shared by the appellant or were misused by him in any other manner as to how it would have impacted the child victim and her family. It was their good fortune that on the day he had recorded



the last video, he was caught. To take a lenient view in such cases would send the wrong message to the society, where the majority of people own mobile phones, that even by indulging in such acts, a person can be handed down lenient punishment.

35. **When the judiciary takes a firm stand** against child sexual harassment, it encourages victims and their families to report such crimes, reducing the stigma associated with seeking justice and ensuring that cases are handled with the utmost seriousness. In this background, this Court has observed in preceding paragraphs that **victim shaming and victim's family shaming must not be allowed as it will be a deterrent and road block in the real victims reporting such offences to the authorities. Taking a lenient view in such cases will also discourage the real victims of such offences.**

36. Furthermore, the judiciary helps set societal norms and expectations regarding the protection of children by consistently condemning voyeuristic acts and emphasizing the sanctity of a child's privacy and dignity. This contributes to the establishment of a culture that prioritizes the safety and rights of children.

37. As far as the argument that the accused was a young man of 22 years of age at the time of incident is concerned, this Court is of the opinion that even the victim was about 17 years old at the time of incident and she has suffered a life-long trauma.

38. The victim in the present case has faced multidimensional trauma since children of this age group are already under the pressure of their board examinations, which decide their future. **Amidst this**



pressure, she faced the indescribable trauma of voyeurism within the safety of her own home and the privacy of her room. The appellant had stealthily recorded videos, an act beyond imagination or expectation of the child victim or her family. This trauma severely impacted her ability to concentrate on her studies and career, ultimately leading her to leave the country for higher studies as she could not continue in the same place where she had been a victim of sexual harassment. The Courts act as guardians of the rule of law in the country and community and must weigh this factor in mind. **It is imperative that the judiciary ensures children in this country are not forced by such trauma to leave their homeland.** Pursuing higher studies in educational institutes of their choice, whether in India or abroad, should be a willing and happy choice made by themselves, stemming from their own personal dreams and aspirations, **not as an escape** from the aftermath of a traumatic experience. The legal system must provide a sense of justice and security, helping victims to **reclaim their lives** without having to abandon their homes and futures.

39. Thus, in the present case, the impact on the victim was profound. The trauma was so severe that the victim was forced to leave the place of her upbringing due to the emotional and psychological distress attached to the incident.

40. This highlights the need for Courts to consider not only the **physical impact of such crimes but also the mental and emotional toll on the victim's overall well-being.** The judicial system must recognize the long-term consequences of voyeurism and sexual



assault, ensuring that victims receive justice and support to rebuild their lives.

41. Therefore, this Court finds no ground to take any lenient view insofar as the sentence awarded to the appellant under Sections 354C and 509 of IPC is concerned.

CONCLUSION: TO SUM UP

42. In view of the above discussion, the material against the appellant can be summed up as follows:

- (a) The child victim's account has remained unwavering from the initial police complaint through her statement under Section 164 Cr.P.C. and her testimony. She consistently reported that on the alleged date and time, while she was changing clothes, she sensed someone peeping through her window. When she had checked, she had seen their domestic help i.e. appellant Pintu Das, with a mobile phone near the window. She further stated that after returning from school, she found Pintu Das alone in his room, watching her video, at which point she immediately called her parents.
- (b) The parents of the victim have substantiated her version of events, with no discrepancies between their testimonies and that of the victim.
- (c) Both the victim and her parents testified that the accused recorded objectionable videos on the same morning they were discovered on his mobile phone. The FIR was promptly



registered on the same day, and the mobile phone was handed over to the authorities, minimizing the risk of tampering with the electronic evidence or false implications.

- (d) It is undisputed that the mobile phone containing the objectionable videos was given to the police on the same day the FIR was filed. The FSL report confirmed the presence of three objectionable videos along with other photos and videos on the mobile phone and SIM card.
- (e) During her testimony, the victim accurately identified the three objectionable videos found on the accused's mobile phone. The accused did not contest the victim's identity or the location in the videos, which depict the victim changing clothes in her house while talking on a mobile phone.

43. Thus, the material placed on record, and the testimonies of the witnesses clearly establish the case of the prosecution that the appellant had made three objectionable videos of the victim while she was engaged in a private act and had intruded into the privacy of the victim. Thus, this Court is of the opinion that the learned Trial Court has rightly convicted the appellant under Sections 354C and 509 of IPC, and under Section 12 of the POCSO Act.

44. Therefore, in view of the foregoing discussion, and upon applying the principles of criminal jurisprudence as discussed above, this Court is not inclined to set aside either the impugned judgment or the order on sentence having found no infirmity or error in the order of conviction passed by the learned Trial Court.



45. Accordingly, the present appeal along with the pending application stands dismissed.

46. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 1, 2024*/at/ns*