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

Reserved on: 14.10.2026
Date of Decision: 02.11.2026
Uploaded on: 02.11.2026

\# **CNR No. DLHC010117152025**

\+ **CRL.A. 276/2025 & CRL.M.(BAIL) 504/2025**

MOHD ANZAR AHMAD .....Appellant

Through: Ms. Aishwarya Rao, Ms. Mansi Rao, Advs.

versus

STATE NCT OF DELHI THROUGH SHO PS JAITPUR DELHI & ANR. .....Respondents

Through: Ms. Meenakshi Dahiya, APP for the State.
Ms. Urvashi Jain, Mr. Aman Bidhuri, Mr. Hemant Singh, Advs. for victim/R-2.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. This hearing has been done through hybrid mode.

2. The present criminal appeal has been filed under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023,(hereinafter referred to as 'BNSS'), whereby the appellant is seeking setting aside of the judgment dated 03.08.2024 and the order on sentence dated 15.01.2025 passed by the learned ASJ, South East District, Saket Courts, Delhi, in connection with

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FIR No. 902/2014, registered at P.S. Jaitpur, Delhi for the offences punishable under Sections 363 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as *"IPC")* and under Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act').

Factual Matrix:

3. The case of the prosecution is that Sh 'J', father of victim gave a complaint to the Police that his daughter Ms. M had left for school in the morning of 05.12.2014 at 07:00 AM, but did not return back home. Despite search, the victim was not found. He suspected that someone had enticed away his daughter. On the basis of this complaint, FIR was registered U/s 363 IPC and investigation commenced. After about 2 months, the missing minor girl was finally recovered from Akbarpur, UP and brought to Delhi on 13.02.2015. At that time she was around two months pregnant. Accused/Appellant was apprehended from Akbarpur and was arrested, and continues to be in Judicial Custody till date. During that time accused was already married to one Rubina Begum who is alleged to have accompanied Sh. 'J' during the recovery of his minor daughter from Akbarpur. Victim's pregnancy was medically terminated on 20.02.2015.

4. After completion of investigation, chargesheet was filed naming Mohd. Anzar Ahmad as accused of offences punishable u/s 363, 376, 506 of IPC & Section 6 of POCSO Act. Cognizance was taken by Ld. Trial Court. The copy of the chargesheet was supplied to the accused in compliance of Section 207 Cr. P.C. Matter was then fixed for consideration on point of charge. FSL result came to be filed later by way of supplementary chargesheet.

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Signing Date:02.11.2026
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5. Vide order dated, 07.10.2015, Ld. Trial Court framed Charges for offences U/s 363 IPC, U/s 6 POCSO Act & U/s 506 IPC against the accused Mohd. Anzar Ahmad. Accused pleaded not guilty and claimed trial. Matter was listed for prosecution evidence.

6. To prove its case against the accused and discharge its burden, the prosecution examined fourteen witnesses before the learned Trial Court, whose testimonies have been discussed in the impugned judgment as under:

> *"26. Minor Victim Ms 'M' was examined as **PW-1**. Accused was on visiting terms with her family. She deposed that on 05.12.2014, she was going to her school with her friends. While her friends went inside the school and she remained outside, accused Mohd. Anzar, whom she used to call Mama was present there. He made her sit in an auto and put something on her mouth due to which she became unconscious. When she regained her consciousness, she found herself at Muradabad in a Jhopri. Some known persons of Anzar were also there. She deposed that when she used to sleep, accused would forcibly rape her and when she resisted he would forcefully do it everyday. When she cried, accused would put his hand on her mouth and beat her. Whenever, she asked him to let her talk with her parents, he would beat her. From Moradabad, accused took her to Bengal and thereafter to Akbarpur and kept her in a Jhopdi. The incidents narrated by the victim continued even at these places. On one day, she finally found opportunity and called her father. Her father reached alongwith with Rubina, i.e, wife of accused Anzar. They were accompanied by police. She was brought back to Delhi and accused was arrested. She was medically examined and was found two months pregnant, MTP was conducted with her consent. MTP report is*

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18:32:09

Ex.PW1/B, She also proved her statement under Section 164 Cr.P.C as Ex.PW1/C wherein she had narrated the atrocities committed upon her by accused before Ld. Magistrate. She correctly identified accused Anzar Ahmed at the time of her deposition. During her cross examination by Ld. Defence counsel, she admitted that she was kept in Juggi where friend of accused also resided with his family. She also admitted that accused also used to go out during the day to bring articles. However, she denied that she could go out of the Jhopdi. She denied that she had attained majority or that she went with the accused out of her free will.

*27. Sh J, father of the victim (name not being disclosed to protect the identity of the victim) was examined as **PW-2**. He deposed that at the relevant time, his daughter/victim Ms. M was studying in Class 8th in a government School and was about 15 years old. On 05.12.2014, Ms. M left her home for school in morning but she didn't return. Present FIR was registered on the basis of his complaint. He identified accused Mohd. Anzar as his neighbor and was missing since the date Ms. M was missing. In February 2015, Ms. M was finally recovered from District Akbarpur, U.P in his presence. Accused was also apprehended.*

28. Sh J further proved that after about 2 months, accused had met him at railway station when he was returning from the place where he had retained his daughter. He was apprehended by the IO and interrogated. Subsequently Ms. M was recovered from jhuggi at the instance of accused. Ms. M was in a state of trauma and started weeping after seeing them. During cross examination by Ld. Defence counsel Sh J affirmed that his daughter was 15 years old and denied suggestion that she had attained majority. He affirmed that accused had met them at

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Signing Date:02.11.2026
18:32:09

the Railway station and that wife of accused had accompanied him during recovery of his daughter. No contrary suggestion was put to this witness by Ld. Defence Counsel with respect to the manner of apprehension of accused or recovery of the victim.

*29. Smt. M W/o Sh. J, Mother of the victim examined as **PW-3**. She was given the same initial 'M' as that of the victim by Ld Predecessor Court. To avoid any confusion she is being referred with initial 'MM' hereinafter.*

30. Smt MM, PW3 corroborated the testimony of her husband Sh. J regarding the manner in which their daughter Ms. M went missing and recovered from Akbarpur. She accompanied Ms. M during her medical examination. During her cross-examination by Ld. Defence counsel, she denied that Ms. M had completed 18 years of age as on 05.12.2014. She denied that she had mentioned lesser age of Ms. M at the time of her School examination while affirming that she had provided Birth certificate of her daughter for her admission in School. She denied that Ms. M left home out of her own free will or that She had married the accused.

*31. Sh. Rajbir Singh, MRT, AIIMS Hospital/**PW-5** proved that MLC No. 1696/15 dated 13.02.2015 of Ms. M D/o Sh. MJ i.e, victim was prepared by Dr. Devender Shiv Karthik who was posted as a Senior Resident in Department of Obs. & Gynae at the relevant time.*

***32. PW-6** ASI Kirpal Singh, Duty Constable, AIIMS Hospital had proved DD no 27 A dated 13.02.2015 whereby he received information about the abortion of Ms M and transmitted the same to IO/SI Suraj Singh.*

33. MLC and Potency test of accused have been proved by PW7, Constable Dinesh.

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Signing Date:02.11.2026
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*34. ASI Dharmender, **PW-8** proved that on directions of IO SI Suraj Singh, he alongwith complainant had gone to Akbarpur, UP where they found the accused at Railway station. Accused was identified by complainant Sh. J. Subsequently, accused took them to Jhuggi from where victim was recovered and prepared site plan Ex.PW8/A at her instance. Then accused was brought to Delhi and handed him to IO SI Suraj Singh. Victim was also brought back. During his cross-examination by Ld. Defence counsel, he admitted that he went to Akbarpur in a car arranged by IO and did not make any departure entry before leaving. He denied making Ex.PW8/A at the Police Station. He could not recall the name of the Railway station where they met accused. The victim girl was recovered in February 2015, witness was examined on 26.02.2020 i.e, after more than 5 years. It is common knowledge that human memory fades with passage of time, the fact that the witness was unable recall the name of the Railway station where they met accused is not fatal to the case of the prosecution.*

***35. PW9** Dr. Deepak, Sr. Department of Radio Diagnosis, AIIMS proved the signatures & hand writing of Dr. Bijay on the MLC, radiology form and ultra sound report of Victim.*

***36. PW 10**, HC Rekha proved that she accompanied the victim Ms. M, obtained her the samples & Sample seal from doctor and handed over the same to IO. During cross-examination she affirmed that she did not speak with the victim on the way to hospital.*

***37. PW11**, SI Chandra Shekhar proved that he received complaint from Sh. J regarding his missing daughter and attested the statement vide memo Ex.PW2/A and prepared rukka Ex.PW11/A. Rukka*

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Signing Date:02.11.2026
18:32:09

was then handed to Duty Officer and FIR was registered. Thereafter further investigation was handed over to IO. During cross-examination he affirmed recording statement of father of victim.

***38. PW12**, Smt. Rubina Begum was the wife of accused at the time of the incident. She received information about arrest of accused from police. She turned hostile and did not support the prosecution. However, this can be attributed to the fact she was the wife of accused at the time of the incident. She subsequently divorced the accused and remarried. It is quite possible that since her remarriage, she might have forgiven the accused for the offences and was tempted to save him. Her not supporting the prosecution is duly explained and is not fatal to the prosecution's case.*

***39. PW13,** Retired SI Suraj Singh was assigned the investigation of the case. He recorded statements of witnesses u/s 161 CrPC. Despite search of victim but no clue was found. On 10.02.2015, Sh J expressed that accused Md. Anzar Ahmad had kept Ms. M in Akbarpur, UP. SHO was informed and on his directions, HC Dharmender was sent to Akbarpur UP with complainant.*

On 13.02.2015, HC Dharmender returned back to Police Station along with complainant, child victim 'M' and accused Mohd. Anzar Ahmed. Smt MM also reached there. He recorded the statement of 'M' and thereafter, sent her to AIIMS Hospital for her medical examination through Ct. Rekha, accompanied by Smt 'MM'. After the medical examination, Ct. Rekha, Ms. M and Smt MM returned back to Police Station. Ct. Rekha handed over MLC, medical report, sealed exhibits along with samples with seals intact, of Ms. M to him which was seized vide memo Ex.PW10/B. Case property was deposited in Malkhana. MLC and

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Signing Date:02.11.2026
18:32:09

Potency test of accused Mohd. Anzar Ahmed was conducted at AIIMS Hospital through Ct. Dinesh. The MLC, potency test report, and sealed exhibits along with sample taken from the accused were handed to him by Ct Dinesh.

40. *During medical examination of child victim, she was found pregnant. Subsequently information about her MTP was received through DD No.27A dated 20.02.2015, PS Jaitpur vide Ex.PW13/A. IO collected sealed exhibits taken during the MTP vide seizure memo Ex.PW13/B and deposited it into malkhana. He collected age document from school of Ms. 'M'. Despite cross-examination, the IO remained consistent in his deposition and affirmed what he had deposed in his examination-in-chief.*

41*. The exhibits / samples were sent to FSL subsequently after his suspension.*

42. PW 14*, SI Madhuri had prepared supplementary chargesheet after receiving FSL result."*

7. On the completion of prosecution evidence, statements of accused persons u/s 313 Cr. P.C. were recorded thereafter, during which accused denied all the allegations levelled by the prosecution. He stated that victim was born in 1997 and was a major at the relevant time. He stated that Victim's younger sister was aware about their relationship. He denied that the victim was pregnant at the time of her recovery. He also denied meeting father of victim or his own wife at the Railway Station. He stated that his wife was informed after his arrest. In his explanation he stated that he and victim were in love and their relationship was consensual. Victim was forced and tortured by her parents, so she left her home. He stated that they got married and lived together thereafter. He claimed to have been falsely implicated in the present

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Signing Date:02.11.2026
18:32:09

case. In Pursuance of application u/s 315 Cr. P.C. accused examined himself as sole defence witness.

8. The learned Trial Court, *vide* the impugned judgment dated 3rd August 2024, convicted the appellant and held as under:

> *"58. On the basis of above said discussions, the prosecution has been able to prove the case against the accused beyond all reasonable doubt. The accused took the minor girl of 14 years 4 months out of the lawful custody of her parents. He kept her in confinement, threatened her and* ***committed aggravated penetrative sexual assault for a period of more than two months as a consequence which she became pregnant and had to undergo MTP.*** *In view of the same, accused* ***Mohd. Anzar Ahmad*** *is* ***convicted*** *for the offence punishable under Section* ***363 IPC, Section 506 IPC & Section 6 of POCSO Act 2012."***

9. Consequent upon the judgment of conviction, the learned Trial Court, vide Order on Sentence dated 15th January 2025, imposed the following sentence upon the present appellant:

> **"…**
>
> *Convict has been convicted for offences,* ***U/s 363 IPC, U/s 506 IPC and U/s 6 POCSO Act.*** *The convict was* ***25 years old*** *as on the date of commission of offence while the victim girl was* ***14 years old.*** *There is a considerable age gap between the victim and the convict. Convict was already married and had children when he ran away with the victim. As a consequence of offence, victim became pregnant and had to undergone MTP. Thus,*

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Signing Date:02.11.2026
18:32:09

the convict does not deserve to be shown any leniency.

As per record, convict has been in custody since 13.02.2015. The previous conviction/involvement report of the convict shows that he has no previous involvement in any similar case. The act of convict has caused alarm in society and in mind of victim. In interest of justice, a balance has to be drawn between reformative theory and deterrent theory of punishment. The measurement of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering imposition of appropriate punishment.

Considering the overall facts and circumstances, convict Mohd. Anzar Ahmad is sentenced as follows:

a) Simple imprisonment for 05 years and to pay fine of Rs.20,000/- for offence U/s 363 IPC.

b) Simple imprisonment for 02 years for offence U/s 506 IPC.

c) Simple imprisonment for 30 years and to pay fine of Rs.25,000/- for offence /s 6 POCSO Act.

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Signing Date:02.11.2026
18:32:09

*In default of payment of fine, convict shall undergo for simple imprisonment for period of **30 days.***

All sentences shall run concurrently...”

10. Aggrieved by the aforesaid impugned judgment and order on sentence, the appellant has challenged both before this Court.

Submissions on Behalf of the Appellant

11. Learned counsel for the appellant submits that the impugned judgment is contrary to the evidence on record and that the prosecution has failed to establish the charges beyond reasonable doubt. He contends that the prosecution case suffers from material inconsistencies concerning the circumstances in which the victim allegedly left her home, the places where she was kept, and the manner and place of her recovery.

12. Learned counsel submits that the investigating officer did not adequately verify the place of recovery and that the discrepancy in the references to Akbarpur, and Faizabad casts doubt on the prosecution version.

13. Learned counsel also submits that PW-8 in his deposition, could not recall the name of the railway station where the appellant was allegedly found, and who admitted that no departure entry had been made before proceeding to the place of recovery.

14. Learned counsel further submits that no local police official or independent public witness was associated with the recovery proceedings and that no separate recovery memo was prepared.

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Signing Date:02.11.2026
18:32:09

15. Learned counsel further submits that PW-3 admitted that the victim had earlier refused to return home and agreed to do so only after the *tabeez* allegedly supplied by the appellant was removed. It is argued that this circumstance supports the defence that the victim was accompanying the appellant voluntarily.

16. Learned counsel also submits that the absence of DNA evidence connecting the appellant with the pregnancy and the FSL report cannot be treated as corroboration of the prosecution case. It is contended that the victim's testimony regarding the alleged assault is not supported by the requisite medical or forensic evidence and that the prosecution failed to examine material witnesses who could have corroborated the circumstances in which the victim allegedly left her school.

17. Learned counsel also submits that the school record was not independently verified by PW-4. It is further argued that the presumptions under Sections 29 and 30 of the POCSO Act could not have been invoked in the absence of reliable foundational evidence. The appellant's counsel contends that the victim's alleged willingness to accompany the appellant has not been properly considered.

Submissions on behalf of respondents

18. Learned counsel appearing on behalf of respondent No. 2, submits that the testimony of the victim is consistent on the material aspects of the prosecution case. It is contended that the victim was a child at the time of the incident and that her testimony regarding the appellant taking her away, keeping her at different places and repeatedly subjecting her to sexual assault has been accepted by the learned Trial Court after appreciation of

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Signing Date:02.11.2026
18:32:09

the evidence.

19. Learned counsel submits that the victim's pregnancy and the subsequent medical termination of pregnancy corroborate the occurrence of sexual intercourse during the period in question. The discrepancies concerning the precise location of recovery and the inability to obtain a conclusive DNA comparison, it is argued, do not by themselves discredit the victim's testimony.

20. Learned APP for the State submits that the victim's age is established by the school record and the testimony of PW-4, and that the plea of consent is unavailable in law if the victim was below eighteen years of age.

21. Learned APP for the State further submits that the sentence imposed by the learned Trial Court does not call for reduction, particularly in view of the victim's age, the duration of the alleged exploitation, the pregnancy and the subsequent medical termination.

Findings and Analysis

22. This Court has considered the rival submissions, the impugned judgment dated 03.08.2024, the order on sentence dated 15.01.2025 and the evidence on record.

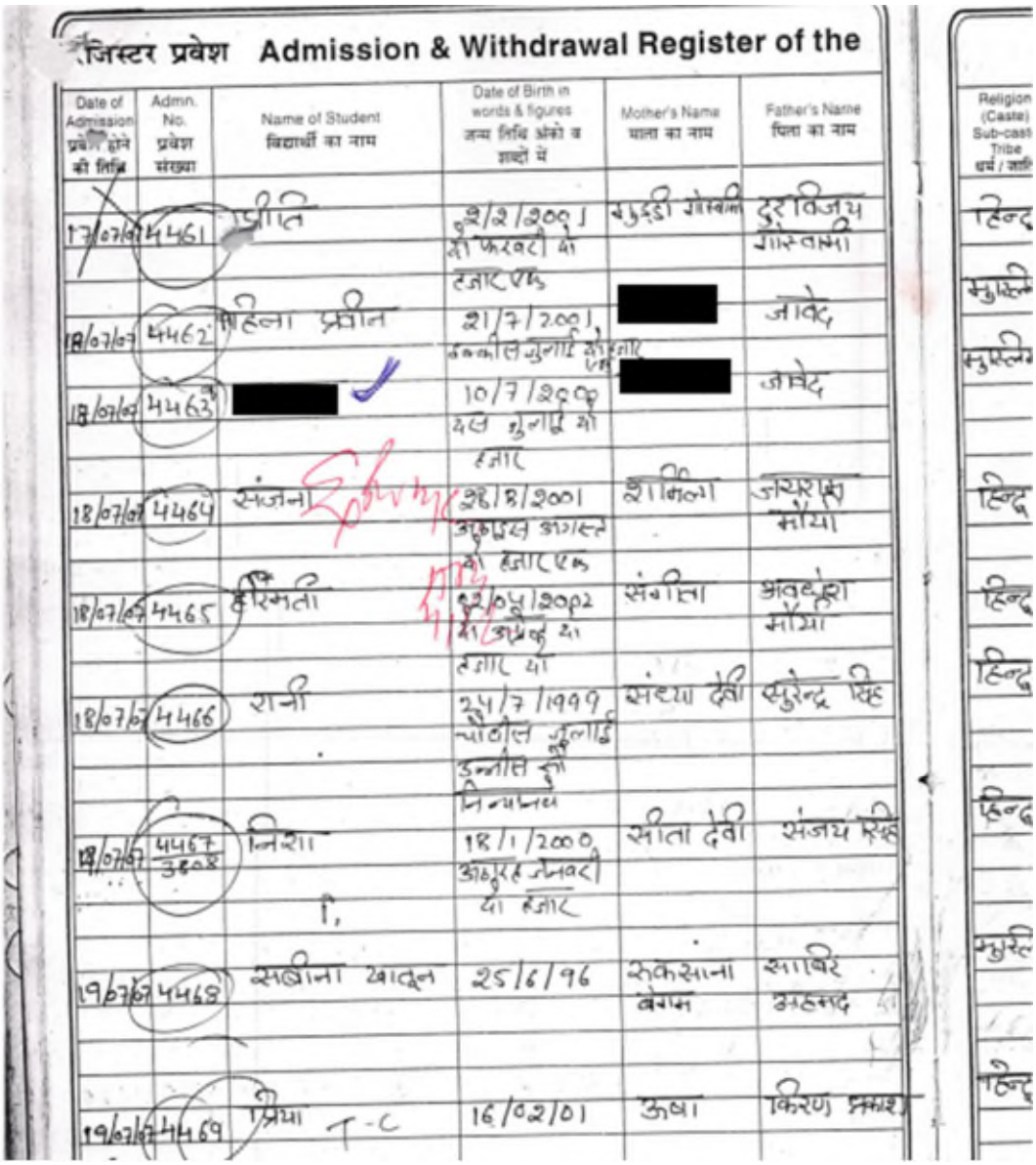
Questions raised by the challenged conviction are:

> ***Whether the victim was below eighteen years of age on the date of the incident & whether her testimony establishes that the appellant took her away and subjected her to penetrative sexual assault?***

Age of the victim

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Signing Date:02.11.2026
18:32:09

23. The incident is alleged to have taken place on 05.12.2014. The prosecution relied upon the testimony of PW-4, Sh. Bal Kishan, retired Principal of SDMC Primary School, Jaitpur, to establish the victim's age. PW-4 produced Ex PW- 4/C, the original school record and deposed that the victim had been admitted to Class I on 18.07.2007 and that her date of birth was recorded as 10.07.2000.



रजिस्टर प्रवेश Admission & Withdrawal Register of the

Date of Admission प्रवेश होने की तिथि	Admn. No. प्रवेश संख्या	Name of Student विद्यार्थी का नाम	Date of Birth in words & figures जन्म तिथि अंको व शब्दों में	Mother's Name माता का नाम	Father's Name पिता का नाम	Religion (Caste) Sub-caste Tribe धर्म / जाति
17/07/07	4461	प्रीति	22/2/2001 बाईस फरवरी दो हजार एक	बुद्धी गोस्वामी	दुरविजय गोस्वामी	हिन्दू
18/07/07	4462	मेहना प्रवीन	21/7/2001 इक्कीस जुलाई दो हजार एक	[redacted]	जावेद	मुस्लिम
18/07/07	4463	[redacted]	10/7/2000 दस जुलाई दो हजार	[redacted]	जावेद	मुस्लिम
18/07/07	4464	संजना	28/8/2001 अट्ठाइस अगस्त दो हजार एक	शोभिला	जयराम मौर्या	हिन्दू
18/07/07	4465	हरिमती	22/04/2002 बाईस अप्रैल दो हजार दो	संगीता	भवदेहरा मौर्या	हिन्दू
18/07/07	4466	रानी	24/7/1999 चौबीस जुलाई उन्नीस सौ निन्यानवे	संध्या देवी	सुरेन्द्र सिंह	हिन्दू
19/07/07	4467 3808	निशा	18/1/2000 अठारह जनवरी दो हजार	सीता देवी	संजय सिंह	हिन्दू
19/07/07	4468	सबीना खातून	25/6/96	सकसाना बेगम	साबिर अहमद	मुस्लिम
19/07/07	4469	प्रिया T-C	16/02/01	ऊषा	किरण [illegible]	हिन्दू

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Signing Date:02.11.2026
18:32:09

24. PW-3 stated that she had admitted the victim to the school but could not recall the victim's date of birth. She also stated that she had submitted copies of an electricity bill and an election identity card, denied having deliberately recorded a lesser age. She expressly denied the suggestion that the victim had completed eighteen years of age on 05.12.2014. The affidavit bearing the mother's thumb impression/signature was produced through PW-4 as part of the school record. The defence did not establish that the document was forged or that the date recorded in it was deliberately misstated.

25. The appellant's suggestion that the victim was born in 1997 is not supported by any birth record proved by the defence. Further, PW-1 stated that she was fifteen years old when her testimony was recorded, while PW-2, her father, consistently stated that she was about fifteen years old at the time of her disappearance and denied that she was a major. The Court does not treat the parents' estimates of age as a substitute for documentary proof. Those statements, however, are consistent with the age reflected in the school record. On the basis of the evidence available, this Court, therefore, finds that the prosecution has established that the victim was below eighteen years of age on the date of the incident.

Testimony of the victim

26. It is settled that a conviction for a sexual offence may rest on the sole testimony of the prosecutrix where her evidence is cogent, consistent on material particulars and inspires confidence. In ***Rai Sandeep v. State (NCT of Delhi)*** **(2012) 8 SCC 21**, the Supreme Court explained the concept of a "sterling witness", whose testimony inspires confidence and withstands

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Signing Date:02.11.2026
18:32:09

scrutiny even in the absence of independent corroboration. Similarly, in ***Nirmal Premkumar v. State*** **2024 SCC OnLine SC 260**, the Court classified oral testimony into three categories: wholly reliable, wholly unreliable, and testimony falling in between. It clarified that where the victim's testimony is clear and consistent, it falls within the first category, for which corroboration is not required as a matter of law.

> ***11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence."***
>
> xxxxx
>
> *13. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high.* ***The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case.*** *While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."*

27. PW-1 is the principal witness to the alleged abduction and sexual assault. She deposed as under:

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Signing Date:02.11.2026
18:32:09

> *"On 05.12.2014 I was going to my school G.G.S.S. School no.2, Molarband New Delhi with my friends. My friends went inside the school but I was outside school. One person Mohd. Anzar met me there. He was in visiting terms at our house and we were calling him Mama. He made me sit in an auto and put something on my mouth. I became unconscious. When I regained my conscious I found myself at Muradabad in a Jhopri. Some known person to the Anzar was also there. When I used to sleep, he raped me without my consent. I denied and asked him not to do such activities with me but he forcefully doing the same daily basis. When 1 used to cry at that time but he used to put his hand on my mouth and gave beatings to me."*

28. A cumulative reading of PW-1's testimony, her statement under Section 164 CrPC, and the evidence of PW-2 and PW-3 reveals a consistent account of the material events: the appellant's identity, the manner in which she was taken away, the repeated sexual assaults, and the circumstances in which she was prevented from contacting her parents. The defence cross-examination has not elicited any material contradiction in her account. The suggestion of tutoring remains unsubstantiated, while the circumstances relied upon by the defence do not, by themselves, establish voluntary accompaniment or consent. The evidence, read as a whole, thus retains its consistency on material particulars and inspires confidence.

Medical evidence and pregnancy

29. The medical evidence provides corroboration of pregnancy, although its limits must be recognised. PW-5, Medical Record Technician at AIIMS, produced MLC No. 1696/15 dated 13.02.2015, prepared by Dr. Devender

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Signed By:BHARTI
Signing Date:02.11.2026
18:32:09

Shiva Karthik, and proved the relevant medical record as Ex. PW-5/B and Ex. PW-5/C.

30. PW-9, proved the radiology report and ultrasound report prepared by Dr. Biswajit, as Ex. PW-9/A and Ex. PW-9/B. PW-9 Deposed as under:

> *"…The report shows that there was single intra uterine gestational sac with live fetus showing perceptible cardiac activity. The age of fetus was described as 8 weeks 5 days."*

31. PW-6, ASI Kirpal Singh, deposed that on 20.02.2015, while posted as a duty constable at AIIMS, he received information from the hospital regarding the medical examination and abortion of the victim, whereupon he informed the Investigating Officer and recorded DD No. 27A. His testimony finds support in the deposition of PW-13, the Investigating Officer, who also stated that he had received information regarding the medical termination of the victim's pregnancy and had collected a sealed exhibit from the hospital. PW-13, however, admitted that the documents pertaining to the medical termination of pregnancy (MTP) could not be collected, as he was subsequently suspended and thereafter retired from service. The non-production of the said documents, though a lapse in the investigation, does not dislodge the medical evidence establishing the victim's pregnancy or the testimony of PW-6 and PW-13 regarding its subsequent termination.

32. PW-10, HC Rekha, further corroborated the medical examination of the victim by deposing that she had accompanied the victim and her mother to AIIMS, where the victim was medically examined and the sealed samples obtained from the hospital were handed over to the Investigating

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Signing Date:02.11.2026
18:32:09

Officer. Although PW-10 mentioned the date of examination as 13.05.2015, whereas PW-5 proved the MLC dated 13.02.2015 and PW-13 also referred to the medical examination conducted on 13.02.2015, the said discrepancy does not affect the substantive medical evidence regarding the pregnancy of the victim. Her testimony, read with the depositions of the other prosecution witnesses, lends further support to the fact that the victim had undergone medical examination at AIIMS.

33. A cumulative appreciation of the aforesaid evidence, particularly the ultrasound examination which revealed a pregnancy of approximately eight weeks and five days, establishes that the victim was pregnant at the time of her medical examination. The subsequent information received from AIIMS regarding the termination of her pregnancy, as deposed to by PW-6 and PW-13, further supports the prosecution case that the victim had undergone an abortion. The pregnancy assumes significance as a corroborative circumstance when examined alongside the testimony of the victim, who consistently identified the appellant as the person who subjected her to repeated sexual assaults during the period she remained away from her family. Although the medical evidence, by itself, cannot conclusively establish the identity of the person responsible for the pregnancy, it materially corroborates the victim's account of having been subjected to sexual intercourse during the relevant period. Thus, the evidence regarding the victim's pregnancy and its subsequent medical termination lends substantial corroborative support to her testimony concerning the sexual assaults committed upon her by the appellant.

FSL Report

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18:32:09

34. The appellant relies upon FSL report Ex. Z-1 to contend that the prosecution failed to connect him with the pregnancy. The report does not record a positive DNA match. It records that the relevant alleles could not be compared because a complete DNA profile was unavailable from the specified exhibits. The result is inconclusive; it is neither a positive identification of the appellant nor a conclusive exclusion of him. The relevant portion is reproduced herein:

> ***"Result of Examination***
>
> *The alleles from the source of exhibit '1'(Cotton wool swab of victim) & '5'(Blood in gauze of accused) could not be compared due to non availability of complete DNA profile from the source of exhibit '4a'(yellowish crusty material) & '4b'(Blackish crusty material)."*

35. PW-7, Ct. Dinesh, deposed that he accompanied the appellant for medical examination on 13.02.2015 and for a potency test on 14.02.2015, and thereafter handed over the sealed samples to the Investigating Officer. PW-13 also deposed regarding the collection and deposit of the samples, but admitted that the exhibits could not be sent to the FSL through him, as he was subsequently suspended and retired. PW-14, SI Madhuri, stated that she prepared the supplementary charge-sheet upon receipt of the FSL report dated 30.07.2021. However, the FSL report remained inconclusive, as a complete DNA profile could not be obtained for comparison. Thus, while the report does not establish the appellant's identity as the biological father, it equally does not exonerate him. The question of his involvement must, therefore, be determined on the basis of the remaining oral and circumstantial evidence.

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Signing Date:02.11.2026
18:32:09

36. As regards the appellant's contention that the prosecution failed to establish that the sexual acts were forceful, it is pertinent to note that the FSL report cannot determine whether sexual intercourse was consensual or otherwise. PW-1 categorically deposed that the appellant rendered her unconscious, subjected her to sexual acts while she was asleep, and despite her resistance and requests to stop, continued to assault her. She further stated that the appellant beat her and covered her mouth whenever she cried or sought to contact her parents. These assertions directly establish the manner in which the alleged acts occurred and remain unaffected by the inconclusive FSL report.

37. It is a settled principle that the burden of proving the offence beyond reasonable doubt rests upon the prosecution, and the appellant cannot be required to establish his innocence. The presumptions under Sections 29 and 30 of the POCSO Act arise only upon the prosecution establishing the requisite foundational facts. In the present case, the testimony of the victim, read with the medical and other corroborative evidence, forms the basis for determining the appellant's culpability. Furthermore, once the victim is established to have been below eighteen years of age, her alleged consent to sexual intercourse is legally immaterial for the purposes of the POCSO Act. Her willingness, if any, to accompany the appellant cannot, by itself, constitute a defence to the charge of penetrative sexual assault.

Recovery of the victim

38. PW-2, the father of the victim, deposed that on 05.12.2014, the victim left for school but did not return, whereupon he lodged a complaint with the police, as corroborated by PW-11, SI Chandra Shekhar. He further

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Signing Date:02.11.2026
18:32:09

stated that the appellant, who resided in their neighbourhood, was also found missing. After approximately two months and eight days, the appellant was apprehended at a railway station in Akbarpur, and the victim was subsequently recovered from a jhuggi. PW-13, the Investigating Officer, corroborated that, upon receiving information from PW-2 regarding the victim's presence at Akbarpur, PW-8 was deputed along with the complainant, and the victim and the appellant were brought to Delhi on 13.02.2015.

39. PW-8, ASI Dharmender, also deposed that the appellant was found at the railway station in Akbarpur and the victim was thereafter recovered from a jhuggi. However, during cross-examination, he admitted that no independent public witness was examined, no separate recovery memo was prepared, and no woman police official accompanied the recovery team. His relevant testimony reads as under:

> *"It is wrong to suggest that no departure entry was made in PS. I do not remember how we reached at Akbarpur. But we went in a car. The car was arranged by SI Suraj. I do not remember the exact name of said Railway Station. No lady constable was with us nor any lady police official was taken from local police station. We did not go to any local police station in Akbarpur. No public person was examined from the nearby jhuggies, where the girl M was recovered. No recovery memo of the victim was prepared. Victim girl M was not medically examined in any hospital in Akbarpur. No information was given in the local court in Akbarpur regarding apprehension of accused and recovery of victim girl M."*

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Signing Date:02.11.2026
18:32:09

40. Although PW-2 stated that the appellant's wife led the police to the jhuggi, whereas PW-8 stated that the complainant and the appellant proceeded there, the discrepancy does not affect the factum of recovery. Significantly, PW-1 herself deposed that she was kept at Akbarpur, from where she managed to contact her father, who subsequently arrived with the appellant's wife, police officials and his friend Javed, and brought her back to Delhi. Her testimony thus independently corroborates the place and circumstances of her recovery.

41. PW-13 was also confronted with a reference to Faizabad in a letter addressed to the CMO, despite having stated that the victim was recovered from Akbarpur. He explained the discrepancy during his cross-examination as under:

> *"In this letter, you had written to the CMO that the victim was brought for Faizabad whereas during your examination in chief, you had stated that victim was brought from Akbarpur. Which of these statement is correct ?*
>
> *Ans. The letter shown to me was written for conducting of Potency test of accused. The victim was brought from Akbarpur only.*
>
> *I had not verified as the complainant & accused stated that they both are relatives and the accused is residing in their house on rent and I never confirmed it and investigated it that the accused is residing in the same house. The father of the victim approached me and said that the girl is found and her present location is in Akbarpur and further 1 requested the SHO concerned that the girl was found in Akbarpur and later on one person from the*

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Signing Date:02.11.2026
18:32:09

case concerned went with the complainant for the recovery of the girl from Akbarpur. It is wrong to suggest that 1 am deposing falsely"

42. The non-examination of independent witnesses and the discrepancies regarding the manner of recovery undoubtedly constitute shortcomings in the investigation. PW-12, the appellant's former wife, also did not support the prosecution regarding the alleged abduction, and her testimony cannot be relied upon as corroboration thereof. Nevertheless, these circumstances do not displace the consistent testimony of PW-1, PW-2, PW-8 and PW-13 regarding the victim's recovery from Akbarpur. The depositions establish that the victim was recovered from a jhuggi at Akbarpur on 13.02.2015 and subsequently brought to Delhi. The discrepancies and investigative omissions, though relevant to assessing the manner of recovery, do not undermine the factum of recovery itself.

Conclusion on Conviction

43. Having considered the evidence in its entirety, this Court is of the view that the prosecution has established the guilt of the appellant beyond reasonable doubt. The school record, the affidavit proved through PW-4 and the depositions of PW-2 and PW-3 establish that the victim was below eighteen years of age at the time of the incident. Her testimony regarding the manner in which she was taken away, the places where she was kept and the repeated sexual assaults committed upon her by the appellant has remained consistent on material particulars. The medical evidence establishes that the victim was pregnant, with the gestational age being consistent with the broad period of occurrence described by her. The

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Signing Date:02.11.2026
18:32:09

subsequent termination of her pregnancy also finds support in the depositions of PW-6 and PW-13.

44. The victim's recovery from Akbarpur stands corroborated by the testimonies of PW-1, PW-2 and PW-8. Furthermore, the appellant's plea of a consensual relationship is inconsistent with PW-1's categorical deposition that she was rendered unconscious, subjected to repeated sexual assaults despite her resistance, and beaten whenever she cried or sought to contact her parents. In any event, the victim being a minor, her alleged consent to sexual intercourse would be immaterial for the purposes of the POCSO Act.

45. Insofar as the conviction under Section 363 IPC is concerned, the testimony of PW-1, read with the deposition of PW-2 regarding her disappearance on 05.12.2014, establishes that she was taken away from the lawful guardianship of her parents. Similarly, the evidence regarding the intimidation and physical coercion exercised by the appellant to prevent the victim from resisting or seeking assistance supports the findings recorded by the learned Trial Court under Section 506 IPC.

46. Thus, upon a cumulative appreciation of the oral, documentary and medical evidence, this Court finds that the learned Trial Court has rightly convicted the appellant for the offences punishable under Sections 363 and 506 IPC and Section 6 of the POCSO Act.

Proportionality and Quantum of Sentence

47. Having upheld the conviction, the question which remains for consideration is whether the sentence of thirty years' simple imprisonment imposed upon the appellant under Section 6 of the POCSO Act is

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Signing Date:02.11.2026
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proportionate to the offence and the circumstances of the present case.

48. At the outset, it is pertinent to note that the offences in the present case were committed during the period from December 2014 to February 2015. Section 6 of the POCSO Act, as it stood at the relevant time, prescribed the following punishment:

> *"Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine."*

49. The minimum punishment under Section 6 was subsequently enhanced from ten years to twenty years' rigorous imprisonment by the 2019 amendment. In ***Satauram Mandavi v. State of Chhattisgarh,* MANU/SC/0983/2025**, the Hon'ble Supreme Court reiterated that the enhanced punishment cannot be applied retrospectively, having regard to the constitutional prohibition contained in Article 20(1) of the Constitution. Accordingly, the punishment prescribed under the unamended Section 6 of the POCSO Act would govern the sentence in the present case.

50. It is a settled principle that the quantum of sentence must be determined upon consideration of the gravity of the offence as well as the circumstances of the offender. In ***Gopal Singh v. State of Uttarakhand*, (2013) 7 SCC 545**, the Hon'ble Supreme Court emphasised the principle of proportionality between crime and punishment and observed that the sentencing discretion must be exercised upon consideration of the nature of culpability, age, antecedents, possibility of reformation and other attending circumstances.

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Signing Date:02.11.2026
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The Court further held that there can be no rigid formula for determining the appropriate sentence, which must depend upon the facts of each case and the rational exercise of judicial discretion.

51. In ***Vipul Rasikbhai Koli Jankher v. State of Gujarat,*** **2022 SCC OnLine SC 2446**, the Hon'ble Supreme Court, while modifying the sentence of life imprisonment to fifteen years, considered the age of the offender, the period of incarceration and the reformative object of punishment.

52. Similarly, in ***Satish Kumar Dhruv v. State of Chhattisgarh*****, 2023 SCC OnLine Chh 3631**, the Chhattisgarh High Court, relying upon the principles enunciated in ***Vipul Rasikbhai Koli Jankher*** **(supra)**, modified the sentence of life imprisonment imposed under Section 6 of the POCSO Act to fourteen years' rigorous imprisonment, having regard to the age of the appellant, the period of incarceration and his conduct during custody.

53. The scope of appellate interference with the sentence must also be examined in light of Section 386(b)(iii) Cr.P.C, which empowers the Appellate Court to alter the nature or extent, or both the nature and extent, of the sentence, subject to the prohibition against enhancement. In ***Phool Kumari v. Office of the Superintendent, Central Jail, Tihar*****, (2012) 8 SCC 183**, the Hon'ble Supreme Court explained the distinction between simple and rigorous imprisonment.

> *"9. Section 53 IPC defines five kinds of punishment which includes punishment for life and two other kinds of imprisonment i.e. rigorous and simple imprisonment.* ***Rigorous imprisonment is one which is required by law to be completed with hard labour.*** *Section 36 of the Delhi Prisons Act, 2000 prescribes that the convicts*

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Signing Date:02.11.2026
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> *sentenced to simple imprisonment shall be employed only so long as they desire but cannot be punished for neglect of work.*
>
> *10. A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work**. But the Jail Officer who requires a prisoner sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by the court (vide State of Gujarat v. High Court of Gujarat.)[1] Thus, while a person sentenced to simple imprisonment has the option of choosing to work, a person sentenced to rigorous imprisonment is required by law to undergo hard labour.** The undertrials are not required to work in jail."*

54. In the present case, the sentence of simple imprisonment awarded by the learned Trial Court does not conform to the punishment prescribed under Section 6 of the POCSO Act, which expressly mandates rigorous imprisonment. The proposed modification must, therefore, be considered not merely as a reduction in the duration of imprisonment, but also as an alteration of its nature to bring the sentence into conformity with the statutory provision applicable at the time of the offence.

55. Reverting to the facts of the present case, the aggravating circumstances are undoubtedly substantial. The repeated acts of sexual assault committed upon a minor and their consequences upon the victim cannot be overlooked. At the same time, the mitigating circumstances also merit consideration. The Appellant was approximately twenty-five years of age at the time of the offence, had no previous involvement in a similar case and has remained in

[1] (1998) 7 SCC 392

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Signing Date:02.11.2026
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custody since 13.02.2015. These circumstances, though not diminishing the gravity of the offence, are relevant to determining a proportionate sentence.

56. A perusal of the order on sentence reveals that although the learned Trial Court considered the mitigating circumstances concerning the Appellant, it did not sufficiently explain why a sentence of thirty years, as opposed to a substantial but shorter term of imprisonment, was warranted. The determination of an appropriate sentence requires a balance between the gravity of the offence, the circumstances of the offender and the possibility of reformation. The seriousness of the offence, while an important consideration, cannot be the sole determinant of the quantum of punishment.

57. Having considered the totality of the circumstances and the principles governing proportionality in sentencing, this Court is of the considered view that the sentence awarded by the learned Trial Court warrants modification. A sentence of 15 years' rigorous imprisonment falls within the punishment prescribed under Section 6 of the POCSO Act as it stood at the relevant time. Such a sentence adequately reflects the gravity of the repeated sexual assaults and their consequences upon the victim, while also taking into account the Appellant's age, antecedents and prolonged incarceration.

58. Accordingly, the sentence of thirty years' simple imprisonment awarded by the learned Trial Court under Section 6 of the POCSO Act is modified to 15 years' rigorous imprisonment. The modification reduces the substantive period of incarceration by 15 years while bringing the nature of imprisonment into conformity with the statutory prescription applicable at the time of commission of the offence. This Court is satisfied that the sentence, as modified, would meet the ends of justice.

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Conclusion

59. Accordingly, the conviction of the appellant under Sections 363 and 506 IPC and Section 6 of the POCSO Act is upheld. However, the sentence of thirty years' simple imprisonment under Section 6 of the POCSO Act is modified to 15 years' rigorous imprisonment. The fine of Rs. 25,000/- and the default sentence shall remain unaltered.

60. The sentences imposed under Sections 363 and 506 IPC, including the respective fines and default sentences, shall remain unaltered. All substantive sentences shall continue to run concurrently. The appellant shall be entitled to set-off for the period of detention already undergone in accordance with law. The statutory provisions governing remission and commutation shall remain applicable.

61. The present appeal is accordingly partly allowed to the extent of modification of sentence, while the conviction is affirmed.

62. Pending application(s), if any, stand(s) disposed of.

63. A copy of this judgment be communicated to the learned Trial Court and the concerned Jail Superintendent for necessary compliance.

64. The judgment be uploaded on the website *forthwith*.

MADHU JAIN
(JUDGE)

NOVEMBER 2, 2026/YT

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