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

Reserved on: 27.10.2026
Date of Decision: 03.11.2026
Uploaded on: 03.11.2026

\# **CNR No. DLHC010477632025**
\+ **CRL.A. 1012/2025**

ALI KHAN .....Appellant

Through: Mr. Adit S. Pujari, Adv. (DHCLSC), Mr. Bhavesh Seth, Mr. Harshwardhan Pushkin Sharma, Mr. Vibhav Rawat, Advs.

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Raghuvinder Verma, APP
Mr. Rohan J. Alva, Adv. *(Amicus Curiae)* & Mr. Anant Sanghi, Adv.
SI Sonal Raj, PS Bharat Nagar and SI Vaishali, DPA Dwarka

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal has been filed under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), read with Section 528 thereof (corresponding to Sections 374 and 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as *'Cr.P.C.')* assailing the judgment dated 01.04.2025 and the order on sentence dated 15.04.2025 passed by the learned ASJ-01/POCSO, North-West, Rohini District Courts, Delhi, in SC No. 318/2021, arising out of ***FIR No. 122/2021*** registered at Police Station Bharat Nagar, Delhi, for offences

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punishable under Sections 376, 363 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act').

BRIEF FACTS:

2. In brief, the case of the prosecution is that on 19.03.2021, the complainant PD (identity withheld), who is the mother of the victim, got registered the missing complaint of her daughter BP (identity withheld) aged about 13 years. Victim BP was missing from her house since 15.03.2021 at 5.00 pm and her mother raised a suspicion that she had been seduced and kidnapped by some unknown person. On the basis of the complaint FIR under section 363 IPC was registered.

3. During investigation, despite sincere efforts victim could not be traced out by the IO/SI Raj Kumar. WT message was flashed and information was uploaded regarding kidnapping on Zipnet. Publication was made in the newspaper. On 27.03.2021, SI Ravi Kumar produced the missing girl BP alongwith the accused before SI Laxmi. Victim was got medically examined from DCB hospital. IO/ SI Laxmi collected the seized exhibits i.e. sexual assault evidence kit and clothes of the victim which were deposited in the malkhana. Victim submitted that accused Ali Khan took her with him and forcibly made physical relations with her.

4. IO/ SI Laxmi alongwith staff and the victim reached the spot i.e. E-340, JJ Colony, Wazirpur, Delhi where accused established forcible physical relations with the victim and prepared the site plan at the instance of the victim. Accused was interrogated and arrested. His medical

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examination was got conducted and his exhibits were seized. Pointing out memo was prepared at the instance of the accused. The statement u/s 164 Cr. P.C. of the victim was got recorded wherein the victim stated before Ld. MM that accused took her with him. Accused is the dharam bhai of his mother. When she tried to come to her parents' house, accused used to beat her. He used to make her stroll in the park for the entire night. He used to forcibly make physical relations with her *(jabardasti ganda kaam)* daily. He used to threaten her saying that even if he gets arrested then also when he will come out of the jail he would kill her parents and sell all five siblings. He also wanted to kill her maternal aunts, her chotey papa, her maternal grandparents.

5. On 01.04.2021 victim was produced before CWC, from where her custody was handed over to her mother. The date of birth documents of the victim were collected from her first school attended and as per school record her date of birth is 26.05.2008. The potency test of the accused got conducted from RML Hospital and as per MLC there is nothing to suggest that accused is incapable of performing sexual intercourse. The exhibits of the case were sent to FSL. After investigation, charge sheet for the offence u/s 363, 376, 506 IPC and 6 POCSO Act has been filed.

6. Copy of the charge sheet was supplied to the accused and arguments on charge were heard. On 04.10.2021, Prima facie charge for the offence u/s 363, 376, 506 IPC and Section 5 (l) (n) POCSO Act punishable u/s 6 POCSO Act was made out against the accused and charge was accordingly framed by the Ld. Predecessor to which accused pleaded not guilty and claimed trial.

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7. During admission/denial under Section 294 Cr. P.C. , accused admitted the proceedings of recording u/s 164 Cr. P.C. by Ld. MM as Ex. PX1/1, opinion on MLC of accused Ex. PX1/2, potency test of accused as Ex. PX1/3 and Ex. PX1/4, recording of FIR without contents as Ex. PX1/5, certificate under Section 65B of the Indian Evidence Act as Ex. PX1/6, statement of Ct. Sumita who accompanied the victim for her medical examination as Ex. PX1/7, statement of Ct. Mukesh who deposited the exhibits to FSL Ex. PX1/8, entry made in register no. 19 and 21 Ex. PX1/9.

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

> *"**4. PW-1 Ms. Anita Chahari, Senior Scientific Officer (Biology), FSL** deposed that on 21.05.2021, three parcels in sealed condition were received in the office of FSL. The said parcels were marked to her for examination, all the said exhibits were examined by her and after examination, she prepared her report Ex. PW1/A and allelic data report in this regard Ex. PW1/B.*
>
> ***5. PW-2 Dr. C.D. Jassal, Deep Chand Bhandu Hospital** identified the signatures and handwriting of Dr. Jyoti Sr. Resident, Gynae and deposed that on 27.03.2021 victim B aged about 13 years old female was examined by Dr. Jyoti vide MLC Ex PW2/A. Dr. Jyoti had left the services of the hospital two years prior and her present whereabouts are not known.*
>
> ***6.** PW-3 **Victim B** the relevant portion of whose testimony is as under:*
>
> *"Ali Khan mujhe park me le gaya tha. Main mummy papa ke pass jaane ko kehti thi to mujhe jaane nahi deta tha mujhe maarta tha aur mere saath ganda kaam karta tha.*

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Q: Beta gande kaam se kya matlab hai ?

A : usne mere sharir mein haath deta tha, aur wo meri shusu wali jagah par apni shusu wali jagah dalta tha.
Jab bhi main apne mummy papa ke pass aane ki koshish karti thi to mujhe maarta tha. Wo mujhe apne friend ke ghar le gaya tha.
Mere papa aur mummy ladai kar rahe the to main aur meri behan park mein chale gaye the aur humne socha tha ki jab wo shant ho jayenge to hum ghar chale jayenge. Ali khan mere pass aya aur kaha ki tum ghar chalo, meri behan bhaag gai park se aur Ali Khan mujhe park se dusare park le gaya tha jo bahut door tha. Wahan kaali mata ka mandir tha aur ek kamra bana hua tha, kamre ke peeche park tha aur park mein wo mere saath ye galat us kamre mein karta tha jo park ke peeche tha. Accused mere saath bahut baar ye galat kaam karta tha usi kamre mein. Jab main usse apne mummy papa ke pass jaane ke liye kehti thi to wo mujhe maarta tha. Mujhe dhamki deta tha ki jab main jail se chhoot jaunga to tumhare mummy papa ko maar dunga aur tumhare bhai behno ko baich dunga. Ali Khan mujhe park mein ghumata tha apne saath hi. Ek din Ali Khan mujhe aunty ke ghar le gaya aur main us aunty ko mausi bolti thi. Mausi ne neeche jaa kar bathroom se phone kiya police ko. Fir police aa gai aur lady police bhi aa gai. Police ne meri mummy ko phone kiya. Police ne mujhse puchh tachh ki. Police mujhe raat ko hospital le kar gai thi aur mera checkup hua tha. Mere pehne hue kapde hospital mein le liye the aur maine dusre kapde daal liye the. Hospital mein meri mummy mere saath thi…"

PW1 identified her thumb impression on the

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statement u/s 164 Cr.P.C Ex. PW3/A. She identified her signatures on the site plan Ex. PW3/B, arrest memo Ex. PW3/C, personal search memo Ex. PW3/D. PW1 stated that her mother had made accused as her dharam bhai. She correctly identified the accused in the Court. She correctly identified her clothes Ex. P1 and Ex. P2.

***7. PW-4** teacher from school attended by the victim child deposed that as per their record victim B was admitted in their school on 18.07.2014 vide entry made in admission register Ex. PW4/C, on the basis of admission form and shapatpatra Ex. PW4/A and Ex. PW4/B respectively. As per this record the date of birth of victim is 26.05.2008.*

***8. PW-5 HC Shri Krishan** deposed that on 27.03.2021, he alongwith SI Ravi and Ct. Sumita went to the JJ Colony for the purpose of recovery of the victim B, where the victim was recovered from the house no. 17A/434, Patharwala Bagh, JJ Colony, Wazirpur, Delhi. He apprehended accused Ali Khan and victim was handed over to the Lady Police official. Thereafter, the accused was arrested by the IO vide arrest memo Ex. PW3/C, personally searched vide memo Ex.PW5/A. IO recorded his disclosure statement Ex. PW5/B. IO prepared the site plan vide Ex. PW5/C. Accused Ali Khan was medically examined from Deep Chand Bandhu Hospital vide MLC no. PX1/2 and his exhibits were handed over to him by the concerned doctor. Thereafter, he came back to the police station and handed over the accused alongwith his MLC and exhibits to the IO. IO seized the exhibits of the accused vide seizure memo Ex. PW5/D. He correctly identified the accused in the Court.*

9. PW-6 PD/ mother of victim the relevant portion of whose testimony is as under:

"Accused Ali Khan ko maine dharam ka bhai

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banaya hua tha. Woh hamari jhuggi main hi rehta tha hum logon ke saath. Ek din 2021 mein jab main apne kaam se wapas aayi to mujhe meri badi beti jiska naam B hai, ghar par nahin mili. Phir maine apni beti ko aas pados main dhoonda. Ali Khan bhi ghar se gayab tha. Mujhe shak hua ki Ali Khan meri beti ko lekar chala gaya hai. Phir main Thane gayi aur wahan police ko complaint kar di jis par meri angoothey ke nishan hai. Complaint is now Ex. PW 6/A. Yeh baat 15.03.2021 ki hai. Maine police ko apni beti ka photo bhi diya tha.

Kuch dino ke baad police walon ka phone aaya aur bataya ki meri beti ko dhoondh liya gaya hai. Main Thane gayi aur wahan mujhe meri beti mili. Meri Beti ne mujhe bataya ki Ali Khan ne us ke saath galat kaam kiya matlab sharirik sambandh banaya aur wo bhi kayi baar aur usne bataya ki Ali Khan use ghoomata phirata tha. Jab meri beti mujhe batana chahti thi to wo use dhamkata tha. Meri beti ki medical bhi hui jis par mere angoothe ke nishan at point A hai. MLC is Ex. PW 6/B. Meri beti ke Judge sahab ke samne bhi bayan hue they.

Meri beti ne police ko jagah bhi batayi thi jahan accused ne uske saath galat kaam kiya tha. Jiska police ne naksha mauka banaya aur jis par mere angoothey ke nishan at point A hain. The site plan is already Ex. PW 3/B. Police ne meri beti ko jahan se baramad kiya tha us par bhi mere angoothey ke nishan at point A hain. Recovery memo is Ex. PW 6/C. Police ne accused ko giraftaar bhi kar liya tha jis par mere angoothey ke nishan at point C hain. Arrest memo is already Ex. PW 3/C.

Main Ali Khan ko pehchaan sakti hun. Accused is present in the Court today and has been correctly

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identified by the witness."

10. PW-7 Inspector Ravi Kumar *deposed that on 27.03.2021, he was informed by the secret informer about the presence of victim and accused in JJ Colony, Wazirpur. Thereafter, he alongwith HC Shrikrishan, HC Sumita and secret informer reached at JJ Colony Wazirpur, where they found victim alongwith accused and brought them to the PS and produced them before SI Laxmi. He correctly identified the accused in the Court.*

11. PW-8 ASI Ramesh Chand *deposed that on 19.03.2021 at about 6.00pm complainant 'P' came to the police station and she told him in that her daughter was missing from 15.03.2021. He recorded her statement Ex.PW6/A. He prepared the rukka Ex.PW8/A and thereafter the present case is marked to ASI Raj Kumar.*

12. PW-9 Inspector Lakshmi *deposed that on 27.03.2021, she received the call of duty officer of PS Bharat Nagar. Accordingly, she came to the PS Bharat Nagar in the mid night, where she met SI Ravi Kumar and he produced victim 'B' alongwith accused Ali Khan and mother of victim. She correctly identified the accused in the Court. She handed over the accused to Ct Shri Krishan. She call the NGO by dialing 181. After some time, NGO counselor came to the police station and counseling was given to victim. She inquired from the victim and thereafter victim was sent to DCB hospital alongwith NGO counselor, mother of victim and Ct Sumita. After the medical examination, Ct Sumita produced the victim and exhibits of the victim which she seized vide seizure memo Ex.PW9/A. She deposited the exhibits to the malkhana. She recorded the statements u/s 161 Cr.P.C of the victim and her mother and relieved them.*

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She corroborated the version of other prosecution witnesses regarding the arrest, medical examination and seizure of exhibits of the accused. On 30.03.2021, statement u/s 164 Cr.P.C of the victim was got recorded through PSI Sonia on her direction.

***13. PW10 SI Vaishali Kaushik** deposed that on 01.04.2021, she produced the victim before the CWC and from there her custody was given to her mother. On 09.04.2021 the potency test of the accused was conducted from RML hospital. During investigation, she collected and verified the age proof documents of the victim. On 21.05.2021 case property was sent to the FSL. She concluded the investigation and prepared the charge-sheet. She received the FSL result and same was filed before the Court. She correctly identified the accused in the Court.*

***14. PW11 ASI Raj Kumar** deposed on 19.03.2021, he received the copy of FIR and original tehrir. He checked the CCTV footage and tried to search for the missing girl/victim but in vain. Complainant disclosed name of accused Ali Khan as suspect.*

***15. PW12 Smt. Sunita Devi** deposed that earlier she used to reside in H.No. N-17A/434, Pattarwala Bagh, JJ Colony. On 26.03.2021 accused brought the victim to her house. She knew both of them. She came to know that victim B was missing from her house. She informed the police about both of them and police apprehended them. Police made inquiry from her."*

9. On the completion of prosecution evidence, an examination of accused U/s 313 *Cr. P.C.* was conducted on 28.11.2024. All the incriminating evidence was put to the accused and his statement was recorded u/s 313 *Cr. P.C.* In reply to the incriminating evidence, accused denied the allegations

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against him in toto. Accused stated it to be a false case. There was money transaction between him and the family of victim and due to that reason he has been falsely implicated in the present case. Victim was not with him from 19.03.2021 to 26.03.2021. In the afternoon of 26.03.2021, victim met him and he counselled her to go back to her house but she did not want to go back home. Thereafter, he took her to the house of PW12/Sunita Devi and Sunita Devi called the police and police wrongly apprehended him. The witnesses are interested. He is innocent and falsely implicated him. Accused chose not to lead evidence in his defence. Hence, the matter was listed for final arguments.

10. The learned Trial Court, vide the impugned judgment dated 1st April, 2025, convicted the appellant and held as under:

> ***"55.*** *In the present case from the unblemished consistent and trustworthy testimony of PW3 the prosecution has established the essential ingredients required to prove the charges framed against the accused. The testimony of prosecution witnesses are found to be trustworthy and reliable, and the prosecution has succeeded in proving the guilt of the accused. Hence, in totality of the facts and circumstances as well as the above discussions, it is proved that the accused Ali Khan has committed the offence of charge. Accordingly accused Ali Khan stands convicted for the offence under Section 363/376/506 IPC and Section 6 POCSO Act."*

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

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*"**9.** Further, considering the financial condition and capacity of convict and the fact the convict is an able bodied person, hence a fine of Rs. 20,000/- (Rupees Twenty thousand Only) is imposed on convict for the offence punishable under Section 6 POCSO Act and in case of default in payment of fine, he shall undergo simple imprisonment of six months. Further, fine of Rs. 10,000/- (Rs. Ten Thousand only) is imposed on the convict for the offence punishable under Section 363 IPC and in case of default in payment of fine, he shall undergo further simple imprisonment of three months. Further, fine of Rs. 5,000/- (Rs. Five Thousand only) is imposed on the convict for the offence punishable under Section 506 IPC and in case of default in payment of fine, he shall undergo further simple imprisonment of one month. As per submissions by Ld. Addl. PP for the State that expenses have been incurred by the the State during prosecution of the case, hence, out of the fine amount paid by the convict, an amount of Rs. 10,000/- (Rupees Ten thousand only) shall be paid to State towards the expenses incurred by the prosecution. The remaining fine amount shall be paid to the victim as part of compensation to be provided to her.*

Offence	***Substantive Sentence***	***Fine***	***Sentence in default of fine***

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Section 06 POCSO Act	*20 years (Twenty years) rigorous imprisonment*	*Rs. 20,000/-*	*SI Six months*
Section 363 IPC	*7 years (Seven years) rigorous imprisonment*	*Rs. 10,000/-*	*SI Three months*
Section 506 IPC	*02 years (Two years) rigorous imprisonment*	*Rs. 5,000/-*	*SI One month*

It is reiterated that all the sentences shall run concurrently and the benefit of Section 428 Cr. P.C. (u/s 468 BNSS) be accorded to victim.

Compensation

*"**10.** The last question remains is with respect to the compensation part. I have perused the record. The victim was aged about 12 years 09 months at the time of incident. Victim suffered through a lot of physical pain and has faced the worst hours of her life. The victim lives in a rented house having one room. The father of the victim is handicapped and having income of Rs. 3000/- per month. The fine imposed upon the convict which has been awarded to the victim under Section 357 Cr. P.C. is found to be inadequate. Hence, I deem it appropriate to proceed u/s 357A Cr. P.C. as the circumstances demand so.*

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11. *It is reported by the Ahlmad of the Court that no interim compensation was awarded to the child victim.*

12. *In the case of X v. State of NCT of Delhi (acting through its Secretary) and anr. in Crl. A. 63/2022 decided by the Hon'ble Delhi High Court on 20.10.2022, the Hon'ble Court has held in para 42 and 43 as under:*

> *"42. When the act provides two spectrum one minimum one maximum, the leaning must be towards the maximum. Since sexual violence derails the life of the survivor, it is important that the compensation must aid in getting the life of the survivor back on track. Adequate assistance to the survivor can go a long way in socially and psychologically empowering the survivor.*
>
> *43. The compensation scheme states the maximum limit. In any beneficial scheme/ legislation, there cannot be a concept of maximum. How can there be price tag on the suffering of the survivor? No amount of compensation can undo the trauma. The least that can be done to help the survivor is to get his/her life back on track. However, pecuniary compensation can be of assistance in the rehabilitation of the survivor".*

13. *Further, Hon'ble High Court in para 47 of the same judgment as held as under:*

> *"47. Hence for POCSO survivors of "rape," it should be 7 +3.5=10.5 lakhs (50% of 7 lakhs being added in POCSO cases as per DVC*

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scheme) lakhs. The final compensation shall not be less than 10.5 lakhs".

14. *Coming to the case in hand, the victim has been subjected to aggravated penetrative sexual assault and mental as well as physical trauma. As a result of the said incident not only the victim but her entire family members have been subjected to humiliation and insult by the society and incident has left grave impact on her mental, physical and emotional being for which she needs financial support.*

15. *Further considering all the factors as enumerated above, as per Rule 9 of The Protection of Children from Sexual Offences Act, 2020, the law laid down in X v. State of NCT of Delhi (acting through its Secretary) (supra) and the facts and circumstances of the present case, I deem it appropriate to grant the final compensation to the tune of amount of Rs. 10,50,000/- (Rs. Ten lakh Fifty thousand Only) to the victim "B" under provision of 33(8) of the POCSO Act read with Rule 9 of POCSO Rules 2020 in the name of victim child and the said amount shall be released to the victim child as per rules.*

16. *SHO PS concerned to ensure the presence of the victim before the Ld. Secretary, DLSA, North West and thereafter the Ld. Secretary, DLSA shall take all necessary steps towards the further formalities required for disbursal of the compensation amount and is directed to disburse the amount in accordance with law and subsisting Rules at the earliest as per rules.*

17. *Being a POCSO case, the order will not be uploaded on the website, however, a copy of the order be sent to the Ld. Secretary DLSA (North*

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West) for information and necessary compliance by all possible modes, as per rules. Copy of this order be also sent by the Reader on the dedicated email ID i.e. nwdlsa-posocw@delhi.gov.in of DLSA circulated.

18. *Copy of the judgment be given to convict and alongwith the copy of order on sentence free of costs. Warrants of commitment as per Form-34 Cr. P.C. be prepared accordingly.*

19. *Convict is informed of his right to prefer an appeal against this judgment and Order on Sentence. He has been apprised that if he cannot afford to engage an Advocate, he can approach the Legal Aid Cell, Tihar Jail or write to Ld. Secretary, Delhi High Court, Legal Services Committee, 34-37, Lawyer Chamber Block, High Court of Delhi.*

20. *In view of Section 365 Cr. P.C. (now Section 406 BNSS), a copy of the judgment be also sent to the District Magistrate concerned for his information.*

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

Submissions on Behalf of the Appellant

13. Learned counsel for the appellant and submitted that the judgment of the learned Trial Court is based on surmises and conjectures and not on the correct appreciation of evidence, therefore, the impugned judgment deserves to be set-aside and the appeal of the appellant be deserves to be allowed. That there are many lacunae on the part of the prosecution who failed to prove the case beyond reasonable doubt and it goes in favour of

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the appellant.

14. Learned counsel for the appellant further submitted that the prosecution has failed to prove foundational facts in support of its case, therefore presumption under Section 29 of POCSO Act could not be raised against the appellant.

15. Learned counsel for the appellant further submitted that the entire sub-stratum of the prosecution case and subsequent conviction are reliant only on the statements and testimony of PW-3 i.e., victim and PW-6 i.e., mother of the victim.

16. Learned counsel for the appellant further submitted that the age of PW-3 at the time of recording of the evidence is doubtful while considering the school records where she is recorded to 13 years old. He submitted that as a rule of prudence, the court ought to have considered the testimony of child witness with close scrutiny. That being at a tender age, a child is susceptible to tutoring by the police and family members more so when they are unable to form a discreet opinion about the nature of the incident due to immaturity of understanding.

17. Learned counsel for the appellant has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Nirmal Premkumar v. State of Tamil Nadu,* (2024) 20 SCC 293**, wherein it was observed that although a conviction can be sustained solely on the testimony of the prosecutrix, without requiring any further corroboration, the testimony must satisfy the test of a sterling witness. It was further submitted that the quality, consistency and credibility of such testimony must be of an exceptionally high standard and that an unreliable or insufficient account of the

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prosecutrix, particularly where it suffers from identifiable inconsistencies, material omissions or inherent gaps, cannot form the sole basis for sustaining a conviction.

18. It was further submitted by learned counsel for the appellant that the appellant was falsely implicated in the present case as he was not even present at the place of the incident at the relevant time. It was submitted that during the course of the investigation specifically by PW-11 ASI Raj Kumar, an omission was made in not reviewing the CCTV footage of the Park and surrounding areas near the victim's house on 15.03.2021. It was added that PW-11 failed to record the statement of an important witness, the victim's younger sister, who was present with the victim at the Park at the relevant time.

19. Learned counsel for the appellant added that the learned Trial Court erred in the law and on the facts by convicting the appellant without properly appreciating the material inconsistencies and contradictions in the prosecution's case. He submitted that as per the testimony of the victim's mother (PW-6), a missing complaint in respect of her daughter was filed by her on 15.03.2021 at around 5.00. He pointed out Ex. PW 6/A which is the complaint by the mother of the victim .

20. Learned counsel for the appellant further submitted that the said complaint was in fact lodged at the concerned police station only on 19.03.2021. He placed reliance on DD No.66A dated 19.03.2021 (Ex. PW6/A), which subsequently formed the basis for the registration of the FIR. He submitted that this contradiction remains wholly unexplained by the prosecution. That such inordinate and unexplained delay materially

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affects the credibility of the prosecution case and raises serious doubts regarding the truthfulness and reliability of the version put forth by the prosecution.

21. Learned counsel for the appellant further submitted that the Ld. Trial Court has failed to appreciate a material contradiction in the prosecution's case. He pointed out that while the prosecution claims the victim was recovered by the police on 27.03.2021 (Ex.PW6/C), the counselling report on record unequivocally reflects that the victim was counselled on 26.03.2021, i.e. prior to her purported recovery. He submitted that the failure of the learned Trial Court to scrutinize this apparent contradiction constitutes a grave miscarriage of justice, vitiating the entire prosecution story and thereby entitling the appellant to acquittal.

22. Learned counsel for the appellant further submitted that the statement of the victim under section 164 Cr. P.C. was recorded on 30.03.2021, after a lapse of 3 days from the recovery of the victim. He added that the unexplained and unjustified delay in conducting the medical examination and recording the statement under section 164 Cr.P.C. is not only contrary to the standard procedure under POCSO Act but also seriously undermines the integrity of the investigation.

23. Learned counsel for the appellant further submitted that the statement has been recorded by the police after 4 days of the alleged incident. The allegations raised in FIR are false and lodged on the instructions of NGO, who had been continuously interfering in the private matter of the family of the appellant. That the PW-3 had given the statements with the suggestion of NGO counsellor.

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24. Learned counsel for the appellant further submitted that no evidence regarding the penetrative sexual assault is seen in the medical evidence and no external or internal injury is seen on private part of the child victim in MLC, that the medical evidence also does not corroborate the statement of the victim.

25. Learned counsel for the appellant further submitted that as per the Medico Legal Certificate (MLC) of the alleged victim, the medical examination was conducted on 27.03.2022; however, in the seizure memo of Exhibits of victim (Ex.PW9/A) recovered from the victim, the date mentioned at the bottom is 19.03.2021 and similarly, as per the MLC of the appellant, the medical examination was conducted on 27.03.2021, whereas the date mentioned in the corresponding seizure memo is again shown 19.03.2021. The counsel added that this discrepancy raises serious question as to the authenticity and accuracy of the seizure memos, the timing of recovery of exhibits, and cast grave doubt on whether the procedures were conducted as per law.

26. Learned counsel for the appellant further submitted that the learned Trial Court has committed an error in convicting the appellant solely on the basis of the testimony of the child victim. He further states that the victim's testimony is not up to the mark.

27. Learned counsel for the appellant further submits that the appellant had no motive of any sexual assault. It was further submitted that the entire case against the appellant is a result of false implication by the victim with the sole intention to shielding her boyfriend. The learned counsel state that the victim had voluntarily left her house and gone to be with her boyfriend

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(another boy), the appellant caught the victim with her boyfriend and brought her to the house of her aunt/mausi who is PW-12. He further stated that it was only thereafter that the victim to protect her boyfriend from any possible legal consequences and to divert attention falsely implicated the appellant. The learned counsel pointed out that during her cross-examination, PW-12 stated that *"Victim B ke baare mein main ye jaanti hun ki iss case ke baad bhi wo kissi aur ke saath bhaag gayi hai"*. He made the submission that the testimony of PW-12 Sunita Devi also supports the appellant's case and cast serious doubt on the prosecution story.

28. Learned counsel for the appellant further submitted that the conviction under Section 6 read with Section 5(i)(n) of the POCSO Act is legally unsustainable, as the foundational ingredients of the crime has not been established. It is submitted that, while the prosecutrix (PW-3), in her testimony, stated that the appellant did not reside with her or her family in the same household, her mother (PW-6), on the contrary, deposed that the appellant used to reside with them in their jhuggi.

29. Learned counsel for the appellant also submitted that the above the quantum of sentence is harsh and uncalled for. It was submitted that in the facts and circumstances of the case, leniency should be shown to the Appellant.

Submissions On Behalf Of The Respondent-state:

30. Per contra, learned APP for the State has opposed the appeal and submitted that the learned Trial Court has rightly appreciated the evidence on record and that the impugned judgment does not suffer from any illegality or perversity warranting interference. It is submitted that the

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prosecution has successfully established the guilt of the appellant beyond reasonable doubt through the cogent and consistent testimony of the prosecutrix, duly supported by the surrounding circumstances and documentary evidence.

31. With regard to the alleged defects and inconsistencies in the investigation, learned APP submitted that mere irregularities or lapses in the investigation cannot, by themselves, be a ground to discard otherwise reliable and trustworthy prosecution evidence. It is contended that the alleged discrepancies concerning the sequence of events, recovery of the prosecutrix, recording of statements, preparation of seizure memos and non-examination of certain independent witnesses do not discredit the substantive evidence establishing the commission of the offence. It is further submitted that the Court must assess the quality of the evidence rather than be swayed by every procedural lapse in the investigation. Reliance in this regard is placed upon ***Ashok v. State,*** **2026 SCC Online Del 5413,** particularly paragraphs 26 to 29 thereof.

32. On the question of age, learned APP submits that the prosecution has duly established the minority of the prosecutrix through the school records proved by PW-4. As per the said records, the date of birth of the prosecutrix was 26.05.2008, thereby establishing that she was approximately 12 years and 9 months old at the time of the incident. It is submitted that the documentary evidence has been duly proved before the learned Trial Court and no material has been brought on record to discredit the same. Even otherwise, any discrepancy in the subsequent oral statement of the prosecutrix regarding her age cannot override the contemporaneous

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documentary evidence establishing her date of birth.

33. Learned APP further submitted that the testimony of the prosecutrix (PW-3) is clear, categorical and consistent on the material particulars of the occurrence. She has specifically narrated the manner in which the appellant took her away, subjected her to repeated penetrative sexual assault, prevented her from returning to her parents and extended threats to her and her family. It is submitted that her testimony inspires confidence and has remained substantially consistent with her statement recorded under Section 164 Cr.P.C. It is further contended that the conviction can validly rest upon the sole testimony of the prosecutrix where the same is found reliable and trustworthy, and independent corroboration is not an indispensable requirement of law. In support of this submission, reliance is placed upon ***State of Himachal Pradesh v. Manga Singh, (*****2019) 16 SCC 759** and ***Phool Singh v. State of Madhya Pradesh*****, (2022) 2 SCC 74**.

34. Learned APP, therefore, submitted that the learned Trial Court has correctly appreciated the evidence and that the appellant has failed to demonstrate any material contradiction or infirmity which would create reasonable doubt regarding his guilt. Accordingly, it is prayed that the present appeal be dismissed and the impugned judgment of conviction and order on sentence be upheld.

Findings and Analysis

35. This Court has heard learned counsel for both the parties and perused the material on record.

36. The principal contention of the appellant is that the conviction rests primarily upon the uncorroborated testimony of the prosecutrix, which is

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allegedly inconsistent and unreliable. It is further contended that the investigation suffers from material defects, the age of the prosecutrix has not been conclusively established and the medical and forensic evidence does not support the prosecution case.

Age of the Victim

37. At the outset, it is pertinent to point out that the appellant has sought to question the age of the victim by referring to certain statements made by her at different stages of the proceedings. However, the record reveals that the prosecution examined PW-4, a school official, who proved the relevant admission record, admission form and affidavit (Ex. PW4/A to Ex. PW4/C). As per the school record, the date of birth of the prosecutrix was 26.05.2008. The incident in question pertains to March, 2021. Accordingly, the prosecutrix was approximately 12 years and 9 months old at the relevant time. The documentary evidence regarding her date of birth, duly proved through the school witness, sufficiently establishes that she was a child within the meaning of Section 2(1)(d) of the POCSO Act. Consequently, the contention regarding uncertainty in the age of the prosecutrix is devoid of merit.

Testimony of the Victim:

38. It is a well settled law that testimony of a prosecutrix in a case of sexual assault stands on the same footing as that of an injured witness. Her testimony, if found reliable, cogent and trustworthy, can by itself form the basis of conviction without requiring independent corroboration. The requirement is that the Court must carefully examine her testimony and satisfy itself regarding its credibility. Reliance in this regard may be placed

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upon ***State of H.P. v. Manga Singh*, (2019) 16 SCC 759** where the Hon'ble Supreme court stated that:

> *10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.*
>
> *11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court."*

39. Further, the Hon'ble Supreme court in ***Phool Singh v. State of M.P.*, (2022) 2 SCC 74** stated that:

> *"7. At the outset, it is required to be noted that in the present case, the prosecutrix has fully supported the case of the prosecution. She has been consistent right from the very beginning. Nothing has been specifically pointed out why the sole testimony of the*

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> *prosecutrix should not be believed. Even after thorough cross-examination, she has stood by what she has stated and has fully supported the case of the prosecution. We see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. The submission on behalf of the accused that no other independent witnesses have been examined and/or supported the case of the prosecution and the conviction on the basis of the sole testimony of the prosecutrix cannot be sustained is concerned, the aforesaid has no substance.*
>
> *8. In Ganesan [Ganesan v. State, (2020) 10 SCC 573 : (2021) 1 SCC (Cri) 76] , this Court has observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. In the aforesaid case, this Court had an occasion to consider the series of judgments of this Court on conviction on the sole evidence of the prosecutrix…"*

40. At this stage it would be apposite to reproduce the relevant part of the statements of the victim before the magistrate and the learned Trial Court and examining it in the light of law above stated:

164	***Examination in chief***
यह पाँच दिन पहले की बात है। मुझे अली बाहर लेकर गया था। अली को मेरी मम्मी ने धर्म भाई बना रखा है। फिर जब मैं अपने मम्मी-पापा के पास आने की कोशिश करती थी, तो	*Ali Khan mujhe park me le gaya tha. Main mummy papa ke pass jaane ko kehti thi to mujhe jaane nahi deta tha mujhe maarta tha aur mere saath ganda kaam karta tha. Q: Beta gande kaam se kya matlab hai ?* *A: usne mere sharir mein haath deta*

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वह मुझे बहुत मारता था। वह मुझे Parks में रात भर घुमाता था। वह मेरे साथ जबरदस्ती करता था और मेरे साथ गंदा काम करता था। वह ये सब हर रोज करता था। वह बोलता था कि मैं पकड़ा भी जाऊँ, तो जेल से छूटकर तेरे माँ-बाप को मार दूँगा और तुम पाँचों भाई-बहनों को बेच दूँगा। वह मेरी मासी को भी मारना चाहता है। वह मेरे छोटे पापा को और नाना-नानी को भी मारना चाहता है। मेरी एक और मासी अशोक विहार में रहती हैं, वह उन्हें भी मारना चाहता है।	*tha, aur wo meri shusu wali jagah par apni shusu wali jagah dalta tha. Jab bhi main apne mummy papa ke pass aane ki koshish karti thi to mujhe maarta tha. Wo mujhe apne friend ke ghar le gaya tha.* *Mere papa aur mummy ladai kar rahe to main aur meri behan park mein chale gaye the aur humne socha tha ki jab wo shant ho jayenge to hum ghar chale jayenge. Ali khan mere pass aya aur kaha ki tum ghar chalo, meri behan bhaag gai park se aur Ali Khan mujhe us park se dusare park le gaya tha jo bahut door tha. Wahan kaali mata ka mandir tha aur ek kamra bana hua tha, kamre ke peeche park tha aur park mein wo mere saath ye galat us kamre mein karta tha jo park ke peeche tha. Accused mere saath bahut baar ye galat kaam karta tha usi kamre mein. Jab main usse apne mummy papa ke pass jaane ke liye kehti thi to wo mujhe maarta tha. Wo mujhe dhamki deta tha ki jab main jail se choot jaunga to tumhare mummy papa ko maar dunga aur tumhare bhai behno ko baich dunga. Ali Khan mujhe park mein ghumata tha apne saath hi. Ek din Ali Khan mujhe aunty ke ghar le gaya aur main us aunty ko mausi bolti thi. Mausi ne neeche jaa kar bathroom se phone kiya police ko. Fir police aa gai aur lady police bhi aa gai. Police ne meri mummy ko phone*

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	kiya. Police ne mujhse puchh tachh ki. Police mujhe raat ko hospital le kar gai thi aur mera checkup hua tha. Mere pehne hue kapde hospital mein le liye the aur maine dusre kapde daal liye the. Hospital mein meri mummy mere saath thi. Mere judge sahab ke samne bhi bayan hue the.

41. A comparison of the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. with her testimony before the learned Trial Court reveals consistency on the material particulars of the prosecution case. At all stages, she has consistently stated that the appellant took her away, repeatedly subjected her to sexual assault, prevented her from returning to her parents and threatened her and her family. During her examination-in-chief, she specifically explained the nature of the sexual assault and identified the appellant.

42. This Court has also considered the law laid down in ***Nirmal Premkumar v. State of Tamil Nadu (Supra)*** relied upon by learned counsel for the appellant. In the present case, the testimony of the prosecutrix, when read in its entirety and considered alongside the other evidence on record, does not suffer from any such material infirmity as would render it unworthy of reliance.

43. Her testimony has withstood the test of cross-examination, wherein she denied the suggestions of false implication, tutoring by her parents and the appellant having merely taken her to her aunt's house at her own request. The fact that she did not raise an alarm despite the presence of other persons

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in the park does not, in the circumstances of the present case, render her testimony unreliable, particularly in view of her consistent deposition regarding the threats and physical violence extended by the appellant. No material contradiction or infirmity has emerged in her testimony so as to discredit her version. Consequently, the judgment relied upon by the appellant does not advance his case, as the factual circumstances therein cannot be mechanically applied to the facts of the present case

44. The contention that the conviction could not have been founded upon the sole testimony of the prosecutrix is, therefore, without merit. The Hon'ble Supreme Court has consistently held that the testimony of a prosecutrix, if trustworthy and inspiring confidence, does not require corroboration as a matter of law. In the facts and circumstances of the present case, the testimony of PW-3 is sufficiently cogent and inspires confidence.

Irregularities in the Investigation

45. The appellant has pointed out certain discrepancies in the prosecution case, including the initial missing complaint referring to an unknown person, the difference in the dates of recovery and counselling, the delay in recording the statement under Section 164 Cr.P.C., discrepancies in the seizure memos and non-examination of independent witnesses. However, the initial complaint was lodged when the whereabouts of the prosecutrix were unknown, and the appellant was subsequently identified by the prosecutrix. The aforesaid discrepancies, in the facts of the present case, do not discredit the otherwise cogent and trustworthy testimony of the prosecutrix.

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46. It is settled that defective investigation, by itself, is not a ground to discard otherwise reliable prosecution evidence. In ***Ashok v. State*, 2026 SCC OnLine Del 541,** this Court has reiterated that the evidence is required to be weighed on its merits and that mere non-examination of independent witnesses is not fatal where the evidence on record is otherwise credible and sufficient to establish guilt.

47. The contention regarding non-establishment of the exact place of occurrence also does not advance the case of the appellant, as the prosecutrix has specifically described the place where the alleged acts were committed and the site plan was prepared at her instance. Further, the plea of false implication on account of an alleged monetary dispute or to protect another boy remains unsupported by any material on record. The testimony of PW-12, who stated that the appellant had brought the prosecutrix to her house, also supports the prosecution version regarding the circumstances preceding her recovery.

48. As regards the offence punishable under Section 6 of the POCSO Act, the prosecution has established that the prosecutrix was a child within the meaning of the Act and that the appellant subjected her to penetrative sexual assault on several occasions. Such repeated acts bring the case within the ambit of aggravated penetrative sexual assault under Section 5(l) of the POCSO Act, punishable under Section 6 thereof. As regards the applicability of Section 5(n) of the POCSO Act, the contention of the appellant that he was not residing with the prosecutrix's family is not sustainable. In this regard, the testimony of PW-6, the mother of the prosecutrix, assumes significance. She categorically deposed before the

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learned trial court that:

> *"Accused Ali Khan ko maine dharam ka bhai banaya hua tha. Who hamari jhuggi main hi rehta tha hum logon ke saath."*

Further in her cross-examination PW-6 maintains the following:

> *"Accused Ali Khan lock down se hamarey saath reh raha tha. Accused Ali Khan Ashok Vihar mcin Guard ka kaam karta tha. Wo shaam ko ghar se 09.00 p.m. apnc kaam par jaata tha aur subah 08.00 a.m. aa jaata tha. Mujhe nahin pata accused kitna kamata tha. Hamein yeh koi paisa nahin deta tha. Police ne mere eik papar par angoothey ke nishan liye the."*

The prosecutrix (PW-3) has also consistently stated that the appellant was the dharam bhai of her mother. Accordingly, the ingredients of Section 5(n) of the POCSO Act also stands established. Consequently, the conviction under Section 5(l) and 5(n) of the POCSO act punishable under Section 6 of the POCSO Act is also sustainable.

49. Coming to the quantum of sentence, it is pertinent to note that the offence under Section 6 of the POCSO Act, as applicable to the present case, prescribes a minimum sentence of twenty years of rigorous imprisonment. The learned Trial Court has awarded the appellant the minimum prescribed sentence of twenty years' rigorous imprisonment for the said offence. Having regard to the nature and gravity of the offence, the age of the victim and the circumstances in which the offence was committed, this Court finds no ground to interfere with the sentence imposed by the learned Trial Court. Further, the sentences imposed for the offences under Sections 363, 376 and 506 IPC have also been directed to

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run concurrently. Accordingly, the order on sentence does not warrant any interference and is upheld.

Conclusion

50. Keeping in view the aforesaid principles, the conviction of the appellant for the offences punishable under Sections 363, 376 and 506 IPC and Section 6 of the POCSO Act, as recorded by the learned Trial Court, calls for no interference. The sentence imposed upon the appellant, including the direction for payment of compensation to the victim, also does not warrant interference, particularly in view of the nature and gravity of the offences and the circumstances of the victim.

51. The appellant shall be entitled to the benefit of Section 428 CrPC in accordance with law. Therefore, the appeal deserves to be dismissed and disposed of accordingly. The pending application(s), if any, stand disposed of in the above terms.

52. A copy of this judgment be sent to the learned Trial Court and the learned Superintendent of the concerned Jail for information and necessary compliance.

53. The judgment be uploaded on the website forthwith.

MADHU JAIN
(JUDGE)

NOVEMBER 3, 2026/RM/GS

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