



2026:DHC:3735



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

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Judgment Reserved on: 28.04.2026
Judgment pronounced on: 04.05.2026

+ **CRL.A. 1062/2025 and CRL.M.A. 21877/2025 & CRL.M.(BAIL)**
1611/2025

BH

.....Appellant

Through: Mr. Vikram Singh, Mr. Sandeep
Arya, Mr. Deepak Sharma, Ms. Nidhi
Tiwari and Ms. Vishruti Chauhan,
Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State.
SI Sachin, PS BHD Nagar.
Mr. Aniruddha Ghosh, Amicus
Curiae for prosecutrix.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 415(2) read with
Section 528 Bhartiya Nagarik Suraksha Sanhita, 2023 (the
B.N.S.S.) the appellant, the sole accused, in Sessions Case No.
440576/2016 on the file of the Additional Sessions Judge



(FTSC) (POCSO)-02, South West District, Dwarka Courts, New Delhi, assails the judgment dated 13.12.2021 and the order on sentence dated 30.04.2022 as per which, he has been convicted and sentenced for the offences punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act) and under Sections 366 and 506 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that the accused on 17.03.2015 at 12.30 AM, near Najafgarh terminal, New Delhi, criminally intimidated PW2, the victim with a knife, took her to a secluded place and committed aggravated penetrative sexual assault upon her. The accused also voluntarily caused hurt to PW2. Hence, as per the final report/ charge sheet, the accused is alleged to have committed the offences punishable under Sections 366, 376, 323, 506 IPC and Section 6 PoCSO Act.

3. Based on Ext. PW1/A FIS/FIR of PW2, crime no. 170/2015 Baba Haridass Nagar Police Station, that is, Ext.



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PW5/B FIR was registered by PW11, Assistant Sub-Inspector. PW1 conducted investigation into the crime and on completion of the same, submitted the chargesheet/final report before the Court, alleging the commission of the offences punishable under the aforementioned Sections.

4. When the accused person was produced before the trial court, all the copies of the prosecution records were furnished to him as contemplated under Section 207 of the Code of Criminal Procedure, 1973 (the Cr.P.C.). After hearing both sides, as per order dated 30.06.2015, a Charge under Sections 366, 323, 506 IPC and Section 6 read with 5(m) of the PoCSO Act was framed against the accused, which was read over and explained to him, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 12 were examined and Exts. PW1/A, PW5/A, PW5/B, PW2/B, PW3/A, PW3/B, PW4/A, PW7/A, PW8/C, PW12/A and P-1 were marked in support of the case.



6. After the close of prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. He submitted that on the intervening night of 16.03.2015/17.03.2015, he was returning home from a party and had consumed alcohol. On his way, he met the police officials, who misbehaved with him and when he told them to behave properly, they took him to the police station and falsely implicated him in the present case. He further submitted that he was also taken to the hospital where the child victim was present and there, he was forced by the police to ejaculate in order to create false evidence against him.

7. After questioning the accused under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-



compliance of the said provision does not *ipso facto* vitiate the proceedings unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (see **Moidu K. versus State of Kerala, 2009 (3) KHC 89; 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him.

8. On consideration of the oral and documentary evidence and after hearing both sides, the trial court *vide* the impugned judgment dated 13.12.2021, held the accused person guilty of the offences punishable under Sections 366, 506 IPC and Section 6 of the PoCSO Act. The accused has been sentenced to undergo rigorous imprisonment for fourteen years with fine of ₹20,000/- for the offence punishable under Section 6 of the PoCSO Act, simple imprisonment for two years with fine of ₹3,000/- for the offence punishable under Section 366 IPC, and simple imprisonment for one year with fine ₹2,000/- for the



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offence punishable under Section 506 IPC. In default of payment of fine, he will have to undergo simple imprisonment for six months.

9. It is submitted by the learned counsel for appellant/accused there are several inconsistencies, contradictions and improvements in the statements and testimony of PW2. Hence, the trial court ought not to have relied on her testimony for convicting the accused. As per the Court Charge dated 30.06.2015, the age of PW2 is stated to be about 10 years. However, her age is stated to be 17 years in Ext. PW1/A FIS/FIR, Ext. PW2/B 164 statement, and Ext. PW4/A MLC. The materials on record do not give a consistent case regarding the age of PW2. Hence in such circumstances, the trial court went wrong in concluding regarding the guilt of the accused on the basis of such unsatisfactory evidence.

10. *Per contra*, it was submitted by the learned Additional Public Prosecutor (APP) that the testimony of PW2 is



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consistent throughout without any major inconsistencies and finds corroboration in Ext. PW4/A MLC and Ext. P-1 FSL result. It was further submitted that during trial an application under Section 94 of the Juvenile Justice Act, 2015 seeking the conduct of ossification test was moved by the accused which was dismissed by the trial court *vide* order dated 03.06.2019. The order has not been challenged and so it gained finality. PW2 has consistently maintained her age to be 17 years as stated in the chargesheet; Ext. PW1/A FIS, and Ext. PW2/B 164 statement. The scientific evidence also supports the prosecution case. It was thus contended that there is no infirmity in the impugned judgment warranting interference by this Court.

11. Heard both sides and perused the records.

12. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgement calling for interference by this Court.



13. I shall briefly refer to the evidence on record relied on by the prosecution in support of the case. The case of PW2, the victim, in Ext. PW1/A FIS/FIR seen recorded in Hindi on 17.03.2015 roughly translated, reads thus:- “I had come from Gurgaon with my friend Neha, who works at a goldsmith's shop in Najafgarh. I and Neha reached Najafgarh on 16.03.2015 at around 7 o'clock in the evening. Neha got separated from me at the bus stand and though I searched for Neha for some time, I was unable to locate her. I decided to return to Gurgaon and so I made enquiries with the people at the bus stand and reached the bus stand from where bus to Gurgaon is available. I waited for quite some time, but no bus came. I met a boy who asked me to accompany him to his house for the night. The boy lured me to a deserted place and after threatening me with a knife did ‘*galat kaam*’ with me. After that, he brought me out on the main road and started taking me along with him forcibly. I refused and screamed for help, and in the meantime, the police came and



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saved me from the boy. Later on I came to know that the name of the boy is Bhunesh. The accused by scaring and threatening me at knife-point, did '*galat kaam*'. The incident took place approximately at 12:30 AM.”

13.1 Ext. PW2/B, the 164 statement of PW2 is seen recorded on 18.03.2015, in which she has stated that during the relevant time she was residing at Gurgaon. On the said day, she had gone to Najafgarh with her friend Neha at about 07:30 PM. Neha left her saying that she would return in 5 minutes, but she never did. As she was unable to locate Neha, she decided to go to her maternal uncle's house in Bahadurgarh, but upon finding no bus to reach there, she decided to return to Gurgaon. She reached the bus stand and while she was waiting for the bus, the accused approached her and asked her to accompany him to his house, which she refused and started walking away. But the accused followed her. The accused threatened her with a knife, gagged her mouth with a cloth. At that time, there was nobody



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nearby. The accused threatened to kill her and took her to a secluded place, where he forcibly had sex with her and also beat her. Thereafter, he brought her to the main road and was forcibly trying to take her with him. She then raised an alarm. Few persons from a nearby car came to her rescue. The accused tried to escape, but the said persons restrained him by which time the police came and apprehended the accused.

13.2 PW2 when examined before the trial court deposed that on 16.03.2015 at about 3:20 PM, she along with her friend Neha went to Chhawla Stand, Najafgarh, Delhi. Neha was working in a jewellery shop in Najafgarh. Neha left her at the Chhawla stand saying that she would return in 5 minutes, but the former never returned. After waiting for a considerable time, she decided to take a bus to go to her maternal uncle's house at Bahadurgarh, but she could not find the bus stand. Night ensued. PW2 further deposed that in late night, a boy (the accused) approached her and asked her to accompany him to his house,



but she refused. However, he followed her and thereafter, threatened her with a knife and took her to a deserted place and raped her. Thereafter, when the accused tried to escape, she raised alarm. The police arrived and apprehended the accused. PW2 also deposed that her medical examination was conducted in the hospital. PW2 identified the accused in the box and the case property including the knife that is stated to have been used by the accused for intimidating her.

13.3 PW2 in her cross-examination reiterated her case in the Section 164 statement that when she raised alarm, some persons in a vehicle had come to her rescue. Prior to the incident she had never visited Najafgarh. The place where the accused raped her is situated less than half a kilometre away from Chhawla bus stand. She could not recall the exact time as to when the accused had raped her. According to PW2, Neha, her friend, aged about 25-26 years had been working in a jewellery



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shop at Najafgarh for about 6 years before the incident. Neha was also her schoolmate/classmate.

14. PW3, the Head Teacher from PW2's school, deposed that she had brought the original record pertaining to the admission of PW2. The copy of the relevant entry in the Admission Register was marked as Ext. PW3/A. The certificate issued by the former Principal relating to the date of birth has been marked as Ext. PW3/B. PW2 in her cross-examination admitted that the date of birth was given by the parents at the time of admission of PW2 in the school. No documentary proof had been submitted then.

15. PW14, doctor from RTRM Hospital, Jaffarpur Kalan, deposed that on 17.03.2015 at about 11:40 AM, PW2 was produced before her for her gynaecological examination with a history of sexual assault. PW2 had a small bruise over her mid sternum area. PW2's hymen was found torn. Ext. PW4/A is the MLC of PW2. PW 4 in her cross-examination deposed that



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initially PW2 had refused for the gynaecological examination. She had not noticed any fresh injury in the genital area of PW2.

16. PW8, Sub-Inspector, Baba Haridas Nagar (BHD) police station deposed that on 16.03.2015 he along with Constable Dharambir were on emergency duty. At about 01:15AM while on their way to the police station, when they reached at Sabzi Mandi, Najafgarh, they heard a girl shouting “*bachao-bachao*”. The accused was found trying to take PW2 away with him. They apprehended the accused. PW2 revealed that the accused had raped her. Thereafter, he conveyed the information to the police station. ASI, Ursula Ekka (PW11) along with WSI Parmila (PW1) reached the spot and recorded the statement of PW2. The knife recovered at the instance of the accused was seized as per Ext. PW8/B seizure memo. The crime was registered and the accused arrested. Ext. P1 knife was identified by PW8. PW8 in his cross-examination deposed that the accused was found drunk. PW8 admitted that he had not



conducted any alcometer test. PW8 denied the defence version that the accused was returning late night after attending a party and as the accused was under the influence of alcohol, the police had apprehended him.

17. PW11, ASI, BHD Nagar police station deposed that on 17.03.2015 she along with PW1 on receipt of DD No. 5-A went to the bus terminal Najafgargh. There she met PW8, Constable Dharambir along with PW1 and the accused. She recorded Ext. PW1/A statement of PW2. PW 2 was taken for medical examination which she initially refused to undergo. PW2 was brought back to the spot. Later her father arrived and thereafter PW2 was again taken for medical examination. PW11 further deposed regarding the various steps taken by her during the course of investigation. Ext. P1 is the FSL report. PW11 in her cross-examination deposed that the accused appeared to be under the influence of alcohol. PW2 had not disclosed the details of her friend whose name has been mentioned in Ext. PW1/A.



PW11 admitted that PW2 in her Section 164 statement has stated that some persons in a car had come to her rescue on hearing her cries. PW2 had not shown her any bus ticket of the former's journey to Najafgarh. PW2 had also not given the reason as to why she had come to Najafgarh. PW11 denied the suggestion that PW2 had been medically examined for the second time in order to create false evidence against the accused.

18. The question is whether the aforesaid evidence is sufficient to find the accused guilty of having committed the offences punishable under Section 366, 506 IPC and Section 6 PoCSO Act beyond reasonable doubt. The trial court relied on Ext. PW3/A and Ext. PW3/B certificate to prove the date of birth of PW2. Ext. PW3/B is described as a certificate given by the then Principal of PW2's school. This is apparently a statement given in writing by a witness during the course of investigation to the police and hence a statement under Section



161 Cr.P.C., which is clearly inadmissible in evidence (**Sasi versus State of Kerala, 2019 KHC 465: 2019 (3) KLT 561**)

19. Ex.PW3/A, on the other hand, is the extract of the Admission Register and the same being a document is admissible in evidence. As per Ext. PW3/A, the date of birth of PW2 is 31.07.2004. The incident took place on 17.03.2015. If that be so, the age of PW2 was only 11 years. But PW2 has no such case. In Ext. PW1/A FIS/FIR and in her 164 statement, she states her age to be 17 years. Going by the court Charge, PW2 is supposed to be 10 years old. Here it would be apposite to refer to a few daily orders of the trial court. The order dated 04.11.2015 reads thus:-

“Child victim has not appeared today despite service of summons. On inquiry from the father of child victim, he has submitted that child victim has run away from the house and she has married with someone and is staying in Gurgaon. It is further submitted by him that he has telephonically contacted the child victim and she has



expressed her un-willingness to come today in the court. However, he undertakes to produce the child victim on the next date of hearing. In the light of his submission, child victim, stands exempted for today. She be again summoned through IO for the next date of hearing and even father of child victim is directed to produce her on the next date of hearing. Now put up this case for prosecution evidence on 07.01.2016.”

The order dated 07.01.2016 reads thus:-

“PW child victim has been served for today but despite service, she is absent. On inquiry from the father of child victim, he submits that child victim had got married against his wishes and she used to reside at Gurgaon. Father of child victim further submits that she contacted him through telephone but from few days, no telephone call has been received from her. Therefore, he is unable to produce her as he is not having her address of Gurgaon. IO seeks last opportunity to trace the child victim and produce her before the court for her evidence.”

20.PW3 when cross-examined admitted that she was not the head teacher when PW2 was admitted in the school. PW3



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also admitted that no documentary proof like the birth certificate of the child had been produced at the time of her admission. According to PW3, the date of birth was given by the parents of the child. PW3 also admitted that the date of birth of the child was never verified before her admission. Therefore, it can be seen that the evidence on record is quite unsatisfactory regarding the age of PW2. In the case on hand, the parents of PW2 would have been the best persons to depose regarding the age, have also not been examined. The prosecution has no case that Ext. PW3/A which refers to the date of birth as 31.07.2004, is a false or fabricated document. In fact they rely on the same and hence the reason why PW3 was examined to prove the same. But PW2 herself has no such case that she was only 10 or 11 years at the time of the incident. On the other hand, she asserts or she claims to have been 17 years at the time of the incident. In the light of such unsatisfactory evidence, I find that the prosecution has failed to prove the age of PW2.



21. It is true that Ext. P1 FSL report shows that the swab of vaginal secretion of victim, swab of cervical mucus collection of victim, underwear of victim, and legging of victim were found to be similar with the DNA profile generated from the blood sample of the accused. This is certainly in favour of the prosecution. As I noticed earlier, the age of PW2 has not been established satisfactorily. Therefore, the important question that arises is with regard to the consent of PW2. On going through the testimony of PW2, I find several discrepancies in her testimony. In Ext. PW1/A FIS/FIR, her case is that she reached Najafgarh bus stand on 16.03.2015 at 7 PM. In her 164 statement, her claim is that she reached at 07:30 PM. However, PW2 in the box has a case that she reached the bus stand at 03:20 PM. In Ext. PW1/A FIS/FIR, her case is that the incident occurred at 12.30 AM. However, she has no such case in the box. On the other hand, she deposed that she does not remember



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the exact time when the accused committed rape, but it was night time.

22. Further, according to PW2, she had come from Gurgaon with her friend Neha to Najafgarh. The said Neha was never examined on behalf of the prosecution. Neha is stated to be the friend of PW2. I fail to understand how Neha disappeared into thin air, leaving PW2 high and dry. If PW2 is to be believed, Neha asked her to wait at the bus stand for about five minutes and that she would return shortly. PW2 also claims that she had searched quite extensively for Neha but she was unable to get in touch with her. PW2 is unable to explain why Neha just disappeared without an explanation and leaving her alone in a completely strange place. PW11, the I.O. curiously/interestingly never thought it fit to investigate the said aspect as to why PW2 had come to Najafgarh at the first place and in what circumstances she was left alone and why had her friend Neha



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also left her at the bus stand? The materials of record do not provide answers to these questions.

23. PW2 has also a case that hearing her cries for help, few people in a car had come to her rescue. According to PW2, the accused seeing the said persons approaching, had tried to escape but the said persons had restrained him. These persons who had come to the rescue of PW2 have neither been made witnesses or examined before the Court. It is true that evidence has to be weighed and not counted. However, in the light of the unsatisfactory evidence of PW2, I find it quite unsafe to rely on her sole testimony to arrive at the guilt of the accused. The materials on record do certainly show that some incident did take place. But it is definitely not as narrated by PW2. It is also true that suspicion do arise regarding the role of the accused in the crime. This is especially so because the accused has only a case that the police had falsely implicated him, as he had asked them to behave. According to the accused, he was returning



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from a party and he had consumed alcohol. The police officials misbehaved with him and, so, he asked them to behave. This, according to the accused is the reason why the police had falsely implicated him. Even if that be so, I fail to understand how PW2 came into the picture. The accused does not seem to have a case that PW2 had an axe to grind against him. I am unable to get any answers from the materials on record on this aspect also. However, it is the burden on the prosecution to prove the case beyond reasonable doubt and the burden never shifts to the accused and even if he is unable to give an explanation, or fails to give an explanation that cannot be made a ground to find that the prosecution has succeeded in establishing its case. The prosecution has to stand on its own legs and establish the case beyond reasonable doubt. That, I am afraid has not been done in the light of the unsatisfactory evidence on record. That being the position, I find that the trial court went wrong in relying on the unsatisfactory evidence and concluding regarding the guilt of the



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accused. Hence, I find that the accused is entitled to the benefit of doubt.

24. In the result, the appeal is allowed. The impugned judgment is set aside and the appellant/accused is acquitted under Section 235(1) Cr.P.C. of all the offences charged against him. His bail bond stands cancelled and he is set at liberty if not required in any other case.

25. Application(s), if any pending shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 04, 2026
Kd/rs