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

% *Judgment Reserved on: 29.04.2026*  
*Judgment pronounced on: 04.05.2026*

+ **CRL.A. 558/2024**

X .....Appellant

Through: Mr. Sunil Choudhary, Advocate.

versus

STATE (GNCT OF DELHI) & ANR .....Respondent

Through: Mr. Utkarsh, APP for State with SI  
Anamika Meena, PS – Ghazipur.

**CORAM:**

**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA**

**JUDGMENT**

**CHANDRASEKHARAN SUDHA, J.**

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, (the Cr.PC) read with Section 383 Cr.PC, the sole accused in SC No. 616/2017 on the file of the Additional Sessions Judge, (SC-PoCSO), East District, Karkardooma Courts, Delhi, assails the judgment dated 03.10.2023 and the order on sentence dated 20.12.2023 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,



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2012 (the PoCSO Act) and Section 376(2) of the Indian Penal Code, 1860 (the IPC).

2. The Prosecution case is that on 08.05.2016 at about 03:30 P.M., at house no. B-55, 2<sup>nd</sup> floor. Gali no. 4, Gazipur, Delhi, the accused, the father of PW1, a minor girl, aged 8 years committed aggravated penetrative sexual assault on her and criminally intimidated her by threatening to beat her up in case she disclosed anything to PW7, her mother. Hence, as per the charge-sheet/final report dated 17.09.2017, the accused was alleged to have committed the offences punishable under Sections 376, 506 IPC and Sections 4 and 6 of the PoCSO Act.

3. On the basis of Exhibit PW7/A FIS/FIR of PW7, given on 09.05.2016, crime no. 248/2016, Gazipur Police Station, i.e., Exhibit PW12/B FIR dated 09.05.2016 alleging the commission of offences punishable under Sections 376 and 506 IPC and Sections 4 and 6 of the PoCSO Act, was registered by PW12, Sub-Inspector, who was further entrusted with the investigation of the



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case on 08.12.2016. PW12 conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report dated 17.09.2017 alleging commission of the offences punishable under the aforementioned sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him, as contemplated under Section 207 Cr.PC. After hearing both sides, the trial court, *vide* order dated 27.10.2017, framed a charge under Section 6 of the PoCSO Act and Sections 376 and 506 IPC, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 13 were examined and Exhibits PW1/A, PW2/DA, PW3/A, PW5/A-B, PW6/A, PW7/A, PW8/A-D, PW9/A-C, PW11/A (Mark-X), PW12/A-E and PW13/A-C were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.PC regarding the



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incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. He claimed that he had been falsely implicated. He stated that disputes between him and PW7, his wife, had been subsisting for three years prior to the registration of the present FIR and that although, PW7 wanted to divorce him, he was not amenable for the same. He further submitted that prior to the registration of this crime, in his absence without informing him, PW7 left the rented residence along with his children and began residing with one Deepak Tiwari, at Village Haiderpur, near Shalimar Bagh, Delhi for about six months. Pursuant to the same, he lodged a missing person report. Despite his efforts, PW7 remained unwilling and adamant and refused to return. He further stated that, at the instance of the said Deepak Tiwari, who was her factory owner, PW7 lodged the present FIR after tutoring PW1, his daughter.



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7. After questioning the accused under Section. 313(1)(b) Cr.PC, compliance of Section 232 Cr.PC was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.PC 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. vs. 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.PC has caused any prejudice to him.

8. The accused offered himself as a witness and hence, he was examined as DW1. DW2 was also examined and Ext. DW2/A, Mark A-C were marked in support of his defence.

9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, *vide* the impugned judgement dated 03.10.2023, held the accused guilty of the offences punishable under Section 6 of the PoCSO



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Act and Section 376(2) IPC. He has been acquitted of the offence punishable under Section 506 IPC. *Vide* order on sentence dated 20.12.2023, the accused has been sentenced to undergo rigorous imprisonment for a period of 12 years each, along with fine of ₹10,000/- each, and in default of payment of fine, to rigorous imprisonment for a period of 6 months each for the offences punishable under Section 6 of the PoCSO Act and Section 376(2) IPC. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.

10. It was submitted by the learned counsel for the appellant/accused that the impugned judgement and the order on sentence passed by the trial court suffers from grave infirmities and hence is liable to be set aside by emphasising that the entire prosecution case is based on the testimony of PW1, the victim and PW7, the mother of the victim, without any independent corroboration. The learned counsel drew the attention of this court to the overall conduct and credibility of the versions developed by



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PW1 and PW7. It was urged that the appellant has been falsely implicated due to strained matrimonial relations between the accused and PW7 and that the present case is a pre-planned conspiracy on the part of PW7.

10.1. It was also submitted that the conduct of PW7, who is the mother of PW1, is improbable. As per the prosecution case itself, PW1 disclosed the incident on the very same day. In such circumstances, the natural conduct of a mother, upon learning that her minor daughter has been subjected to such a grave offence by her own father, would be to immediately approach the authorities. However, in the present case, PW1 merely confronted the appellant, accepted his apology, and allowed him to leave the house. This conduct seriously dents the credibility of the prosecution story, goes the argument. It was further argued that PW7 herself alleged that a similar offence had been committed by the appellant upon their elder daughter in the past. However, no complaint was ever lodged in respect of such a serious allegation.



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This omission is unexplained and raises grave suspicion regarding the truthfulness of the allegations.

10.2. The learned counsel further submitted that the alleged incident is stated to have taken place in a small room situated in a premises comprising multiple adjoining tenanted rooms (approximately 16 rooms on the same floor). Despite this, the prosecution has failed to examine any independent witness from the locality and that no effort had been made to establish whether the adjoining rooms were occupied or whether any person heard any noise or commotion. It was also urged that the younger brother of PW1 was present outside the room at the time of incident, who has never been examined as a witness by the trial court. His testimony could have provided crucial corroboration, at least to the extent of surrounding circumstances such as whether the room was bolted, whether any cries were heard, etc.

10.3. The learned counsel laid much emphasis on the inconsistency regarding the disclosure of the incident. As per the



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version of PW1, after the alleged incident, she opened the door and left the room without raising any alarm and thereafter she went to the factory to inform PW7, her mother. However, PW7 has deposed that she came to know about the incident only when she returned home in the evening. It was urged that this inconsistency assumes significance and affects the credibility of the prosecution version.

10.4. It was lastly contended that the medical evidence does not conclusively support the prosecution case as PW3, the doctor, has not opined whether the torn condition of the hymen was recent or old and that no external injuries were noted. Further, it was also contended that as per the FSL report, no semen was detected. It is further submitted that the defence evidence led by the appellant, including prior complaints and documents, has not been properly appreciated. The appellant had brought on record materials to demonstrate the strained relationship. However, the same have been brushed aside without due consideration.



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11. *Per contra*, the learned Additional Public Prosecutor supported the impugned judgment and order on sentence and submitted that no interference is called for in the present appeal, as the trial court has correctly appreciated the materials on record. The learned prosecutor drew the attention of this court to the Section 164 Cr.PC statement of PW1 and the testimony of PW1 to urge that the sequence of events is clear and consistent, namely, that PW1, after the incident, went to the factory, narrated the incident to PW7, her mother, and thereafter both returned home where the accused was confronted. Thus, there is no material inconsistency affecting the core of the prosecution case.

11.1. It was further contended that the so-called discrepancies sought to be highlighted by the appellant are, at best, minor variations which are bound to occur in the testimony of a child witness and her mother, and do not go to the root of the matter. The substratum of the prosecution case, namely, the commission of penetrative sexual assault by the appellant upon his



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minor daughter, remains consistent and unshaken. It was also submitted that the testimony of PW1, a child of tender age, is cogent and trustworthy and that there is no probable reason for a child to falsely implicate her own father in such a grave offence.

11.2. The learned prosecutor further submitted, with respect to the defence documentary evidence, that the same are merely photocopies and have not been proved in accordance with law. It was argued that no ground under Section 65 of the Indian Evidence Act, 1872 (the Evidence Act) had been laid for leading secondary evidence. It was further contended that even if such documents were brought on record, the same cannot be treated as proved merely because they were marked. The learned prosecutor also contended that reliance upon certain complaints (including missing complaints) is of no consequence, particularly when the appellant/accused himself is shown to have changed his version by filing multiple complaints on different dates.



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11.3. Lastly, with regard to the non-examination of the younger brother, it was submitted that the said child was only about 5 years of age and was not an eyewitness to the incident, being outside the room. It was thus contended that his non-examination does not affect the prosecution case. It was further submitted that PW3, the doctor, has not given any opinion as to whether the hymen tear was fresh or old. It was thus contended that the absence of such opinion cannot be used to discredit the prosecution case.

12. Heard both sides and perused the records.

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

14. I shall make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Exhibit PW7/A, the FIS/FIR of PW7, the mother of the victim reads thus:- She was married in the year 2001 to Sarvesh



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(the accused) and that she has three children: the eldest daughter, aged 14 years; the second daughter (PW1), aged 8 years; and the youngest male child. The accused has been working as a labourer in Gazipur Mandi for a long time and that about 1½ months prior to the date of incident, the accused brought her along with her two younger children, i.e., PW1 and Ankit, to Gazipur, where they started residing in a rented room bearing H.No. B-55, Gali No. 4, Gazipur Dairy Farm. Thereafter, PW7 began working in a slipper factory situated in Gali No. 5. On 08.05.2016, at about 8:30 A.M., she left for her workplace after leaving both her children at home in the care of the accused. At about 1:00 PM, PW1, her daughter came to the factory to deliver her lunch and thereafter returned to the room at about 3:00 P.M. When she returned to her room from work at about 6:00 P.M. on the same day, PW1, in a distressed and crying condition, told her, "*Mummy, Papa (father/the accused) forced himself on me in the room, covered my mouth, removed my underwear, and inserted his private part into mine. I started*



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*crying, but Papa threatened me that if I disclose the incident to my mother, he would beat me" (मम्मी मेरे पापा ने मेरे साथ कमरे में ही जबरदस्ती मुँह दबाकर मेरी चड्डी उतारकर पेशाब करने वाली जगह में लिखकर अपनी पेशाब करने वाली सु-सु घुसाकर गलत काम किया था। मैं रोने लगी परन्तु पापा ने मुझे डराया और धमकाया कि अगर अपनी मम्मी को बताएगी तो मैं तुम्हारी पिटाई करूँगा।)* She was further informed by her daughter (PW1) that the incident took place at about 3:30 PM. At about 8:00 P.M., when Sarvesh (the accused) returned home, she confronted him regarding the said incident, upon which he began apologizing and stated that such a mistake would not be repeated in the future. Thereafter, at about 10:00 PM, Sarvesh (the accused) left the house without informing anyone of his whereabouts. On the following day, she informed her employer one Bir Bhan (PW2), about the entire incident, who called the police. PW7 also stated that about four months prior to the date of incident, Sarvesh (the accused) had committed a similar act with PW1 in the village, but PW7 did not



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report the same at that time due to fear of social stigma. She prayed for strict legal action to be taken against her husband Sarvesh (the accused).

15. Exhibit PW1/A Section 164 Cr.PC statement of PW1, the victim, seen recorded by the Magistrate on 13.05.2016 reads thus: About five to six days prior to the date of incident, she was at her home along with her father (the accused) and brother, while PW7, her mother, had gone to work. On that day, at around 12:00 noon, she went to the factory to deliver food to her mother and returned home at approximately 3:00 PM. Shortly thereafter, her father (the accused) came home. When she requested her father (the accused) to allow her to go to her aunt's (*Mausi*) house in the next street to watch television, the former refused. Thereafter, the accused closed the gate and the window, smothered her mouth, and made her lie down on the floor. He then removed her underwear. She pleaded with her father (the accused), saying, "leave me, leave me" ("छोड़ दो छोड़ दो") but he did not stop. Even when her brother



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knocked on the door, her father (the accused) did not leave her. She further stated that her father kissed her on the mouth and cheek and inserted his private part into her private part (“अपनी सुसु वाली जगह मेरी सुसु वाली जगह में घुसा दी”). Thereafter, PW1 pushed her father (the accused), opened the gate, and went outside and when PW7, her mother, returned from the factory, the former narrated the entire incident to her. On the following day, PW7, her mother, informed the factory owner about the incident, upon which he called the police.

15.1. PW1, when examined before the trial court, while broadly supporting the version given by her initial version in Exhibit PW1/A Section 164 Cr.PC statement, made certain additional statements. PW1 deposed that on the date of incident, after she pushed the accused and came out of the room by opening the bolt of the door, she was wearing only her frock as the accused had removed her panty before committing wrong upon her. PW1 further deposed that when she opened the door and came out of the



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room, her brother (Ankit) was standing outside the room. Thereafter, she along with her brother reached the factory of PW7, her mother, and narrated the entire incident to the latter, after which, PW7 brought her back to the house and confronted the accused and upon being confronted, he apologised and said “*mujhe maaf kar do main aage se nahi karoonga*”. PW1 further deposed that she, along with her mother and her brother went to the terrace of their house and slept there. The following day, when they came downstairs, the accused was not there in the house. PW1 further deposed that her mother went to the factory and appraised PW2, the factory owner about the incident. Thereafter, PW2 informed the police.

15.2. According to PW1, even prior to this incident, when she along with her mother, her father and brother were residing in the village, at the time when she was studying in Class 4<sup>th</sup>, her father (the accused), during night time, when her mother and brother were sleeping, removed her undergarment (panty), kissed



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her and inserted his penis into her lower private part (“*unhoney apni juju meri susu wali jagah mein ghusa di thee*”). The following day, when she apprised about this incident to her mother (PW7), the latter confronted the accused, he apologised to PW7 and ensured that he would not repeat the same in future. PW1 further deposed that her mother did not lodge any complaint at that time. PW1 further deposed that the accused committed rape upon her sister in the same manner, and when her mother came to know about the same, she left her sister in the house of her “*nani*” and since then, her sister has been residing with them.

15.3. PW1, in her cross-examination, admitted that one Deepak Tiwari lived in their neighbourhood. According to PW1, the said Deepak never visited their rented house in Delhi before the registration of the present case. PW1 denied the suggestion that prior to the registration of the case, a quarrel had taken place between PW7 and the accused and for this reason her mother shifted to a separate rented accommodation along with her, where



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they lived for about six months. PW1 further deposed that prior to registration of the case, the accused used to come home after consuming liquor and used to beat her and her mother, and that when PW7 would object to the accused consuming alcohol, quarrels used to take place between her parents. PW1 further denied the suggestion that she use to address the said Deepak Tiwari as “*papa*”. She further denied the suggestion that her parents use to quarrel regarding the issue of Deepak Tiwari and further deposed that the said Deepak Chacha, never visited their house in Delhi and that PW7, her mother, never used to speak to him. PW1 further admitted that the house of the said Deepak was situated in front of their house across the lane and sometimes they use to visit Deepak uncle’s house and sometimes the latter’s sister use to visit their house, however, Deepak uncle had never visited their house.

15.4. PW1 further deposed that on the date of incident, immediately after she came out of the room, she along with her



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brother reached the factory where PW7 was working, and also deposed that she did not disclose anything to her brother and had only asked him to accompany her to the factory. Upon reaching the factory, PW1 saw her mother working with few other ladies and hence called her alone to one side and narrated the incident. PW1 further deposed that on the following day in the morning, when she came downstairs from the terrace, the accused was not there and all the household goods were lying scattered and that the accused took away the money of PW7. (“*wo meri mummy ke paise bhi le gaye they*”). PW1 denied the suggestion that her mother was having illicit relations while living in Delhi and in village and that the accused brought her mother to Delhi to avoid such kind of relationships. PW1 further denied the suggestion that she along with her mother had resided with Deepak Tiwari or that she used to address him as “*papa*”. PW1 denied having any knowledge regarding any kind of missing complaints lodged by the accused.



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16. PW7, the mother of PW1 also supported the prosecution case. PW7 deposed that at the time of incident, she along with her husband and her children were living on rented accommodation at Ghazipur, Delhi and that she was working in a factory making jeans. On 08.05.2016, as usual she went for work, PW1 came to the factory for giving lunch at around 01:00 p.m. and returned back at around 03:00 p.m. According to PW7, when she returned home after finishing her duty at about 06:00 p.m., PW1 was found weeping and when she enquired the matter, she was told about the incident. Her daughter informed her that her younger son (Ankit) was sent away by the accused for watching T.V. in the neighbourhood. The accused retained PW1 inside the room and thereafter, locked the room from inside and made her lie on the floor; removed the underwear of the victim and inserted his penis inside her vagina (“*susu wali jagah*”). The accused had also threatened PW1 from disclosing the incident. PW7 further deposed that when she returned from her work place, the accused was not



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present at home and he returned at around 08:00 to 8:30 p.m. When she confronted the accused, the latter confessed his guilt and assured her that he would not repeat such things in future. She further deposed that a heated altercation occurred between her and the accused, pursuant to which, in the night the accused left the house without informing her as to where he was going. The accused had taken away all her money. Hence, the next day she went to her work place to request for money from her employer and to seek permission for leave. She informed PW2, the owner of the factory about the entire incident, who in turn called the police. PW7 further deposed that PW1 was taken to the hospital and was medically examined and that Ext. PW3/A is the MLC. PW7 further deposed that the clothes of PW1 had been seized and the same were handed over to the investigating officer (IO) *vide* Ext. PW6/B seizure memo.

16.1. PW7, in her cross-examination deposed that when she returned from her work place, PW1 and her youngest son (Ankit),



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aged 05 years, were present at home. She had not enquired anything about the incident to her son as he was not present at that time and he was playing outside the house. PW7 admitted that there are 16 rooms on the floor where she was residing. PW7 was unable to recall whether all the rooms were occupied by the tenants or not. PW7 admitted that she did not inform the police on coming to know of the incident on the same day.

16.2. PW7 further deposed that Deepak Tiwari was a neighbour of her matrimonial home in the village. PW7 denied the suggestion that on 06.02.2016, Deepak Tiwari along with his mother came to her rented house in Ghazipur. PW7 further deposed that she has no knowledge regarding any complaint lodged by the accused on 25.02.2016 vide DD no. 33A. She further denied the suggestion that her children used to address the said Deepak as “*papa*”. PW7 deposed that she is unaware as to whether on 08.04.2016, the accused had lodged a written complaint alleging that the said Deepak Tiwari had kidnapped her



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and children in order to deploy them in prostitution or that on the intervention of the local police, a written compromise was arrived at between her and the accused in the presence of villagers and that she had signed the compromise dated 08.04.2016. PW7 also denied the suggestion that when she shifted to Delhi along with the accused, after few days the said Deepak Tiwari had also shifted to Delhi and that he was working in a mirror shop or that she used to meet him in the absence of the accused. PW7 denied the suggestion that she had sent her elder daughter to her maternal grandmother's house in order to conceal her relationship with the said Deepak. According to PW7, the accused committed "*galat kaam*" with her elder daughter also and that to prevent her daughter from such assaults in future, she had sent her elder daughter to her mother's house. PW7 denied the suggestion that she had lodged a false complaint against the accused at the instance of PW1 by levelling false allegations against the accused in order to get rid of him.



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17. PW2 deposed that he was running a factory for manufacture of jeans at B-5, Road No. 5, Gazipur Dairy Farm, Delhi. PW7 was one among the 18 to 20 workers employed by him. According to PW2, PW7 had worked in his factory during the period 2015-16 for about 1½ years. On 08.05.2016, when he was at his factory, at about 12:00 noon, PW7 came to him along with one of his tailor and informed him that her husband (the accused) had committed '*galat kaam*' on her daughter. PW2 further clarified that by the term '*galat kaam*' he meant rape. PW2 further deposed that PW7 also informed him that accused had committed rape on her eldest daughter while they were residing in their native place and also told him that the latter had complained of severe pain due to the said act of the accused. Thereafter, PW2 called the police, after which, he along with PW7 reached her house where the police had also arrived. PW2 more or less stood by his version in the cross-examination.



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18. PW3, Senior Resident (Obstetrician and Gynaecologist) at LBS Hospital, Delhi deposed that on 10.03.2015, PW1 had been brought with a history of sexual assault by her father. She examined PW1 and found the hymen to be torn. She had prepared Exhibit PW3/A MLC No. 90/2016.

18.1. PW3, in her cross-examination deposed that she could not tell the time span of the hymen tear, however, she deposed that at the time of examination, there was no bleeding, but could not ascertain whether the hymen tear was old or fresh. PW3 admitted that hymen could be torn even while playing, jumping, cycling, etc.

19. Now turning to the defence evidence, the accused offered himself as a witness and hence was examined as DW1. DW1 deposed that at the time of registration of the present FIR, he was residing with his family in Delhi. A year prior to the date of registration of FIR, i.e., in the year 2014, PW7, along with her three children, were living in his village in Uttar Pradesh. At that



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time, one Deepak, was his neighbour. PW7, his wife along with his children left his native village and started cohabiting with the said Deepak Tiwari, without disclosing anything to his parents. He was told about this by his parents when he visited his native village. He made efforts to search his family but he failed. Thereafter, he gave a written complaint, that is, Mark 'A', to SSP, Oriyya District, U.P and SHO, Avrakatra, Oriyya District, U.P regarding the conduct of PW7 and Deepak. After about seven days, his wife and children returned on their own to his native village. Thereafter, a written compromise, i.e., Mark B, was executed between him and PW7 in the presence of police officials and villagers at Avrakatra Police Station on 08.04.2026.

19.1. DW1 further deposed that he along with PW7, his wife, his younger daughter (PW1) and younger son came to Delhi, leaving the elder daughter with her maternal grandmother (*nani*). According to DW1, the said Deepak Tiwari also came to Delhi after few days and started living in the vicinity in a rented room.



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One day when he went for duty, PW7 eloped with Deepak Tiwari. She took away both his children also along with her and started residing in Village Haiderpur, Shalimar Bagh, Delhi, regarding which he lodged a complaint *vide* DD No. 33A dated 25.02.2016 in Gazipur Police Station, i.e. Mark-C. DW1 further deposed that PW1 used to address the said Deepak as “*Papa*”. According to DW1, the present crime has been lodged by PW7 at the instance of the said Deepak by tutoring PW1.

20.DW2, Head Constable, Gazipur, Police Station produced the Daily Diary Register containing DD No. 33 dated 25.02.2016, pertaining to a missing person report lodged by the accused. The DD entry assigned to Sub Inspector Vishal for taking necessary action, is still pending. The copy of the entry has been marked as Ext. DW2/A. DW2, in his cross examination, deposed that the DD entry is pending as no information had been received with respect to the missing person. DW2 was unable to say whether the missing persons after 06.02.2016 had returned home.



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DW2 also deposed that he has no personal knowledge regarding the matter mentioned in DD No. 33.

21. The appellant has been convicted for the offences punishable under Section 6 of the PoCSO Act and Section 376(2) IPC. Section 6 of the PoCSO Act prescribes punishment for aggravated penetrative sexual assault, while Section 376(2) IPC deals with aggravated forms of rape. To bring home an offence punishable under the aforesaid sections, the prosecution must establish (i) that the victim is a child; (ii) that there was penetration, however slight; and (iii) that the act falls within any of the aggravated categories, *inter alia*, where the perpetrator is a relative or a person in a position of trust or authority, including the father. In the case on hand, the age of PW1, the victim is undisputed. Also, it is pertinent to note that in the present case, the status of the accused, i.e., biological father of PW1, the victim, makes the case squarely fall in the ambit of Section 5 of the PoCSO Act, punishable under Section 6 thereof.



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22. The prosecution case primarily rests on the testimony of PW1, the victim and PW7, the mother of the victim, corroborated with the medical evidence of PW3 and Ext. PW3/A MLC. The testimony of PW1 seems to be clear, cogent, natural and consistent enough to establish the offence. She has narrated the incident in a very natural manner, describing the sequence of events leading up to the grave incident, the act itself, including her immediate reaction thereafter. In nutshell, she stood by her case from her first version in the Section 164 statement to her testimony before the trial court. It is a settled position of law that conviction can be based on the sole testimony of the victim if it is of sterling quality, and the same does not require any corroboration [See **Rai Sandeep @ Deepu v. State (NCT of Delhi), AIR 2012 SC 3157**]. In the present case, nothing has been elicited to discredit PW1, during her cross examination. The testimony of PW7 further corroborates the version narrated by PW1, particularly, regarding the disclosure made by PW1 about the incident; the confrontation



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with the accused and the subsequent conduct of the accused running away from the house overnight.

23.I shall first address the arguments advanced by the learned counsel for the appellant/accused, wherein he has highlighted the inconsistencies in the testimonies of PW1 and PW7, specifically with respect to the place and time of disclosure of the fateful incident by PW1 to PW7. While PW1 has deposed that she narrated the incident to her mother at the factory, PW7 has deposed that she came to know about the incident when she returned home. It is well settled that there is no requirement of corroboration if the testimony of a child witness inspires confidence; such testimony can form the sole basis of conviction. Corroboration may be sought as a matter of prudence where the evidence appears tutored or suffers from material contradictions. The Court must, however, carefully rule out the possibility of tutoring and, upon finding the testimony to be natural and reliable, act upon it. (See **State of Madhya Pradesh v. Balveer Singh**,



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**2025 SCC OnLine SC 390)** The competency of a child witness depends on the satisfaction of the trial court as to the child's understanding and ability to depose; non-administration of oath is not fatal; and though courts must remain alive to the possibility of tutoring, there is no bar in law to base conviction solely on the testimony of a child witness who withstands cross-examination.

(See **State of Rajasthan v. Chatra, 2025 SCC OnLine SC 566**).

Referring on the aforesaid principles, this Court finds that the discrepancies pointed out are minor in nature and do not go to the root of the matter. Variations in the narration of events, especially by a child witness and her mother recounting a traumatic incident, are bound to occur and, in fact, lend authenticity rather than detract from it.

24. Similarly, the argument that the conduct of PW7 after knowing the incident from PW1 seems unnatural, is without any merit. It is quite natural that in cases involving sexual offences within a family, there are high probabilities of hesitation or delay



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in reporting the matters due to social stigma, fear or shame. [See **Satpal Singh vs. State of Haryana, (2010) 8 SCC 714**]. The conduct of PW7, i.e., initially confronting the accused, and thereafter reporting the matter to PW2, the owner of the factory the following day, does not render the prosecution case doubtful. Also, the non-examination of the younger brother of PW1 does not dent the prosecution case as he was not an eye-witness to the incident, and hence, his testimony would have been, at best, of corroborative nature. Also, the contention that no independent witness from the adjoining tenanted rooms has been examined is misconceived. There is no evidence on record to establish that the other rooms in the premises were occupied at the relevant time or that any person was present who could have witnessed or heard the occurrence. In the absence of any material showing the presence of such persons, no adverse inference can be drawn against the prosecution for non-examination of independent witnesses. Mere existence of multiple rooms in the premises, without proof of



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occupancy or presence of persons therein, is insufficient to discredit the prosecution case.

25. A perusal of Ext. PW3/A MLC shows that the hymen was found torn. The MLC thus records findings which are consistent with the allegation of sexual assault. Though PW3 has not opined whether the tear was recent or old, it is settled law that the absence of such opinion does not negate the prosecution case, particularly when there is clear and cogent ocular testimony of the victim. (See **State Of Haryana v. Bhagirath And Ors., AIR 1999 SC 2005**). The absence of external injuries or non-detection of semen is not fatal to the prosecution, especially in cases involving minor victims, where resistance may be limited or absent due to fear, coercion or overpowering by a person in authority. In the present case, the MLC does not contradict the prosecution version; rather, it lends assurance to the testimony of PW1. Hence, the medical evidence, read in conjunction with the ocular testimony, supports the prosecution case.



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26. The defence has relied upon the documents marked as Mark A and Mark B which is objected to by the learned prosecutor on the ground that the foundation to adduce the said documents, which are merely photocopies of the original documents, as secondary evidence as contemplated under Section 65 of the Evidence Act was not laid. It is well settled that where original documents are not produced without a plausible reason and no factual foundation is laid for adducing secondary evidence, it is not permissible for the Court to allow such evidence. In this regard, reference may be made to the decision of the Apex Court in **H. Siddiqui (dead) by LRs vs. A. Ramalingam, (2011) 4 SCC 240**, wherein it was held that secondary evidence cannot be admitted unless the non-production of the original is satisfactorily explained and the conditions laid down under Section 65 of the Evidence Act are fulfilled. In the present case, no foundation whatsoever has been laid by the defence to bring the case within the ambit of Section 65 of the Evidence Act. There is no explanation as to the



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non-production of the original documents, nor has any effort been made to establish the circumstances under which secondary evidence could be permitted. However, it is equally well settled that if a document has been admitted in evidence without objection at the trial stage, its admissibility cannot be challenged at a later stage, including in appeal. In this context, I refer to **Land Acquisition Officer, Vijayawada Thermal Station v. Nutalapati Venkata Rao, AIR 1991 AP 31** and **P.C. Purushothama Reddiar v. S. Perumal, AIR 1972 SC 608**, wherein it has been held that once a document is marked without objection, the opposing party cannot subsequently contend that the conditions for admitting secondary evidence were not satisfied.

27. Thus, although the defence has failed to lay the necessary foundation for adducing secondary evidence under Section 65 of the Evidence Act, the fact remains that the documents marked as Mark A and Mark B have come on record without objection. Therefore, their admissibility cannot be



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questioned at this stage. But mere marking of the documents will not prove the contents of the same. [See **L.I.C. of India & Anr. v. Ram Pal Singh Bisen, (2010) 4 SCC 491** and **Kaliya v. State of M.P., (2013) 10 SCC 758**]

28. It is quite pertinent to notice that documents Mark 'A' and 'B' were never put to PW7 while in the box. In fact the cross examination of PW7 is seen adjourned by the trial court on 27.10.2018 at the request of the defence for the purpose of production of some documents. Thereafter, PW7 is seen further cross-examined on 04.12.2018. But, neither of the documents are seen put to her. PW7 in the box denied having eloped with Deepak Tiwari or of having entered into a compromise with the accused as claimed by the latter. In such circumstances, the documents Marked 'A' and 'B' ought to have been put to PW7 while she was in the box as she has denied the contents as well as her signature in the same. Having failed in doing that, the accused could have atleast examined any of the villagers who are supposed to have



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witnessed the execution of the compromise. I hasten to add that the burden is always on the prosecution to establish the case beyond reasonable doubt. But, when the accused sets up a specific defence, then it is his burden/duty to establish the same, though not beyond reasonable doubt but by a preponderance of probabilities (See **Harbhajan Singh v. State of Punjab, AIR 1966 SC 97; V.D. Jhingan v. State of U.P., AIR 1966 SC 1762; and Munshi Ram v. Delhi Administration, AIR 1968 SC 702**). However, the accused has failed to do that.

29. Be that as it may, even if the contents of Mark A, Mark B and Mark C are taken at their face value, the same does not in any manner affect the core of the prosecution case. The said documents, at best, seek to suggest strained relations between the accused and PW7. It is improbable that a minor child would falsely implicate her own father in an offence of such a grave nature, in the absence of any compelling reasons. It is pertinent to note that both PW1 and PW7 have even asserted that earlier the accused had



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sexually assaulted his elder daughter also. However, the said fact is not stated by either PW1 or PW7 in their first statements, that is, in Ext. PW1/A 164 statement or in Ext. PW7/A FIS/FIR. But, PW7 in the FIS/FIR had referred to an earlier incident in which the accused had sexually assaulted PW1. This is spoken to by PW1 also in the box. It is true that, PW7 never took any action against the said assault. But the failure of the mother to take prompt action cannot be a reason to reject the testimony of PW1. The most important element of the aforesaid crime, i.e., penetration also stands proved from the categorical testimony of PW1, who has clearly deposed that the accused removed her under garments (चड़ी or कच्छी), forced himself upon her in the room and inserted his private part (penis) into her private part (vagina) [“अपनी सुसु वाली जगह मेरी सुसु वाली जगह में घुसा दी”]. It is well settled that even the slightest penetration is sufficient to constitute the offence of rape or penetrative sexual assault. [See, **Guddu @ Santosh v. State of**



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**Madhya Pradesh, (2007) 14 SCC 654 and Radhakrishna Nagesh v. State of A.P, (2013) 11 SCC 688].**

30. On a cumulative appreciation of the oral and documentary evidence, this Court finds no reason to disbelieve the testimony of PW1. The findings recorded by the trial court are based on proper appreciation of evidence and do not suffer from any perversity or illegality, warranting interference by this Court.

31. In the result, the appeal *sans* merit, is dismissed.

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

**CHANDRASEKHARAN SUDHA  
(JUDGE)**

**MAY 04, 2026**  
*p'ma/kd/rs*