



2026:DHC:916



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

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Judgment Reserved on: 03.02.2026

Judgment pronounced on: 05.02.2026

+ CRL.A. 772/2016

RAJESH

.....Appellant

Through: Mr. Avneesh Saranan and Ms. Anita
Saran, Advocates with appellant in
Person

versus

STATE OF DELHI

.....Respondent

Through: Mr. Pradeep Gahlot, APP for the State
with SI Pinky, PS-Sultanpuri with
prosecutrix in person.
Mr. Tushar Rohmetra, Advocate for
victim

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 of the Code of Criminal Procedure, 1973, (the Cr.P.C.), the sole accused in SC No. 118/2014 on the file of the Additional Sessions Judge-01, North-West District, Rohini Courts, Delhi, assails the judgment dated 30.04.2016 and the order on sentence dated 03.05.2016 as



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per which he has been convicted and sentenced for the offences punishable under Sections 363 and 366 of the Indian Penal Code, 1860 (the IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that the appellant/accused about 8 to 9 months before 30.04.2014, kidnapped PW10, a minor aged 15 years from the lawful guardianship of her mother (PW11), took her to the *juggi* of his *mami*, at P-1, Sultanpuri, Delhi, knowing that she may be forced or seduced to illicit intercourse and thereafter repeatedly committed aggravated penetrative sexual assault on her. As per the chargesheet/ final report, the accused was alleged to have committed the offences punishable under Section 363, 366, 376 IPC and Section 6 of the PoCSO Act.

3. On the basis of Exhibit PW10/A FIS of PW10, given on 01.05.2014, crime no. 484/2014, Sultan Puri Police Station, i.e., Exhibit PW4/A FIR was registered by PW4, Head Constable. PW14, Woman Assistant Sub Inspector (WASI) was entrusted



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with the investigation of the case. PW14 conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report 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.P.C. After hearing both sides, the trial court, vide order dated 03.07.2014, framed a charge under Sections 363, 366, 376 of the IPC and Section 5(I) read with Section 6 of the PoCSO Act, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 15 were examined and Exhibits PW1/A-C, PW2/A-B, PW3/A-D, PW4/A-C, PW5/A, PW7/A, PW8/A, PW10/A-E, PW12/B, PW13/A, PW14/A-E 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.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 claimed that he had been falsely implicated at the instance of the parents of PW10.

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

8. No oral or documentary evidence was adduced by the accused.



9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, vide the impugned judgement dated 30.04.2016 held the accused guilty of the offences punishable under Sections 363 and 366 IPC and Section 6 PoCSO Act. *Vide* order on sentence dated 03.05.2016, sentenced him to undergo rigorous imprisonment for a period of 3 years each and to fine of ₹1,000/- each, and in default of payment of fine, to simple imprisonment for a period of one month each for the offences punishable under Sections 363 and 366 IPC, and to rigorous imprisonment for a period of 10 years and to fine of ₹10,000/-, and in default of payment of fine, to simple imprisonment for a period of six months for the offence punishable under Section 6 PoCSO Act. 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 that the impugned judgment suffers from grave mis-appreciation of evidence, inasmuch as the trial court failed to consider the



categorical admissions of PW10 that the relationship between the parties was consensual, arising out of a love affair known to both families, and that the FIR came to be lodged in a state of anger only because the appellant allegedly refused to marry her. It was submitted that PW10 herself admitted that no force was ever used by the appellant and that the trial court erred in overlooking these material admissions while recording conviction.

10.1. It was further argued that the trial court committed a serious error in convicting the appellant solely on the premise of minority of PW10, without examining whether the essential ingredients of Sections 363 and 366 IPC stood satisfied. The learned counsel submitted that the evidence on record does not establish kidnapping or inducement, nor does it prove that the appellant compelled or forced PW10 into any act against her will. It was urged that the medical evidence, which only notes an old hymen tear without any external injury, does not corroborate the



allegation of penetrative sexual assault and cannot, by itself, sustain a conviction under Section 6 of the PoCSO Act.

10.2. It was contended that the trial court ignored the mitigating circumstances, including the subsequent marriage between the appellant and PW10 and her own statement seeking leniency, and imposed a disproportionately harsh sentence. On these grounds, it was prayed that the impugned judgment of conviction and order on sentence be set aside and the appellant be acquitted.

11. The learned Additional Public Prosecutor supported the impugned judgment and contended that the so-called consent of PW10 is wholly immaterial in law, once her minority stands established. It was submitted that the evidence on record conclusively proves that PW10 was a child within the meaning of the PoCSO Act on the date of occurrence, and therefore any purported consent, willingness, or voluntary participation is of no



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legal consequence. There is no infirmity in the impugned judgement calling for an interference by this Court.

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 make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case Exhibit PW10/A, the FIS of PW10 reads thus:- She stated that the accused, a resident of C-2 Jhuggi, Sultanpuri, had been known to her for about one year and that he used to visit her house to meet her. About 8 to 9 months prior to 01.05.2014, the accused had taken her to the hut (*jhuggi*) of his maternal aunt (*Mami*) situated in Sultanpuri, which was in the same locality, though she could not recall the exact date. She further stated that at that time, the younger son of the accused's maternal aunt was present there, to whom the accused gave ₹5 and sent him to a shop. Thereafter, the



accused began professing his love for her and expressed his desire to marry her, and started asking her to have physical relations with him. She refused and informed him that she was a minor. However, he repeatedly insisted that he loved her and would marry her, and urged her to have relations with him. Saying this, he committed a "wrong act" (*galat kaam*) against her will. She further stated that on 29.04.2014, at about 2:00 PM during the day time, the accused took her to Budh Vihar Phase-I, Delhi, near Sharma Office, to the room of his maternal uncle (*Mama*) on the pretext of taking her for a walk, where he again established physical relations with her against her will. PW10 further stated that on 30.04.2014, at around 2:30 PM, she had gone to Mangolpuri for her tailoring classes, when the accuse came outside the tailoring centre and started quarrelling with her. Meanwhile, PW11, the mother of PW10 arrived there and informed the police. She further stated that the accused had established physical relations with her on 2 to 3



occasions by giving her a false assurance of marriage and requested that legal action be taken against him.

14.1. PW10 in Exhibit PW3/B Section 164 statement has stated that the accused is an acquaintance. His maternal aunt resided near her house and he used to visit there, during which they became friends. When she informed her family about the relationship, they agreed to the marriage and told her that she would be married to the accused on attaining the age of 18 years. The father of the accused, however, was not agreeable to the marriage and, thereafter, under pressure from his family members, the accused also refused to marry her. She further stated that it was she who expressed her desire to have physical relations with the accused, to which he agreed. Both of them went to the house of the accused's maternal uncle at Budh Vihar, where physical relations took place at her request, with the intention of persuading him to agree to the marriage. Prior thereto also, she and the accused had physical relations on three to four occasions, and on each such



occasion, the relationship was consensual. On 30.04.2014, a quarrel took place between her and the accused outside the tailoring (*silai*) center, whereafter her tailoring teacher informed her mother (PW11) over the telephone. Her mother, in a state of anger, called the police and lodged the present case. PW10 categorically asserted that the accused was not at fault and expressed that she did not want any punishment to be awarded to him and sought his release.

14.2. PW10, when examined before the trial court, more or less stands by her case in the FIS and in the Section 164 statement.

15. PW11, the mother of PW10, deposed that the house of the *mami* of the accused is situated near her residence and that the accused used to frequently visit the said house. PW10, her daughter, was in a relationship with the accused. When she scolded her daughter for the same, both the accused and her daughter expressed their desire to marry. Thereafter, she asked the accused to arrange a meeting with his parents. Pursuant to this, she along



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with her husband went to the house of the accused to discuss the marriage. However, the father of the accused, refused to solemnize the marriage of his son with her daughter. She further deposed that her daughter used to go out with the accused on several occasions. On 30.04.2014, she received a call from the *silai* center where her daughter used to go. When she reached the center, she found her daughter weeping. PW10 told her that the accused had quarreled with her, assaulted her, and refused to marry her. PW10 also informed her that the accused had established physical relations with her on the pretext of marriage. PW10 insisted that she would marry only the accused and no one else. Pursuant thereto, she informed the police. Thereafter, the accused was arrested and further proceedings were taken by the police.

16. As noticed earlier, the accused has been charged with the offences punishable under Sections 363, 366 and 376 of the IPC and under Section 5 read with Section 6 of the PoCSO Act. Section 363 IPC deals with punishment for kidnapping. Section



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361 IPC, which defines kidnapping from lawful guardianship, says that whoever takes or entices any minor under sixteen years of age, if a male, or under eighteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, commits the offence of kidnapping from lawful guardianship. The materials on record, as already referred to, do not disclose any enticing of PW10 by the accused. On the contrary, the materials indicate that she went along with the accused on her own accord. Therefore, the essential ingredients of either taking or enticing are not made out. Consequently, the trial court erred in finding the accused guilty of the offence punishable under Section 363 IPC and in sentencing him thereunder.

17. Section 366 IPC deals with kidnapping, abducting or inducing a woman to compel her marriage. It says that whoever kidnaps or abducts any woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled, to



marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment which may extend to ten years and shall also be liable to fine. The second part of the section provides that whoever, by means of criminal intimidation, abuse of authority or any other method of compulsion, induces any woman to go from any place with the intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person, shall be punished.

18. As noticed earlier, there is no kidnapping or abduction involved in the case on hand. There are also no materials to show that PW10 was kidnapped or abducted with the intent to compel her, or with the knowledge that it was likely that she would be compelled, to marry any person against her will. For an offence under Section 366 IPC to be made out, the woman must have been kidnapped or abducted and the accused must have had the requisite



intent or knowledge as contemplated under the Section. The said ingredients are not made out in the present case, as neither the FIS nor the Section 164 statement nor the testimony of PW10 discloses any element of kidnapping, abduction or compulsion to marry against her will. There are also no materials to show that she was forced or seduced to have illicit intercourse or that the accused had knowledge that she would be so forced or seduced. Therefore, the ingredients of Section 366 IPC are also not attracted. Hence, the trial court erred in convicting and sentencing the accused for the offence punishable under Section 366 IPC.

19. Now coming to the offence of rape as contemplated under section 375 IPC or the offence of aggravated penetrative sexual assault as contemplated under Section 5 of the PoCSO Act. The prosecution relies on the sole testimony of PW10 who has given inconsistent versions all throughout the proceedings. I have already referred to in detail the FIS, the Section 164 statement and her testimony in the box. In Exhibit PW3/B Section 164 statement,



she claims that it was at her instance the accused had sexual intercourse with her. She has also stated that she did so in order to make the accused agree to marry her. She also states that it was as per her wish, the physical relationship had taken place. She has also stated that on the date of the incident, i.e., 30.4.2014 there was a quarrel between her and the accused. She informed her mother and that her mother in anger had informed the police. She further stated that the accused had not done any wrong to her. Therefore, it appears from the statement of PW10 that she resorted to all these tactics in order to compel the family of the accused to solemnize their marriage. It is true that the sole testimony of the prosecutrix is sufficient in an offence of such nature and corroboration is also not required if the testimony of the victim is of sterling quality.

20. In the light of the statements and testimony of PW10, wherein she stated that she had acted in the manner referred to in order to compel the accused to marry her, it may not be safe to conclude that the accused committed penetrative sexual assault



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upon her. On a perusal of the impugned judgment and the order of sentence, it is noticed that the trial court also observed that during the pendency of the trial, PW10 had married the accused and thereafter became pregnant through him. It is true that subsequent marriage between the accused and the victim is not, by itself, a ground to hold that the offence was not committed. However, in the present case, the materials available on record in support of the prosecution case consists solely of the testimony of PW10, which suffers from material inconsistencies. There exists a possibility that the complaint was lodged with the police in order to compel the family of the accused to agree to the marriage. In such circumstances, I find that the accused is entitled to the benefit of doubt and consequent acquittal.

21. In the result, the appeal is allowed. The impugned judgment by which the accused has been convicted and sentenced for the offences punishable under Sections 363, 366 IPC and Section 6 of the PoCSO Act is set aside. The accused is acquitted



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under Section 235(1) Cr.P.C. of the offences punishable under Sections 363, 366 IPC and Section 6 of the PoCSO Act. The accused is set at liberty and his bail bond shall stand cancelled and the sureties, if any, shall stand discharged.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 05, 2026/RN/MJ