



2026:DHC:4231



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

% *Judgment reserved on: 12.05.2026*
Judgment pronounced on: 14.05.2026

+ **CRL.A. 199/2025**

KARTIK

.....Appellant

Through: Mr. Adit S. Pujari, Mr. Bhavesh Seth
and Mr. Harshwardhan Pushkin
Sharma, Advocates (DHCLSC).

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Nikhil Kumar, PS Ambedkar
Nagar.
SI Kamal, PS Ambedkar Nagar.
Mr. Himanshu Anand Gupta, Mr.
Karan Jain and Ms. Mansi Yadav,
Advocates.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 415(2) of the
Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS), the sole



accused in Sessions Case No. 727/2018 on the file of the Additional Sessions Judge (Special Court - PoCSO), South District, Saket Courts Complex, Delhi, assails the judgement dated 19.09.2024 and order on sentence dated 16.10.2024, as per which he has been convicted and sentenced for the offences punishable under Sections 376(2)(n) and 174A of the Indian Penal Code, 1860 (the IPC) and Section 5 (j)(ii) and (l) read with 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that in the month of September 2017 and on 05.11.2017, the accused committed repeated penetrative sexual assault/ rape upon PW1, a minor aged about 17 years and 08 months as a result of which, she became pregnant. Further, the accused failed to appear before the trial court on 20.07.2018 as required by the proclamation published on 19.06.2018, following which the accused was



declared a proclaimed offender on 01.09.2018. Hence, as per the chargesheet/ final report, the accused is alleged to have committed the offences punishable under Sections 363, 376, 174A IPC and 6 PoCSO.

3. On the basis of Ext. PW10/A FIS/FIR of PW10, given on 26.02.2018, Crime no. 204/2022, Ambedkar Nagar Police Station, i.e., Ext. PX FIR was registered by Dharam Pal Singh, Head Constable. PW3 Sub Inspector conducted investigation into the crime and on completion of the same, filed the chargesheet/final report alleging commission of the offences punishable under the aforementioned Sections. Thereafter, supplementary charge sheet dated 31.05.2019 and 24.02.2022 were submitted by PW9 and PW14.

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 20.08.2019, framed a Charge under Sections 376(2)(n) IPC and Section 5(j)(ii) read with 6 of the PoCSO Act against the accused. Additionally, the trial court also framed a Charge under Section 174A IPC against the accused, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 16 were examined and Ext. PW1/A-B, Ext. PW2/A-C, Ext. PW6/A, Ext. PW10/A, Ext. PW11/A-C, Ext. PW12/A-D, Ext. PW15/A, Ext. PW16/A-C, Ext. PX, and Ext. PX-1 to PX-8 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. The accused



submitted that electricity bill relating to a house, namely, H. No. K/400, Dakshinpuri, came in the name of the PW10, i.e., PW1's mother, who asked him to threaten the owner of the said house. He refused the said request. PW10 repeated her demand and threatened to falsely implicate him if he refused to accede. As he refused the demand, PW10 got him falsely implicated in this case.

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. 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 19.09.2024 held the accused guilty of the offences punishable under Sections 376(2)(n) and 174A IPC and Section 5 (j)(ii) and (l) read with 6 PoCSO Act. *Vide* order on sentence dated 16.10.2024, sentenced him to undergo rigorous imprisonment for a period of 15 years and to fine of ₹50,000/-, and in default of payment of fine, to simple imprisonment for a period of 5 months for the offence punishable under Section 376(2)(n) IPC; and to rigorous imprisonment for a period of 3 years and to fine of ₹10,000/-, and in default of payment of fine, to simple imprisonment for a



period of 30 days for the offence punishable under Section 174A IPC. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.

10. The learned counsel appearing for the appellant/accused submitted that the trial court erred in determining the minority of PW1 on the basis of Ext. PW2/A date of birth certificate, as the same is founded upon an affidavit given by PW10 wherein the date of birth of PW1 is recorded as 03.03.2000, which coincides with the cut off date of the relevant academic year, thereby casting doubt on its authenticity. The prosecution has failed to conclusively establish the minority of PW1, which is a foundational requirement for attracting the offences under Sections 5(j)(ii) and 5(l) of the POCSO Act. It was also argued that PW1 herself has disclosed in her testimony about the existence of a consensual relationship with the



accused, and therefore, if PW1 is not proved to be a minor, the offence under Section 376(2)(n) IPC would not be attracted.

11. The learned Additional Public Prosecutor submitted that the impugned judgment does not suffer from any infirmity warranting interference by this court as the trial court has duly considered each and every ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits. It was contended by the learned APP that no question or suggestion disputing the age of PW1 was put to her during cross examination, and PW10, the mother of PW1, who would be the most competent person to depose regarding her age, was also not confronted on this aspect. Therefore, the defence cannot be permitted to raise a challenge to the age of PW1 at this stage, and the same is liable to be rejected.



12. Heard both sides and perused the materials on record.

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 Ext. PW10/A, the FIS/FIR given by PW10, mother of PW1 is a missing complaint. According to PW10, on 25.02.2018, at about 02:00 PM, her daughter (PW1) went missing. Hence, appropriate legal action may be taken. PW10 furnished a list of persons, including the accused, upon whom she had suspicion in connection with the missing of her daughter.

15. PW1, the victim, in Ext. PW1/A Section 164 Statement recorded on 27.02.2018 has stated thus:-*"I love a boy*



named Kartik (the accused). I will turn 18 years old in four days. We both love each other. We have been talking to each other for 4 years. We both had decided to get married, but I was not 18, so he said that we will get married after I turn 18. Then, without telling me, he eloped with a girl named Aarti. I do not know what his compulsion was, but then he went to Tihar jail. Both of them got married of their own free will. Then I found out that while being with me, he got involved with another girl. In Nov. 2017, he established physical relations with me with my consent. Then I found out that I am pregnant. When I told him, he said alright, I will take you with me because I was facing a lot of problems at home. He had talked to me before the 25th. He was in Bihar at that time; he said that he would come from Bihar and take me along, but I did not listen to him at all and kept insisting. Then, of my own free will, on 25.02.18 at 02:00 PM, I went to Kartik's aunt's (mausi's) house. From there, I called my



elder brother to tell him that wherever I am, I am fine, but my brother started insisting on calling me back. My mother's health was also not fine, so on 26/02/18 I came back. Then I called Kartik on the phone, and he said that he would come back by tomorrow. Then I came to know that this complaint has been filed. I am still pregnant. I do not know whether Kartik has come back or not. I want to get an abortion. Kartik should also be asked what he wants. Kartik is not at fault in this.”

(Emphasis supplied)

16. PW1, when examined before the trial court, fully stood by her version given in Ext. PW1/A Section 164 Statement. PW1 further deposed that in the year 2017 she was residing with her family comprising her mother, two brothers and five sisters at Dakshinpuri, Delhi. She was in a relationship with the accused for about 3 to 4 years who was a friend of her elder brother Ajay. The accused had promised to marry her and



she had also consented to the same. However, the marriage did not take place as she had not attained the age of 18 years at that time. On 24.02.2017, she went to the house of the accused's maternal aunt (*mausi*). She was pregnant and hence returned the next day. PW1 deposed that she had physical relations with the accused on 2 to 3 occasions during their relationship, but she does not remember the exact date, month or year of the first two instances of physical relations. However, the last such instance took place on 29.11.2017. She consented to such physical relations as the accused had promised to marry her and she also intended to marry him. When she became pregnant and informed the accused, he told her that he would take her to his house and marry her. However, thereafter he went to Bihar to participate in a dance show. As her pregnancy progressed, she became anxious and informed the accused telephonically, upon which he asked her to go to the house of his maternal aunt. She accordingly went



there, but the accused did not come despite his assurance. PW1 further deposed that she thereafter called her brother, who asked her to return home stating that their mother was unwell, and she accordingly returned. She made several attempts to contact the accused thereafter, but was unable to reach him. After the accused had established physical relations with her, she came to know that he had married another girl, namely, Aarti by eloping with her and that in connection with that matter he had also been sent to jail. She further clarified that her earlier statement regarding the date of visiting the house of the accused's maternal aunt on 24.02.2017 was inadvertent and that the correct date was 24.02.2018.

16.1. PW1, in her cross examination, admitted that she used to visit the house of the accused regularly during their relationship. According to PW1, her parents refused to solemnize her marriage with the accused on coming to know that



the background of the accused was not good and that he was already married. PW1 denied the suggestion that she had given a statement to the police under pressure from her sister or that she never intended to initiate proceedings against the accused. According to PW1, initially she was reluctant as the accused had assured her that he would come to the police station, however, when he failed to do so, she gave her statement. PW1 denied the suggestion that the present case was falsely instituted as the accused married Aarti instead of her. PW1 deposed that she does not wish to marry the accused as he had deceived her and despite having relations with her, he had married another woman, and so there is a possibility that he would repeat such conduct in future also.

17. PW8 and PW10, the sister and mother of PW1 respectively support the prosecution case of relationship between the latter and the accused, though they had not directly



witnessed any such relations between the two. According to PW8, PW1 underwent an abortion on 03.03.2018. PW8 deposed that her sister had informed her that the former was pregnant with the child of the accused.

17.1. PW8 in her cross examination expressed her inability to state the exact age of PW1, but denied the suggestion that the latter was about 22 years of age at the relevant time. According to PW8, she was born in the year 2002 and so was around 20 to 21 years of age when examined before the Court. PW8 further deposed that she was not aware of any love affair between her sister and the accused. PW8 admitted that the accused used to visit their house, sometimes stayed overnight, and used to take meals there. PW8 admitted that they had not noticed any relationship between the accused and PW1. According to her, the wife of the accused had informed them



about such a relationship, which the accused denied when confronted.

18. PW2, Principal, Nigam Pratibha School, Ambedkar Nagar, when examined, deposed that as per the school record, PW1 was admitted for the first time in Class 2 and her name has been recorded at Serial No. 4559 in the Admission and Withdrawal Register. At the time of admission, the mother of PW1 had submitted an affidavit declaring the date of birth of the victim as 03.03.2000. The same was marked as Ext. PW2/A. PW2 further deposed that during the course of investigation, the police visited the school and made inquiries regarding PW1's admission, whereupon she verified the record and issued a certificate reflecting the date of birth as 03.03.2000. The said certificate has been marked as Ext. PW2/B. PW2 also produced the attested copy of the admission form, which is Ext. PW2/C and the attested copy of the Admission and Withdrawal



Register, which is Ext. PW2/D. PW2, in her cross examination, admitted that the date of birth was recorded on the basis of an affidavit furnished by PW10, mother of PW1. PW2 admitted that she was not working in the school at the time when PW1 was admitted and had joined the school only in the year 2017.

19. The trial court has found the accused guilty of the offences punishable under Section 376(2)(n) IPC as well as Section 5(j)(ii) and (1) read with Section 6 PoCSO Act. To bring home the charge under Sections 5 and 6 of the PoCSO Act, the prosecution must establish that PW1 was a child, that is, below 18 years of age at the time of the incident. In order to prove the same, the prosecution has relied upon the testimony of PW2, the Principal of the school where PW1 had studied, along with Ext. PW2/B, the date of birth certificate issued by PW2 on the basis of Ext. PW2/A affidavit furnished by PW10, the mother of PW1 at the time of admission. A birth certificate issued to the



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investigating officer by the authority concerned during investigation is nothing but a statement under Sec. 161 CrPC, although signed. Therefore, it is hit by Sec. 162 CrPC. The prosecution has to produce the extract of the birth register or the extract of the school admission register or any other similar document to prove the age of the victim. What was produced and exhibited was a certificate issued by PW2, the Principal of the school where the victim had studied. The certificate marked as Ext PW/2B is a certificate PW2 prepared and signed and handed over to the investigating officer. The same can be treated only as a statement of PW2 given to the investigating officer under S.161 of Cr.PC, although signed. Ext PW2/B is therefore hit by S.162 of Cr.PC and is not admissible in evidence and hence is liable to be discarded (**Sasi v. State of Kerala 2019 KHC 465: 2019 (3) KLT 561**).[See also **Kali Ram v. State of H.P., 1973 KHC 634:1973 (2) SCC 808; Kanu Ambu Vish v.**



**State of Maharashtra, 1971 KHC 469: 1971 (1) SCC 503;
Datar Singh v. State of Punjab, 1975 KHC 789 : 1975 (4) and
C. Chenga Reddy v. State of A.P., 1996 KHC 1264 : 1996
(10) SCC 193]**

20. It is true that PW2 has also produced Ext. PW2/D, which is stated to be the attested copy of the admission and withdrawal register. But the entry in the same is stated to have been made on the basis of an affidavit given at the time of admission of PW1 in the school. Therefore, the evidence relating to age of PW1 is not quite satisfactory.

21. It is true that Section 29 of the POCSO Act provides that the Court shall presume that the accused has committed or abetted or attempted to commit the offence, unless the contrary is proved. However, such presumption is not automatic and comes into operation only upon the prosecution first establishing the foundational facts of the case. In the present



case, insofar as the prosecution has failed to prove the minority of PW1, which is a sine qua non for attracting the provisions of the POCSO Act, the statutory presumption under Section 29 cannot be invoked, and the benefit of doubt must necessarily enure to the accused.

22. Coming to the offence punishable under Section 376(2)(n) IPC, in view of the prosecution having failed to establish the minority of PW1, the relationship between the accused and PW1 is to be assessed on the basis of consent. As PW1 has, throughout her testimony, admitted to having engaged in a consensual relationship with the accused, the essential ingredients of the said offence are not made out.

23. In the result, the appeal is allowed. The appellant/accused is acquitted under Section 235(1) Cr.P.C. of the offences punishable under Sections 376(2)(n) IPC and



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Section 5(j)(ii) and (l) read with 6 of the PoCSO Act. He is set at liberty and his bail bonds shall stand cancelled.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 14, 2026
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