



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

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Judgment Reserved on: 19.01.2026

Judgment pronounced on: 22.01.2026

+ CRL.A. 74/2025 and CRL.M.(BAIL) 134/2025

ISLAM

.....Appellant

Through: Mr. Gautam khazanchi and Ms. Aditi
Kukreja, Advocates.
Mr. Anubhav Singh, Mr. Nitin Kumar
and Ms. Maria Mary, Advocates.

versus

THE STATE (GOVT. OF NCT) DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Nagendra Kumar, PS – Sunlight
Colony.
Mr. Ashutosh Kaushik, Advocate
(DHCLSC) for victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Sections 374(2) Cr.P.C. and 415 of the BNSS has been filed by the accused in SC No. 2278/2016 on the file of the Special Court under the Protection of Children from Sexual Offences Act, 2012 (PoCSO Act), South-East, Saket



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Courts, New Delhi challenging the judgment dated 10.07.2024, as per which he has been convicted and sentenced for the offences punishable under Sections 363, 342, 506 IPC and Section 6 of PoCSO Act.

2. The prosecution case is that about 5 to 6 days before 11.05.2015, the accused kidnapped PW1, a minor girl aged 8 years, from lawful guardianship, took her to his room, confined her there and committed penetrative sexual assault on her. The accused is also alleged to have threatened PW1 with dire consequences in the event she revealed the incident to others. Hence, as per the final report/ chargesheet, the accused is alleged to have committed the offences punishable under Sections 363, 342, 506 IPC and Section 6 of the PoCSO Act.

3. Based on Ext. PW1/A, First Information Statement (FIS) of PW1, recorded on 11.05.2015, crime 316/2015, Sunlight Colony Police Station, i.e. Ext. P2 FIR was registered by PW 14, Women Sub-Inspector. PW14, the Sub-Inspector, conducted the



investigation to the crime and on completion of the same, submitted the chargesheet/ final report against the accused alleging the commission of the offences punishable under the above mentioned 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, as per order dated 11.12.2015, framed a charge under Sections 363, 342, 506 IPC and 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, PW1 to PW16 were examined and Exts. P1-P3, PW1/A-C, PW4/A-E, PW5/A-B, PW6/A, PW7/A-D, PW9/A-C, PW10/A, PW11/A, PW12/A, PW13/A, PW14/B-E and PW15/A were marked in support of the case.



6. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence led by the prosecution. He denied all those circumstances and maintained his innocence.

7. After questioning the accused under Section 313 Cr.P.C., the compliance of Section 232 Cr.P.C. was mandatory. 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**). In the case on hand, the accused has no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to him. No oral or documentary evidence was adduced by the accused.



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8. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court *vide* the impugned judgment, held the accused guilty of the offences punishable under Sections 363, 342, 506 IPC and Section 6 of the PoCSO Act. Hence, as per order dated 12.09.2024, sentenced him to rigorous imprisonment for one year for the offence punishable under Section 363 IPC and to pay fine of ₹2,000/- and in default of payment of fine, to simple imprisonment for two months; to rigorous imprisonment for one year for the offence punishable under Section 342 IPC; to rigorous imprisonment for two years for the offence punishable under Section 506 IPC and to rigorous imprisonment of ten years for the offence punishable under Section 6 of the PoCSO Act and to fine of ₹2,000/- and in default of payment of fine, to simple imprisonment for two months. The sentences have been directed to run concurrently. The fine amount, if realized, has been directed to be paid as compensation



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to the victim. Benefit under Section 428 Cr.P.C. has also been allowed. Aggrieved, the appellant/ accused has come up in appeal.

9. It was submitted by the learned counsel for the appellant/ accused that there are several inconsistencies, contradictions and improvements in the statements and testimony of PW1. Hence, the trial court ought not to have relied on her testimony for convicting the accused. Further, materials have come on record to show that there are several rooms situated adjacent to the room of the accused in which the crime is alleged to have taken place. It has also come out in evidence that the adjacent rooms were open and that people were present in the said rooms when the crime is alleged to have been committed. In such circumstances, it was highly improbable and impossible for the accused to have committed the offences charged against him.

10. *Per contra*, it was submitted by the learned Additional Public Prosecutor that the materials on record clearly establish the prosecution case. Nothing has been brought out to discredit the



testimony of PW1 and hence, there is no reason to disbelieve or discard her testimony. There is no infirmity in the judgment of the trial court calling for an interference by this Court, argued the prosecutor.

11. I will now briefly refer to the materials on record relied on by the prosecution in support of the case. PW1/A, the FIS of PW1, recorded on 11.05.2015 reads thus:- “I am studying in the third standard. There is an old uncle residing in the 1st floor of the building where I am staying with my parents and sisters on the 5th floor. The uncle used to call me when I go up and down the stairs. He used to fondle my cheeks. He buys eatables for me and gives me money. About 5 to 6 days back, the old uncle whose name is Aslam took me to his room. After closing the door, he undressed me. He spread a blanket on the floor, undressed himself and lay on top of me. He fondled my cheeks. He applied/put sugar on my genital and ate it. He put his genital into my genital. When I cried out in pain, he closed/gagged my mouth with his hand. He laid on



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top of me for quite some time. He gave me money. He then showed a knife and threatened me with dire consequences in case I revealed the incident to others. I became very scared/afraid. I did not tell anybody and so he used to take me everyday to his room and repeat the dirty things on me. My tuition teacher (PW2) asked me about the money in my hand. I did not tell her anything. But when didi asked me lovingly, I told her about the incident. Didi asked me to tell my mother. I was afraid and hence, I did not tell my mother. Today also, in the evening, uncle took me to his room and repeated the dirty things/acts on me. After that, when I went for tuition, didi understood everything and so she informed my mother, who, in turn, informed my father. My father informed the police.....”

12. In her 164 statement marked as PW1/C recorded on 12.05.2015, PW1 reiterates her case in the FIS. PW1 in the box initially deposed that she cannot recall what the accused had done to her and that she can only recall a part of it. She further deposed



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that uncle (accused) had asked her not to reveal the incident to others or else he would stab her with a knife. PW1 further deposed that she does not remember what the accused had asked her not to disclose. She had disclosed the incident to her tuition didi but she does not remember as to what she had disclosed to the former. When PW1 did not initially support the prosecution case, the prosecutor sought the permission of the trial court for putting questions as put in the cross-examination, which request was allowed. On further examination by the prosecutor, PW1 admitted the sexual assault by the accused. She deposed that the accused used to give her money; that he used to kiss on her cheeks; that he had called her inside his room; undressed her and after removing his clothes, had put sugar in her vagina, licked the same; he had inserted his penis into her vagina; when she cried out in pain, the accused gagged her and that the accused had given her money and had also threatened to kill her by showing a knife. PW1 also admitted that the sexual assault was repeated by the accused daily



for the next 5 to 6 days. On further examination, she admitted that PW2, her tuition didi, had asked her about the source of money in her possession and then she had disclosed the incident to the latter. PW2 had informed her mother and thereafter, the police was informed.

12.1 PW2, the tuition teacher of PW1, deposed that in the year 2015, she used to take tuitions and PW1 was one of her students. In the month of May 2015, she noticed that PW1 was having money with her. When she enquired about the same, PW1 revealed the incident to her. She informed PW1's mother who thereafter informed the police.

12.2 PW3, the mother of PW1 deposed that her daughter used to attend the tuition class of PW2. Pursuant to her daughter informing PW2 about the sexual assault by the accused, PW2 had informed her about the same.

13. Though it was submitted by the learned counsel for the appellant that there are several contradictions in the testimony of



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PW1, no contradiction(s) has been proved as per the procedure contemplated under Section 145 of the Evidence Act. Therefore, the appellant/ accused cannot be heard to argue that there are contradictions in the testimony of PW1.

14. PW9, Medical Record Technician, AIIMS, New Delhi produced the office copy of the Medico-Legal Certificate (MLC) which was issued by the doctor who examined the victim. The same has been marked as PW9/B. PW16, SR, Department of Obstetrics and Gynaecology, AIIMS, New Delhi, deposed that Dr. Seema Yadav who examined PW1, had left the services of the hospital in the year 2018 and that she is familiar with the signature and handwriting of the latter as she had worked as an intern in the unit of the latter about a month. PW16 identified the signature of Dr. Seema Yadav in Ex. PW9/B, the MLC.

15. PW7, Principal, SDMC Primary School (Girls), Sarai Kale Khan, New Delhi, deposed that as per records, the date of birth of the child is 03.07.2008. The attested copies of the



admission register, admission form and affidavit have been marked as Ex. PW7/A to Ex. PW7/C. PW7 was never cross-examined. The incident took place in the year 2015. Therefore, PW1 was just 7 years at the time of the incident and hence, the provisions of the PoCSO Act are applicable.

16. The medical evidence on record shows that the hymen of PW1 was torn. It has to be borne in mind that at the time of examination, PW1 was just 8 years old. The defence version is that this is a false implication as the accused had advanced an amount of ₹20,000/- to PW1's father. When he demanded the money back, the parents of PW1 has falsely implicated him by concocting a false story. This version does not appear probable or true in the light of the materials of record. It is true that PW1 initially did not disclose the incident while she was examined before the court. But on being further questioned by the prosecutor, she admitted the prosecution case of repeated penetrative sexual assault by the accused. The version of PW1 is corroborated by the testimony of



PW2. No reason(s) has/have been shown as to why PW2 should also support the prosecution case or depose against the accused.

17. It was further argued on behalf of the appellant/ accused that PW1's case that she was residing in the 5th floor of the building in which the appellant is residing in the 1st floor, has turned out to be false from the materials on record. The materials on record show that the building has only 4 floors. Again, it needs to be borne in mind that PW1 was just 8 years old when the incident occurred. Even assuming that her testimony regarding the number of floors of the building is wrong, the same does not in any way affect the prosecution case. I do not find any reasons to disbelieve PW2 or PW3. The testimony of PW1 that there was penetrative sexual assault is corroborated by the medical evidence which shows that there was a tear in the hymen of PW1, a girl aged about 7 to 8 years. In these circumstances, I find that the trial court was right in finding the guilt of the accused for the offence punishable under Section 6 of the PoCSO Act.



18. The testimony of PW1 also makes it clear that pursuant to the incident, the accused had threatened her with dire consequences in case she revealed the incident to others. Therefore, the conviction and sentence under Section 506 IPC also suffers from no infirmity.

19. In the result, the appeal *sans* merit it dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JANUARY 22, 2026

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