



2026:DHC:6009



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

% *Judgment Reserved on: 22.07.2026*
Judgment pronounced on: 28.07.2026

+ **CRL.A. 1144/2025 & CRL.M.A. 23761/2025**

AKEEL AZHAR @ RINKU

.....Appellant

Through: Mr. Amitej Kumar Nagar, Advocate

Versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for State with SI
Kevendra Singh
Mr. Manish Sangwan, Advocate
(DHCLSC) for Victim

+ **CRL.A. 1272/2025 & CRL.M.A. 27206/2025**

SXX PXXX (MOTHER OF VICTIM)

.....Appellant

Through: Ms. Sanjana Gupta, Advocate
(DHCLSC) with Mr. Rakesh Tanwar,
Advocate

Versus

THE STATE GOVT OF NCT DELHI & ANR.

.....Respondents

Through: Mr. Utkarsh, APP for State with SI
Kevendra Singh

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT



CHANDRASEKHARAN SUDHA, J.

1. In these appeals filed under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 [Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.)], accused nos. 1 and 2 (A1 and A2) in Sessions Case No. 2227 of 2018 on the file of the Additional Sessions Judge (SC-POCSO), East District, Karkardooma Courts, New Delhi, assail the judgment dated 30.01.2025 and order on sentence dated 14.02.2025 as per which A1 has been convicted and sentenced for the offences punishable under Sections 376(2), 323, 506 of the Indian Penal Code, 1860 (the IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act). A2 has been convicted and sentenced for the offences punishable under Section 6 read with Section 17 of the PoCSO Act and Section 376(2) read with Section 109 IPC.

2. The prosecution case is that, several times during the



three years preceeding 10.08.2018, A1 criminally intimidated PW1 to PW3, three minor girls aged between 02 to 08 years and repeatedly committed penetrative sexual assault. He threatened to beat them in case they disclosed the incidents to anyone. A1 voluntarily caused hurt to the victims by beating them and repeatedly committed penetrative sexual assault on them. A2 abetted and aided A1 in committing the penetrative sexual assault. Hence, as per the charge sheet/final report, A1 is alleged to have committed the offences punishable under Sections 376(2), 354 and 323 IPC and Sections 6 and 10 of the POCSO Act. A2 is alleged to have committed the offences punishable under Sections 376(2) read with 109 IPC and Sections 6 read with 17 and 21 of the PoCSO Act.

3. Based on Ext. PW1/B FIS of PW1, crime no. 384/2018, ShakarPur police station, that is, Ext. A4 FIR, was registered by PW5, Constable. PW13, Sub-Inspector, conducted investigation into the crime and on completion of the same, filed the



chargesheet/final report alleging the commission of the offences punishable under the aforementioned Sections.

4. When A1 and A2 were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court, as per order dated 10.01.2019, framed a Charge under Sections 376(2), 506, 323 IPC and Section 6 of the PoCSO Act against A1 and under Section 6 read with Section 17 of the PoCSO Act and Section 376(2) read with Section 109 IPC against A2. The same was read over and explained to A1 and A2, to which they pleaded not guilty.

5. On behalf of the prosecution, PWs.1 to 13 were examined and Exts. PW1/A-C, PW2/A, PW3/A-C, PW4/A-C, PW5/A, PW8/P1-P4, PW9/P1-P10, PW10/A-C, PW11/P1, PW13/B-D and A1-A8 were marked in support of the case.

6. After the close of the prosecution evidence, A1 and A2 were questioned under Section 313(1)(b) Cr.P.C. regarding the



incriminating circumstances appearing against them in the evidence of the prosecution. A1 and A2 denied all those circumstances and maintained their innocence. A1 submitted that he has been falsely implicated in the present case due to family disputes. He has not committed any offence, and the allegations made against him are false and baseless.

6.1. A2 submitted that she has been falsely implicated in the present case and has not committed any offence as alleged herein.

7. After questioning A1 and A2 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 made 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, A1 and A2 have no case that non-compliance of



Section 232 Cr.P.C has caused any prejudice to them.

8. On behalf of A1, DW1 was examined. No oral or documentary evidence was adduced on behalf of A2.

9. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 30.01.2025, convicted A1 for the offences punishable under Sections 376(2), 323 and 506(1) IPC and Section 6 of the PoCSO Act, and A2 for the offences punishable under Section 109 read with Section 376(2) IPC and Section 6 read with Section 17 of the POCSO Act. By the order on sentence dated 14.02.2025, A1 has been sentenced to rigorous imprisonment for a period of 12 years as well as fine of ₹25,000/- and in default of payment of fine, to rigorous imprisonment for six months for the offence punishable under Section 6 of the PoCSO Act; to rigorous imprisonment for 01 year as well as fine of ₹5,000/- and in default of payment of fine, to rigorous imprisonment for one month for the offence punishable under Section 506(1) of the IPC and to rigorous



imprisonment for 06 months as well as fine of ₹2000/- and in default of payment of fine, to rigorous imprisonment for 15 days for the offence punishable under Section 323 IPC. A2 has been sentenced to rigorous imprisonment for 10 years as well as fine of ₹10,000/- and in default of payment of fine, to rigorous imprisonment for six months for the offence punishable under Section 17 read with Section 6 of the PoCSO Act. The sentences have been directed to run concurrently. Aggrieved, A1 and A2 have come up in appeal.

10. It was submitted by the learned counsel appearing for the appellant/A1 that Ext. A7 FSL report says that no male DNA was detected, despite the prosecution case as revealed in Ext. PW1/B FIS/FIR being that A1 had sexually assaulted her on the morning of the report also. The attention of the Court was drawn to paragraphs 6 and 7 of the order on sentence dated 14.02.2025, which has recorded the statement of PW1 to the effect that neither A1 nor A2 had done anything wrong to her and that she had made



the allegations under the pressure of her class teacher. It was also pointed out that PW3, one of the victims when examined before the court has not supported the prosecution case. Although PW1 deposed that she had seen A1 sexually assaulting her sisters, that is, PW2 and PW3, the testimony of PW3 does not corroborate the said allegation. Therefore, it is prayed that the impugned judgment of conviction and order on sentence be set aside and the appellant/A1 be acquitted.

11. The learned counsel appearing for the appellant/A2 quite persuasively argued that the trial court erred in convicting A2 for abetment as contemplated under Section 17 of the PoCSO Act and Section 109 IPC. It was submitted that in order to sustain a conviction for abetment, the prosecution must establish intentional instigation, conspiracy or intentional aid, which has not been established by the prosecution. Mere knowledge of the act, in the absence of any active participation or intentional assistance, is insufficient to attract the liability under Section 17 of the PoCSO



Act and Section 109 IPC. Further, PW1 has given inconsistent versions in her earlier statements and testimony. In Ext. PW1/B FIS/FIR, PW1 stated that the incidents had taken place while she was studying in second standard, whereas, in her testimony, she deposed that the incidents continued during second, third and fourth standards. Therefore, the prosecution has failed to establish its case beyond reasonable doubt, and the appellant/A2 is, therefore, entitled to an acquittal. In support of the submissions, reliance was placed on the dictum of the High Court of Judicature at Madras dated 21.11.2023 in **State Rep. By the Inspector of Police vs. XXX, R.T. No.2 of 2022 and Crl.A. Nos.427 and 392 of 2023.**

12. *Per contra*, the learned Additional Public Prosecutor submitted that PW1 and PW2, the minor victims, have been consistent in their statements and testimony, which is further corroborated by the medical evidence. It was pointed out that Ext. PW1/A MLC of PW1 records that her hymen was torn, there was a



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bite mark on her abdomen and tenderness was present. Further, the absence of detection of male DNA in Ext. A7 FSL report cannot be read against the ocular evidence of the victims. The biological samples were collected after a lapse of time and, therefore, the possibility of degradation or loss of DNA material, as also mentioned in the report itself, cannot be ruled out. It was further submitted that the expression “offence”, as defined under Section 2(n) of the Code of Criminal Procedure, 1973, means any act or omission made punishable by any law for the time being in force. Once the law recognises an omission as capable of constituting an offence, the deliberate failure of A2 to discharge her legal duty to protect her minor daughters, despite repeated disclosures regarding the acts of A1, is capable of attracting the provisions relating to abetment by illegal omission under Section 16 of the POCSO Act. Therefore, the prosecution had proved the guilt of the appellants beyond reasonable doubt and that there is no infirmity in the impugned judgment calling for an interference by this court.



13. It was submitted by the learned counsel appearing for the victim/PW1 that PW1 had made the allegations under the influence and tutoring of her teacher, to whom she had initially reported the incident. It was submitted that PW1 now supports the case of the appellants/A1 and A2 and has stated that they had not committed any offence against her. It was, therefore, prayed that the impugned judgment of conviction and order on sentence be set aside and the appellants be acquitted.

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

15. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellants/A1 and A2 by the trial court are sustainable or not.

16. I shall briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW1/B FIS/FIR of PW1 recorded in Hindi on 10.08.2018, translated reads thus: *“I reside along with my three sisters, mother,*



and father. My bua's son (A1) also lives in our house, whom we address as bhaiya. Ever since I was studying in the second grade, bhaiya (A1), who lives with us, would take off my pajamas and lie on top of me, touching my private part with his hand (हाथ मेरी शू-शू पर लगाते थे). Whenever I tried to tell my mother (A2) about this, she would dismiss my concerns by saying that he was my brother and that I should not say such things (ऐसे नहीं कहते वो भैया है). Then one day, bhaiya (A1) took off his clothes as well as my clothes, lay on top of me, and inserted his private part into mine (मेरे ऊपर लेट गए और अपनी सु-सु मेरी सु-सु में डाल दिया). I cried a lot. My mother (A2) had gone to the toilet at that time. When she returned, I told her about it, but she dismissed it by saying that I should not say such things about bhaiya (A1) and that I was lying. Bhaiya (A1) has done this to me four times, and he does the same with my mother as well. Today, when my father left at 05:00 a.m. and my mother went to the toilet, bhaiya (A1) again inserted his



private part into mine, after which I left for school. I told this incident to my teacher, Ayesha Khan Madam. Bhaiya (A1) behaves inappropriately with my sister as well.”

17. In Ext. PW1/C 164 statement of PW1 recorded on 14.08.2018, she has stated thus: *Bhaiya (A1)* behaves inappropriately with us. He removes his pants and touches us with his hand. He lies on top of us. He puts his private part into our private part and moves back and forth (अपना सुसु हमारे ऊपर डाल कर आगे पीछे होते है). He tells us not to tell anyone. She told her mother (A2), but her mother (A2) did not say anything and said that it was okay. *Bhaiya (A1)* also beats us. He beats us with a stick. We told Ma'am who brought us there. *Bhaiya (A1)* said that if we told anyone about the incident, he would beat us severely. He also kisses us. He did the same to her sister also. He forces us by beating (मारकर करवाता है).

18. In Ext. PW2/A 164 statement of PW2 recorded on



14.08.2018, she has stated thus:- *Bhaiya* (A1) talks of bad things (भैया न गंदी बात करते थे). He touches us and puts his hand where we urinate (हाथ डालते थे। यहाँ पर सुसु करते हैं न, वहाँ डालते थे।). He used to do this to all three sisters. He also used to beat all three of us. He used to put his private part into her mouth, as well as into her sister's (PW1) mouth. *Fufu* had sent him there. He is not our biological brother. He sleeps at *fufu*'s house.

19. In Ext. PW3/A 164 statement of PW3 recorded on 14.08.2018, she has stated thus:- When Rinku *bhaiya* (A1) bathes her, the former removes her underwear and clothes. After that, he touches her private parts with his hand.

20. PW1 when examined before the trial court, stood by her version in the FIS/FIR and the 164 statement. She deposed that Rinku (A1) is the son of her *fufu*. She used to call him *bhaiya*. Rinku (A1) used to reside in their house and was working as a computer mechanic. On being asked as to what Rinku (A1) had



done to her, she answered that he raped her. When she was asked what she meant by rape, answered that - *“Rinku (A1) used to remove my pajami and used to insert the finger inside my vagina.”*

The trial court has noted thus – *“victim demonstrated by putting finger towards her utaras [sic] portion”*. PW1 further deposed that Rinku (A1) also inserted his private part (*susu wali jagah*) inside her private part (*susu wali jaga*) and committed rape (*wo apna neeche wala part mere under daak kar aage peeche karata thaa*).

Rinku (A1) also committed the aforesaid acts with her younger sisters also. Rinku (A1) did the aforesaid acts when she was in second, third and fourth grade. She did not disclose the act to anyone. One day, after everyone had eaten and were asleep, she heard a noise which woke her up. Her younger sister also woke up. She noticed that Rinku (A1) was having sexual intercourse with her mother. On noticing her, A1 went under the bed. She questioned the act of the accused. Rinku (A1) then put a towel around his lower portion as he was naked and stated that he pays



money for it and that he does the same with her as well (*Main paise de kar karta hoon, main tere saath bhi kartaa hoon*). Despite hearing A1, her mother (A2) did not respond or confront him. Rather, her mother (A2) told her that the former raises them using the money given by A1 (*Inhi paision se to main tumhe paalti hoon*). Rinku (A1) threatened her with a belt and told her that he would beat her if she disclosed the incident to anyone. Thereafter, they all went to sleep. In the morning when they woke up, her mother (A2) told her that it was okay and that people do such things (*Koi nahi aise karte hain*). Then life went on.

20.1. One day at school, when she was in the fifth standard, her class teacher (PW6) was teaching them about good and bad touches and advising that if any wrong act is committed against children, they should report the matter to their parents and near ones. In the said class, her cousin sister (the daughter of her *bua*) who is also her classmate, asked her to disclose the sexual assault committed by Rinku (A1) to the teacher. After the awareness



program, she told her class teacher (PW6) that she wanted to discuss certain facts with her. Thereafter, while the class was going on, her teacher called her and asked what she wanted to disclose. She then disclosed the entire incident to her teacher. Her teacher told her that she would get the perpetrator punished and also asked her not to tell anyone that she had disclosed the incident to her. One day, while she was in class, her class teacher took her to the Principal's room, where police officers were already present. She narrated the entire incident to the police. Thereafter, the police took her to the hospital, where her medical examination was conducted. The police also recorded her statement. From the hospital, she was taken to Sanskar Ashram.

20.2. The prosecutor sought permission of the trial court to put leading questions to PW1. The same was allowed. On being asked if she knew Alina Khan, PW1 answered that when she had told her class teacher about the incident, her class teacher called Alina Khan Madam, who also made inquiries with her.



20.3. PW1 in her cross-examination, deposed that Rinku (A1) used to give his salary to her mother (A2). She denied the suggestion that her grandmother and her mother (A2) used to quarrel often. Once, she had told her *buaji* about the assault by Rinku (A1), but her *buaji* never confronted Rinku (A1) about it. PW1 denied frequent quarrels between her parents. She had once noticed a quarrel between them. She had not told her father about the incident. The quarrel between her parents took place when the police had been called to the school (*Jab bhaiya karte they tab mere saath tab jhagada hua tha*). She denied the suggestion that she complained against Rinku (A1) as tutored by her father and *dadi*. PW1 admitted that, on one occasion, a quarrel had taken place between Rinku (A1), her mother (A2), and her father over money, as her mother (A2) had kept as savings the money given to her by Rinku (A1), while she gave a portion of the money received from her father to Rinku (A1). PW1 further deposed that her father is “*slightly mentally weak*”. According to PW1, she had witnessed



Rinku (A1) sexually assaulting her younger sisters (PW2 and PW3). She denied the suggestion that as her father did not want to return Rinku's (A1) salary, the false implication has been made. PW1 admitted that neither of her sisters had complained to their mother (A2) regarding the sexual assault by A1. When she had informed her mother (A2) about the sexual assault committed by A1, her youngest sister (PW3) was asleep, but her younger sister (PW2) was awake. Her *buaji* showed no reaction and kept mum when the assault was disclosed to her. She told her *buaji*'s daughter, who was her classmate, about Rinku's (A1) actions after the first incident of sexual assault. Her cousin sister then disclosed Rinku's actions to her *dadi*.

21. PW2 when examined before the trial court, deposed that AkilAzhar @ Rinku (A1), son of her phuphu used to do bad things to her. On being asked what bad things he had done, she answered that A1 used to touch her inappropriately / put his hands on her. The trial court recorded its observation thus - "At this



stage, witness (PW2) pointed towards her lower private part in order to show where the accused (A1) used to put his hand". Rinku (A1) used to remove her clothes, and then touch her. Rinku (A1) used to hit her on the head with a pan used for making *rotis* and threatened to break her head. Rinku (A1) used to do the same acts on both her sisters as well as her *bua's* daughter. Rinku (A1) used to put his private part into their mouths. Rinku (A1) did the aforesaid acts several times during night while they were asleep. When she and her sister initially informed their *dadi* and mother (A2) about the assault, her *dadi* dismissed it as a joke while her mother (A2) remained silent and took no action. They disclosed the incident to a teacher in their school. The teacher called the police, after which a female police officer took them for medical examination. Thereafter, they were taken to *ashram*, where they have been residing since.

21.1. PW2 in her cross-examination, deposed that Rinku (A1) used to give ₹10/- to ₹20/- to her younger sister (PW3).



Rinku (A1) also used to give money to her mother (A2), while her father saved money in a piggy bank rather than handing it directly to her mother. She denied frequent quarrels between her father and Rinku (A1). Her mother met their school expenses. PW2 denied having complained to her teacher as instructed by someone else and clarified that they had complained voluntarily, without being instructed by anyone. PW2 admitted that her mother (A2) loved her.

22. PW3 deposed that Rinku *bhaiya* (A1) did not do anything inappropriate to her or touch her private parts. She admitted that she used to bathe with Rinku *bhaiya* (A1) and that the latter lived in their house. The police took Rinku *bhaiya* (A1) away. She denied that she was taken to the hospital by the police. While she admitted appearing before a judge, she denied the judge asking her as to what had happened or having told the judge about the incident. She denied disclosing the incident to her mother (A2). She denied having been instructed by her *dadi* not to say anything



against Rinku *bhaiya* (A1).

23. PW10, then Senior Resident, Gynaecology Department, LBS Hospital, deposed that on 10.08.2018, she conducted medical examination of the victims (PW1 to PW3). On obtaining consent, an internal examination of PW1 was conducted which revealed the tear on the hymen was old. There was slight tenderness. She had examined the other victims (PW2 and PW3) also. But their *bua* refused internal medical examination. On local examination of the genitals of both the victims (PW2 and PW3), the hymen was found intact.

23.1. PW10 in her cross-examination, admitted that hymen can be torn due to reasons other than sexual assault. PW10 admitted that tenderness could be caused by an injury but no physical injury was visible on local examination. She denied the suggestion that she had prepared the MLCs at the instance of the Investigating Officer (PW9).

24. I will also refer to the testimony of the defence witness



examined on behalf of A1. DW1 deposed that Akeel Azhar (A1), his cousin brother, was residing with his family at the time of the incident. DW1 in his cross-examination, denied the suggestion that A1 was residing with co-accused (A2). He admitted that he possessed no documentary proof to establish his relationship with A1 or proof that A1 had ever resided with him.

25. A1 stands convicted for the offences punishable under Sections 376(2), 323 and 506(1) IPC and Section 6 of the POCSO Act. The principal question that arises for consideration is whether the evidence adduced by the prosecution establishes these offences against A1 beyond reasonable doubt.

26. The prosecution case substantially rests upon the testimony of PW1 and PW2 as well as the medical evidence. Section 164 statements of PW1, PW2 and PW3 are substantially consistent and corroborate each other on the material particulars of the prosecution case, particularly with regard to the repeated acts of penetrative sexual assault committed by A1, criminal



intimidation and causing hurt to them. PW1 and PW2 entered the box and reiterated all the material particulars and the allegations made in their Section 164 Cr.P.C. statements. But, PW3, the youngest of the sisters, did not support the prosecution case during trial. However, this fact does not dilute the evidentiary value of the testimony of PW1 and PW2. The absence of corroboration from PW3 also does not affect the credibility of PW1 and PW2 regarding the offences committed against them or the incidents witnessed by PW1. Further, it is settled law that the sole testimony of a victim can be relied upon to decide a case of sexual assault, provided it is clear, trustworthy and reliable. As held in **Ganesan v. State, (2020) 10 SCC 573** and **State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575**, a conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence, and there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration. The testimony of PW1 and PW2 is clear, cogent and corroborates each



other. I, therefore, find no reason to reject or discard the testimony of PW1 and PW2.

27. The inconsistencies highlighted by the learned counsel for A1, namely, whether A1 used to sleep in the house of PW1 or at the house of the *bua*, and whether the incident occurred when PW1 was in second grade or whether it continued for three years from the second standard till fourth standard, are not such that would strike at the root of the prosecution case or that would affect the core allegation of aggravated penetrative sexual assault. These discrepancies are natural, considering that the incidents had occurred when PW1 to PW3 were between 5 and 10 years of age and the testimony was recorded after almost an year from the date of registration of the FIR. It would be unrealistic to expect a child witness to recollect every date, the sequence and details with mathematical precision after a lapse of time. Moreover, in the FIS/FIR, PW1 has stated that since the time she was in the second standard, the accused had been assaulting her (जब मैं दूसरी क्लास में



पढ़ती थी तो तब से जो भैया घर में रहते हैं मेरी पाजामी उतारकर अपने आप मेरे ऊपर लेट जाते थे.....). So, the argument advanced by the learned counsel for A2, that there is inconsistency between the versions of PW1 in the FIS/FIR and in the box is incorrect. On the other hand, the case of PW1 is that the accused has been sexually assaulting her from the time she was in the second standard.

28. Ext. PW1/A MLC of PW1 also supports the prosecution case. On examination, no fresh injury was noticed over the external genitalia. It is true that the tear in the hymen was found to be old. But tenderness was seen. This supports the version of PW1 that on the date of reporting also she had been sexually assaulted. It is true that PW10, the doctor in the cross-examination admitted to a suggestion put on behalf of the defence that hymen can be torn for reasons other than sexual assault. Suggestions made to the doctor and admissions made thereon are not proof of a fact and based on that admission, the court cannot arrive at a



conclusion. Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitness's version to be true. A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features which he noticed in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice. Similar view has also been expressed in **Mange v. State of Haryana**



(1979) 4 SCC 349; State of U.P. v. Krishna Gopal, AIR 1988 SC 2154 ; Ram Dev v. State of U.P. (1995) Supp. (1) SCC 547; State of U.P. v. Harban Sahai, (1998 6 SCC 50 and Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606 and Ram Swarup vs. State of Rajasthan, AIR 2008 SC 1747.

29. It was submitted by the learned counsel for the appellant/A1 that the absence of detection of male DNA on the clothes of PW1 as recorded in Ext. A7 FSL report, despite the prosecution allegation that PW1 had been subjected to penetrative sexual assault by A1 on the very same morning, is inconsistent with the prosecution case and creates reasonable doubt. The non-detection of male DNA by itself does not demolish the prosecution case. As pointed by the learned APP, possibility of degradation or loss of biological material as noted in the report, cannot be ruled out.

29.1. Further, the medical and forensic evidence admissible under Section 45 of the Indian Evidence Act, 1872 can only



corroborate the testimony of the witness. The purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion. Such report is not binding upon the court. The court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not. The assistance and value of expert opinion is indisputable, but there can be reports which are, *ex facie*, incorrect or deliberately so distorted as to render the entire prosecution case unbelievable. But if the eyewitnesses and other prosecution evidence are trustworthy, have credence and are consistent with the eye-version given by the eyewitnesses, the court will be well within its jurisdiction to discard the expert opinion. An expert report, duly proved, has its evidentiary value but such appreciation has to be within the limitations prescribed and with careful examination by the court. A complete contradiction or inconsistency between the medical evidence and the ocular evidence on the one hand and the statement of the



prosecution witnesses between themselves on the other, may result in seriously denting the case of the prosecution in its entirety but not otherwise (See **Dayal Singh v. State of Uttaranchal, (2012) 8 SCC 263**).

30. I have also gone through paragraphs 6 and 7 of the order on sentence dated 14.02.2025 wherein PW1/victim is stated to have expressed that she had made the allegations under the influence of her class teacher. During the course of oral arguments, the learned counsel appearing for the victim/PW1 submitted that the counsellor had tutored the victim/PW1 to speak against her mother (A2) and brother (A1).

31. The class teacher of PW1 was examined as PW6. PW6 deposed that in August 2018, an MCD counsellor visited the school to conduct a session, during which PW1 disclosed that she was being sexually harassed at home by a relative. The counsellor subsequently informed her department regarding the harassment. On 10.08.2018, the police officers visited the school and recorded



the statements of the victim (PW1) and her two younger sisters (PW2 and PW3), who were studying in the third class and nursery respectively. She had accompanied the victims and the police to the LBS Hospital, where the medical examinations were conducted in the presence of the children's *dadi*. PW6 in her cross-examination admitted that the victims (PW1 to PW3) had not disclosed anything to her prior to the counselling session and that the session had not been conducted to investigate sexual harassment among students.

32. A careful perusal of the testimony of PW6 shows that no case of tutoring PW1 to PW3 was ever put to her during her examination. Not even a suggestion was put to her on behalf of either A1 or A2 that she had tutored, influenced or prompted the victims to falsely implicate A2, their mother, or A1. On the contrary, her testimony indicates that PW1, the eldest child among the three victims, disclosed the incident after attending the counselling/awareness sessions. This is not an unnatural



circumstance, considering that the victims were of tender age and may not have fully understood the nature of the acts committed upon them or that such acts constituted offences. This is especially so in the case on hand because PW1 and PW2 despite informing A2, who is none other than their own mother, as well as their *dadi* of the sexual assaults, the latter dismissed the complaints of the young girls as a joke. Infact, according to PW1, her mother (A2) responded by saying that it was okay and that people do such things. PW1, a girl of tender age at the time of the incident seemed to have had the misfortune of seeing the intimate scenes between her mother (A2) and A1, the person who abused her. The girls never realised that they were being abused by A1 until PW1 attended the awareness classes. They must have thought that the acts were normal when their own mother responded by saying – “*Koi nahi aise karte hain*”. The contention that the victims were tutored, having never been put to PW6 during trial, appears to be a clear afterthought. Such a case is not put forward even when A1



and A2 were questioned under Section 313(1)(b) Cr.P.C. Further, a subsequent retraction at the stage of sentencing, unsupported by any materials on record, cannot demolish the substantive evidence recorded during trial. The correctness of the conviction has to be examined on the basis of the evidence or materials adduced during trial. Accepting the statement of PW1 as seen recorded in paragraph 6 of the order on sentence, would amount to making a mockery of the criminal justice system, which cannot be allowed at any cost. The trial court has rightly rejected the same. I refrain from taking or recommending any action against PW1 in the light of her young age. A2 is none other than her mother. Her father is no more. According to PW1, it is her grandmother and *bua* who are taking care of her as well as her sisters. Therefore, one can certainly understand the pressure PW1 must have been put to by the family members to retract her earlier statement.

33. Further, the testimony of DW1 does not advance the defence case in any material particular. At best, it seeks to



establish that A1 was residing with DW1 and that he was apprehended from the factory instead of the place alleged by the prosecution. The place of arrest is not a fact in issue nor does it have any bearing on whether the offences alleged against A1 were committed. Even assuming his version regarding the place of arrest to be correct, it does not affect the prosecution evidence concerning the commission of the offences. Consequently, the evidence of DW1 does not create any reasonable doubt in the prosecution case and is of no material assistance to the defence. Accordingly, the conviction of A1 for the offences punishable under Sections 376(2), 323 and 506(1) IPC and Section 6 of the POCSO Act warrants no interference.

34. Coming to the conviction of A2 under Section 6 read with Section 17 of the PoCSO Act and Section 376(2) read with Section 109 IPC. The primary argument raised by the learned counsel for the appellant/A2 is that mere knowledge of the commission of an offence would not attract either Section 17 of



the POCSO Act or Section 109 IPC and that there must be evidence of intentional aid, instigation or active facilitation.

35. Section 16 of the POCSO Act which defines abetment says that a person abets an offence if he or she (i) instigates any person to commit the offence; (ii) engages in a conspiracy for the commission of the offence, followed by an act or illegal omission in pursuance thereof; or (iii) intentionally aids, by any act or illegal omission, the commission of the offence. Explanation II to Section 16 further clarifies that a person who, either prior to or at the time of the commission of the act, does anything in order to facilitate the commission of that act, and thereby facilitates its commission, is said to aid the doing of that act. The prosecution seeks to bring the conduct of A2 within the ambit of clause thirdly of Section 16, namely, intentional aid by illegal omission. According to the learned counsel for A2, the prosecution in order to succeed under clause (iii) of Section 16 of the PoCSO Act must prove that A2, the mother, had intentionally aided the commission of the offence



by A1, which has not been done in this case. Reliance has been placed on the dictum in **State v. XXX** (*supra*) in support of the argument.

36. In the aforesaid case, the accused persons were the father (A1) and mother (A2) of the victim. The prosecution case was that on several occasions A1 had committed penetrative sexual assault on his minor daughter ever since she was 7 years old. When the victim informed the assault to her mother (A2), the latter did not care to take any action. Due to repeated penetrative sexual assault, the victim child became pregnant. The victim informed her teacher about the incidents and thereafter, the law was set into motion. The trial court convicted and sentenced A1 under Section 6 of the PoCSO Act, Section 75 of the Juvenile Justice (Care and Protection of Children) Act, whereas A2 was convicted and sentenced under Section 6 read with Sections 17, 21 of the PoCSO Act and Section 75 of the JJ Act.

36.1. The judgment of conviction and sentence was



challenged before the High Court. Upon reappreciation of the evidence, the High Court affirmed the conviction of A1 for the offences punishable under the aforementioned Sections. However, insofar as A2 was concerned, the High Court observed that the evidence on record did not show that A2 had any intention to aid A1 in committing the sexual offences. Infact, it was found that A2 had protested at every stage, and A1 had abused and beaten A2, besides intimidating her with dire consequences. Therefore, it was held that her knowledge of the illegal acts and her omission to prevent it or complain about it would not amount to “intentional aiding”. It was thus held that the prosecution had failed to establish the ingredients of abetment as contemplated Section 17 of the PoCSO Act. Nevertheless, the High Court found that A2 had failed to report the commission of the offence despite being aware of it and had exposed the child to mental and physical suffering. Accordingly, her conviction under Section 21(1) of the POCSO Act and Section 75 of the JJ Act was upheld.



37. The present case stands on an entirely different footing. A2 is not a stranger, acquaintance or any family member, but the mother of the victims who had the parental and legal duty to protect her children. According to PW1, the repeated acts of penetrative sexual assault were committed by A1 while he was residing in their house. PW1 deposed that she had informed her mother (A2), about the acts committed by A1. Instead of protecting her minor daughters or taking any preventive or remedial steps, A2 dismissed the complaints, told PW1 not to make such allegations against A1 and continued permitting A1 to continue residing in the house, thus exposing the minor children to further abuse. PW1 has further deposed that A2 justified the conduct of A1 and did not intervene despite being repeatedly informed. The continued omission of A2 cannot be viewed as mere passive knowledge but would certainly come within the expression “intentionally aids by illegal omission” coming in clause (iii) of Section 16 of the PoCSO Act.



38. In the light of the aforesaid discussion, the findings of guilt recorded by the trial Court for the offences punishable under Sections 376(2), 323, 506 IPC and Section 6 of the PoCSO Act against A1 and Section 6 read with Section 17 of the PoCSO Act and Section 376(2) read with Section 109 IPC against A2, are proved beyond reasonable doubt and suffer from no infirmity warranting an interference by this Court.

39. The appeals, *sans* merit, are dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 28, 2026

rs/p'ma