



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

%

Judgment reserved on: 30.04.2026

Judgment pronounced on: 05.05.2026

+ **CRL.A. 610/2020**

RAJENDER SHARMA

.....Appellant

Through: Mr. Dhruva Bhagat, Advocate

versus

THE STATE (GOVT OF NCT) DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh, APP for

State with SI Rahul Rathi

Ms. Aishwarya Rao, Advocate with

Ms. Mansi Rao, Advocate for Victim

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.P.C.) read with 383 Cr.P.C., the sole accused, in Sessions Case No. 6565/2016 on the file of the learned Additional Sessions Judge-04 (POCSO), South District, Saket Courts, New Delhi, challenges the judgement dated 16.03.2020 and the order on sentence dated 26.05.2020 as per



which, he has been convicted and sentenced for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act) and Section 376(2)(f) of the Indian Penal Code, 1860 (the IPC).

2. The case of the prosecution is that on 13.01.2013, at D-29/3, Rashtriya Marg, Sangam Vihar, the accused, a tenant in the house of PW1, the victim aged 6 years, committed penetrative sexual assault on her.

3. On the basis of Exhibit PW1/A FIS/FIR of PW1, given on 14.01.2013, Crime No. 19/2013, Sangam Vihar police station, that is, Ex. PW3/A, FIR was registered by PW3, Duty Officer/Station House Officer. PW10, Sub-Inspector, C.R. Park police station conducted the investigation into the crime and submitted the charge-sheet/final report before the jurisdictional magistrate alleging commission of the offences punishable under Section 376 IPC and Section 4 of the PoCSO.



4. When the accused was produced before the jurisdictional magistrate (Metropolitan Magistrate-03/MM), all the copies of the prosecution records were furnished to him as contemplated under 207 CrPC. *Vide* order dated 04.04.2013, the MM court committed the matter to the Court of Session.

5. The trial court, after hearing both sides, as per order dated 06.05.2013 framed a charge under Section 376 IPC and Section 4 of the PoCSO Act, which was read over and explained to the accused, to which he pleaded not guilty. On 07.12.2018, the Charge was altered and Charge framed against the accused for the offences punishable under Section 376(2) IPC and Section 6 read with Section 5(m) of the PoCSO Act, which was read over and explained to the accused, to which he pleaded not guilty.

6. On behalf of the prosecution, PW 1 to 13 were examined and Exts. PW1/A, PW2/A-C, PW2/DA, PW3/A,



PW4/A, PW5/A, PW7/A-C, PW9/A-C, PW11/A-B, PW12/A, PW 14/A, PW16/A, PX-1 and P1-9 were marked in support of the 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. On behalf of the accused, DW 1 and DW2 were examined. No documentary evidence was adduced by the accused.

9. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the



impugned judgement dated 16.03.2020 held the accused guilty of offences punishable under Section 376(2)(f) IPC and Section 6 of the PoCSO Act. *Vide* order on sentence dated 26.05.2020, the accused has been sentenced to undergo rigorous imprisonment for a period of 20 years and to a fine of ₹ 3,000 and in default of payment of fine, to undergo simple imprisonment of 1 month. Aggrieved, the appellant/accused has preferred this present appeal.

10. The learned counsel for the appellant/accused submitted that there are several contradictions and improvements in the statements of PW 1, that is, the FIS/FIR; her statement recorded under Section 164 of the Cr.P.C., and her oral testimony before the Court. It was submitted that the accused has been falsely implicated by PW1, at the behest of PW2, her maternal grandmother. PW 2 wanted the accused to vacate the house over a rent dispute and thus she tutored PW 1 to falsely implicate the accused. It was submitted that there is discrepancy regarding the



place of the incident. The garments of neither the victim nor the accused had been seized nor sent for medical examination and thus the result in the Forensic Science Laboratory (FSL) report is liable to be ignored/rejected. The materials on record are insufficient to find the appellant/accused guilty and hence he is entitled to be acquitted.

11. *Per contra*, it was submitted by the learned Additional Public Prosecutor that PW1 has consistently stood by the prosecution case. The witnesses have given consistent statements all throughout the proceedings. Their testimony has not been discredited in any way and hence, there is no reason(s) to disbelieve them. It was also submitted that DW1 and DW2 are close relatives of the accused and hence interested witnesses.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in this appeal is whether there is any infirmity in the conviction entered



and sentence passed by the trial court warranting an interference by this Court.

14. I shall first briefly refer to the evidence on record relied on by the prosecution in support of the case. The incident in this case is alleged to have taken place on 13.01.2013, at D-29/3, Rashtriya Marg, Sangam Vihar, the residence of PW1. Ext. PW1/A FIS/FIR of PW1, the victim, was recorded on 14.01.2013. In the FIS, PW1 has stated thus:- “.... Last night, when I went downstairs to use the bathroom, I met Rajinder uncle (the accused) on the stairs, who has been living in our house as a tenant for a long time. Rajinder uncle picked me up in his arms and took me to the bathroom. Rajinder uncle removed my pants and underwear, and took me to the back lane (*gali*) and made me sit on his lap. Rajinder uncle started putting his private part (*su-su*) in my private part. (फिर uncle अपनी सु-सु मेरी सु-सु में लगाने लगे।) After some



time, he let me go. My private part started to hurt and I told my maternal grandmother (*Nani*).”

14.1. Ext. PW 7/A, PW1’s statement u/s 164 Cr.P.C., is seen recorded on 14.01.2013. In the said statement PW 1 states thus:-
“Last night when I was going to use the bathroom, Rajinder uncle pulled me and took me into the bathroom. I was wearing a sweater and *pajama*. Rajinder uncle took off my *pajama* and underwear. He put his private part (*su-su*) into my private part. He touched my private part with his finger too. (...उन्होंने मेरी सू-सू में अपनी सू-सू डाली। उन्होंने मेरी सुसु को उँगली से भी छुआ था।...) I was in lot of pain but I did not cry. Rajinder uncle left me there. Then I went to my maternal grandmother (*Nani-Mammi*) and told her everything. I also told the police. I went to the doctor.”

15. PW 1, when examined before the court, stood by her version in the FIS/FIR and in her statement under Section 164 Cr.P.C.



16. PW 2, the maternal grandmother of PW1, deposed that on 13.01.2013 while she was cooking food, PW1 went to the toilet situated downstairs. PW1 returned after about an hour in bad shape and complaining about severe pain in her private part. When she enquired the matter, PW1 told her that the accused had placed his private part into her private part. She caught the accused and took him to the police station. In the cross-examination, PW2 deposed that the incident took place at about 07:00 to 08:00 p.m. Apart from the accused, there were five other tenants in the house. But none of them were present in the house at that time. There were no blood stains on the clothes of PW1. However, there was a mark of belt on the waist of PW 1. There were bruises on the abdomen of PW1. PW2 also deposed that the toilet is situated within the plot and one door of the toilet opens to the *gali* outside. The accused had been her tenant for about two months before the incident. PW2 also deposed that PW 1 became unconscious due to the rape.



According to PW2, the undergarment of PW 1 had been seized by the police.

17. PW4, Senior Resident, AIIMS Hospital, New Delhi, deposed that on 14.01.2013, she had examined PW1 and issued Ext. PW4/A MLC which bears her signature. In the cross-examination, PW4 deposed that there was an abrasion approximately 1.5 x 0.5 cm on PW1's pubis.

18. PW8, Constable, Paschim Vihar police station deposed that on 13.01.2013, she had taken PW1 to the AIIMS Hospital for medical examination. According to PW8, one sealed *pullanda* containing the undergarment of the accused; one brown colour envelope containing blood in gauze; one plastic container containing penile swab and one plastic container containing control swab all sealed with the seal of Department of Forensic Medicine and Toxicology, AIIMS Hospital New Delhi were seized in her presence as per Ext. PW16/A seizure memo. In the cross-



examination, PW8 deposed that she does not remember how many *pullandas* had been received and that she does not remember the seal that were put on the *pullandas*.

19. PW9, Constable, Sangam Vihar police station, deposed that on 14.01.2013, as directed by the Investigating Officer (IO), he had taken the accused to AIIMS hospital for medical examination. The accused was examined and his MLC was prepared by the doctor. After the examination of the accused, the doctor handed over two sealed *pullandas* along with sample seal. Thereafter, he handed over the accused as well as the seals, exhibits, and sample seal to Sub Inspector Kusum Dangi, (PW13), who seized the same as per Ext. PW9/A seizure memo. The accused was arrested by PW13 *vide* Ext. PW9/B arrest memo. In the cross-examination, PW9 deposed that he had handed over the exhibits along with sample seal to PW13 at the police station.



20. PW10, Sub-Inspector, CR Park police station, deposed that on 14.01.2013, as directed by the ACP, Ambedkar Nagar, she went to Sangam Vihar police station where PW1 and PW2, her nani and the accused were present. The accused was produced before the court and he was remanded to judicial custody. PW10 further spoke of the various steps taken by her during the course of investigation and on completion of investigation; she submitted the final report/charge sheet against the accused.

21. PW11, Senior Scientific Officer (Biology), FSL Rohini, New Delhi, deposed that on 21.01.2013, six sealed parcels were received in his office. The seals were intact. After examining the sample sent, he prepared Ext. PW11/A report.

22. PW13, Sub-Inspector, Kalkaji police station deposed that on 14.01.2013, she received information from the Duty Officer, Kalkaji police station asking her to report to Sangam Vihar police station. She proceeded to Sangam Vihar police station



where PW1, her nani and the accused were present. She recorded Ext. PW1/A statement of PW1. The victim was thereafter sent for medical examination along with Constable Poonam (PW8). After conducting the medical examination of PW1, PW8 produced the MLC of the victim as well as the exhibits which she seized as per Ext. PW9/A seizure memo. Thereafter, the accused was sent for medical examination along with PW9 Constable. After the medical examination of the accused was conducted, PW9 produced the MLC as well as four sealed parcels and one sample seal in the hospital which she seized as Ext. PW16/A seizure memo. She arrested the accused *vide* Ext. PW9/B arrest memo. She thereafter handed over the case file to the SHO, Sangam Vihar police station and she deposited the exhibits in the *malkhana* of the said station.

23. DW1 and DW2 were examined on behalf of the accused. DW1, the brother-in-law of the accused, deposed that during the period 2012-2013, he used to stay along with his brother



Gore Lal and the accused at the first floor of D-29/3, Sangam Vihar, New Delhi. There were seven rooms on the first floor, all of which were occupied by tenants. There are four rooms on the ground floor, out of which one was occupied by his landlord and the rest three were occupied by tenants. There was only one toilet for all the occupants which was situated on the ground floor. All three of them doing carpentry work used to leave for work by about 08:00-08:30 a.m. and return by 09:00-09:30 p.m. They started living at the aforementioned address in October-November 2012. They were evicted when the FIR in this case was registered. They used to pay rent of ₹1500/- per month. The landlady (PW2) used to threaten them on a daily basis that she would call the police as another tenant had agreed to pay rent of ₹3000/- per month for the same room. He along with the accused; the landlord and the landlady had gone to the Sangam Vihar police station in the night of 13.01.2013 where a false and frivolous case had been



registered against his brother-in-law/the accused. The police did not register a case against him or his other brother as they acceded to the demand of the landlady to vacate the room. However, the accused fought with them and refused to vacate the room and hence this false case has been registered against him. DW2, the brother of DW1, supports the version of DW1.

24. The trial court has found the accused guilty of the offences punishable under Section 376(2)(f) IPC and Section 6 POCSO Act. The question is whether the aforesaid evidence on record is sufficient to find the appellant/accused guilty of the offences charged against him. It is true that there is slight discrepancy in the testimony of PW1 regarding the actual place of occurrence. In the FIS/FIR, PW1 has a case that on the said day, the accused took her to the bathroom, removed her clothes and thereafter took her to the backlane (*gali*) and committed the sexual assault. In the 164 statement and in the box, she deposed that the



sexual assault took place inside the toilet. However, materials have also come on record that one of the doors of the bathroom open to a *gali*. PW1 stood by her case of sexual assault by the accused all throughout in her statements, be it her FIS/FIR, the 164 statement, or her testimony before the box. On going through her testimony and statements, I do not find any reason(s) to disbelieve her version. It is also true that PW2 in the box has a case that PW1 had become unconscious after the rape. However, PW1 has no such case. But PW1 has testified that due to the sexual assault by the accused, she was in severe pain. PW1 and PW2 stood by the case in the cross-examination also. The inconsistencies pointed out are immaterial and the same has in no way affected the prosecution case.

25. Now coming to the evidence regarding seizing of the undergarments of PW1 and the accused. According to PW8, on 13.01.2013 she had taken PW1, the victim, to AIIMS hospital for



her medical examination. PW8 does not speak about the seizure of the undergarment or the samples drawn from PW1. On the other hand, she testified regarding seizure of the undergarment of the accused as well as the samples collected from the accused. She further deposed that the undergarment as well as the other exhibits relating to the accused were seized in her presence *vide* Ext. PW16/A seizure memo. PW16/A reads thus:-

“Seizure Memo

In the presence of following witnesses Ct. Hira Lal No. 1251/SE has produced the exhibits after medical examination of accused Rajinder Sharma S/o Jagdish Mistri R/o D-29/3 Block-D Sangam Vihar, N. Delhi, Age 27 years vide MLC No. 435/13 dt. 14/1/13. All the exhibits are seized through seizure memo as a necessary police proof. The details are as follows:

- 1. One Pulanda containing underwear of accused sealed with the seal of Deptt. of Forensic Medicine & Toxicology AIIMS Hospital, N. Delhi.*
- 2. One Brown colour envelope containing blood in gauze of accused sealed with the seal of Deptt. of Forensic Medicine & Toxicology AIIMS Hospital*



N. Delhi.

3. One Plastic container containing Penile Swab of accused sealed with the seal of Deptt. of Forensic Medicine and Toxicology AIIMS Hospital N. Delhi.

4. One Plastic container containing Control Swab of accused sealed with the seal of Deptt. of Forensic Medicine and Toxicology AIIMS Hospital N. Delhi.

5. One Sample Seal signed by doctor.

Witness: Poonam
L/Ct. Poonam
No 3041/SE
PS Sangam Vihar

Produced By:
Ct. Hira Lal
No. 1251/SE
(Signature)
S.I.Kusum Dangi
PS Kalkaji 14/1/13”

As per Ext. PW16/A, the aforesaid articles relating to the accused were produced by PW9 before PW13, the I.O. The same has been attested by PW8. PW9 on the other hand, deposed that he had taken the accused to AIIMS hospital for medical examination and after the examination, the doctor had handed over to him the MLC as well as the samples drawn from the accused. According to PW9,



these were seized by PW13 as per Ext. PW9/A seizure memo.

PW9/A seizure memo reads thus:-

“Seizure Memo

In the presence of following witnesses Ct. Poonam No. 3041/SE has produced the following exhibits. The same are seized through seizure memo as a necessary police proof after medical examination of victim Ruby D/o Ramesh Chand vide MLC No. 436/13 dt. 14/1/13. The details of exhibits are as follows:-

- 1. One pulanda containing Perivaginal Smear for forensic examination of victim sealed with the seal of CMO AIIMS Hospital N. Delhi.*
- 2. One pulanda containing Perivaginal Smear for forensic examination sealed with the seal of CMO AIIMS Hospital N. Delhi.*
- 3. One sample seal signed by Dr. Manisha Sr. Gynae II, AIIMS Hospital, N. Delhi..*

Witness:

*Ct. Hira Lal
No. 1251/SE
PS Sangam Vihar*

Produced By:

*L/Ct.Poonam Noojoyi/SI
PS Sangam Vihar
'B'
(Signature)
S.I.Kusum Dangi
P.S. Sangam Vihar(place)
PS Kalkaji 14/1/13”*



Apparently, PW9/A relates to the seizure of the samples drawn from PW1, the victim. As per Ext. PW9/A, these were produced by PW8 before PW13. PW8 never spoke about the samples of PW1 being handed over to her by the doctor or her handing over the same to PW13, the I.O. PW9 speaks of PW9/A which apparently is relating to the victim and not that of the accused. Therefore, the seizure of articles referred to in Ext. PW9/A and PW16/A has not been proved as mere production and marking of seizure memos will not prove the contents of the same. It is only when the witnesses speak of the same before the court, it becomes substantive evidence and the seizure memos can only corroborate their testimony.

26. Further PW9/A seizure memo does not speak of the undergarment of PW1 though PW2, her grandmother has a case that the same had also been seized. PW4/A MLC of PW1 prepared by PW4 the doctor says thus:-“*panty (preserved as exhibit) and*



peri vaginal smear taken for forensic examination and handed over to accompanying lady constable with sample of smear.”

However, PW8 who is alleged to have taken PW1 to PW4 for medical examination has no such case. PW9/A also does not speak of the undergarment alleged to have been handed over by PW4 to PW8. PW5, the doctor who examined the accused in Ext. PW5/A says that along with the samples drawn an underwear sealed was handed over to the I.O. along with the sample sealed. PW9 who is alleged to have taken the accused for medical examination does not speak about the undergarment being handed over to him by the doctor. On the other hand, he has only testified that the doctor gave him two sealed *pullandas* along with the sample seals. Therefore, the evidence regarding the seizure of the undergarment as well as seizure of samples from PW1 and the accused is not satisfactory. That being the position, though the FSL report supports the prosecution case, the same cannot be relied on as the materials on



record regarding seizing of samples and exhibits are far from satisfactory. However, the scientific evidence is only corroborative evidence and it can only corroborate the testimony of the victim. Here the testimony of PW1, the victim, is credible and believable and, therefore, even if the scientific evidence cannot be relied on, there is no reason to disbelieve the prosecution case.

27. It was further argued that Ext. PW4/A MLC says that the hymen was intact. Therefore, it was argued that that this does not tally with the version of PW1 who has a case of penetrative sexual assault by the accused. This was pointed out as yet another reason to disbelieve the prosecution case.

28. I am afraid, I disagree with the argument advanced by the learned counsel for the appellant/accused because as per Section 3(a) PoCSO Act, a person is said to commit penetrative assault if he penetrates his penis to any extent into the vagina, mouth, etc. of a child, the offence of penetrative sexual assault is



made out. Therefore, it is not necessary that the hymen has to be ruptured to make out an offence under Section 3(a) of the Act.

29. Ext. PW4/A medical certificate shows that PW1 had an abrasion of 1.5 x 0.5 cm over pubis. This coupled with the testimony of PW1 and PW2 is sufficient to prove the offences charged against the accused. Coming to the defence evidence, it cannot be believed that because there was a dispute regarding the rent, PW2 had tutored her young grandchild to speak against the accused. The defence put up seems to be quite improbable. From the materials on record, I find no reason(s) to disbelieve the prosecution case. Therefore, I find no infirmity in the findings of the trial court regarding the guilt of the accused for the offences punishable under Section 376(2)(f) IPC and Section 6 PoCSO Act.

30. Finally, the learned counsel for the appellant/ accused submitted that in case this Court is not inclined to interfere with the impugned judgment, leniency may be shown and the



substantive sentence may be reduced to the term that the accused has already served.

31. The incident took place on 13.01.2013. Section 6 of the PoCSO Act as it then stood reads: “*whoever, commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine*”. Going by the dictum in **Ravinder Singh v. The State Govt. of NCT of Delhi, (2024) 2 SCC 323**, the trial court could have imposed either the maximum sentence of life or if it was for a term, for a period not exceeding 14 years. Here, the trial court imposed a sentence of 20 years which apparently could not have been done. Therefore, taking into account the facts and circumstances of this case, I find that substantive sentence of 14 years would serve the ends of justice.



2026:DHC:3775



32. In the result, the appeal is partly allowed. The conclusion regarding the finding of guilt of the accused for commission of the offences punishable under Section 376(2)(f) IPC and Section 6 POCSO is confirmed. However, the substantive sentence of imprisonment is modified from 20 years to 14 years.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 05, 2026
p'ma/kd/mj