



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

% ***Judgment Reserved on: 21.07.2026***
Judgment pronounced on: 24.07.2026

+ **CRL.A. 501/2023**

ABHILASH

.....Appellant

Through: Mr. M. Mukul, Advocate.
Appellant in person (*through VC*)

Versus

STATE (N.C.T. OF DELHI)

.....Respondent

Through: Ms. Manjeet Arya, APP with SI
Suresh Kumar Meena, P.S. New
Usman Pur.
Ms. Sana Juneja, Advocate for Victim

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) the sole accused in Sessions Case No. 282/2018 on the file of the Additional Sessions Judge (Special Court - PoCSO), North East District, Karkardooma Courts, New Delhi, assails the judgement dated 26.11.2022 and order on sentence dated 28.03.2023, as per



which he has been convicted and sentenced for the offences punishable under Section 376 of the Indian Penal Code, 1860 (the IPC) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that about a month before 18.11.2015, at around 6:00 PM, in the house of the accused's maternal aunt (*mausi*) at Shastri Park, Delhi, and again on 17.11.2015, after 8:00 PM, in a room situated in Gali No. 8, Gautam Vihar, Delhi, the accused after giving her a cold drink administered with some intoxicant committed penetrative sexual assault/ rape upon PW1, aged about 16 years. Hence, as per the chargesheet/ final report, the accused is alleged to have committed the offences punishable under Sections 376, 328 IPC and Sections 4 and 6 of the PoCSO Act.

3. On the basis of Ext. PW1/1 FIS/FIR of PW1, given on 18.11.2015, Crime no. 1304/2015, New Usmanpur Police Station, i.e., Ext. PW3/2 FIR was registered by PW3, then Head



Constable (HC). PW7 Sub Inspector (SI) 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.

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 10.12.2018, framed a Charge under Section 376 IPC and Section 6 PoCSO Act against the accused which was read over and explained to him to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 18 were examined and Ext. PW1/1-2, Ext. PW2/1, Ext. PW3/1-2, Ext. PW4/1, Ext. PW5/1, Ext. PW8/1-3, Ext. PW10/1, Ext. PW13/1-4, Ext. PW14/1-2, Ext. PW15/1, Ext. PW16/1-3, Ext. PW17/1, Ext. PW18/1-2 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 on 18.11.2015, PW1 was insisting on marrying him, but his family did not approve of the proposed marriage, leading to a quarrel between the two families. Owing to the said dispute, PW1 and her family falsely implicated him in the present case about an year later.

7. On behalf of the accused, DW1 to DW3 were examined. No documentary evidence was produced.

8. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court *vide* impugned judgment dated 26.11.2022 held the accused guilty of the offences punishable under Sections 376 IPC and Section 4 of the PoCSO Act. Accordingly, *vide* order on



sentence dated 28.03.2023, the accused has been sentenced to rigorous imprisonment for a period of 07 years and fine of ₹10,000/- for the offence punishable under Section 376 IPC, and in default of payment of fine, to simple imprisonment for 30 days. In the light of Section 42 of the PoCSO Act, no separate sentence has been awarded for the offence punishable under Section 4 of the PoCSO Act. Aggrieved, the accused has preferred this appeal.

9. The learned counsel for the appellant/ accused submitted that the trial court erred in relying upon the testimony of PW1 despite her statements suffering from material inconsistencies and embellishments, and lack of specificity regarding the date, sequence, place, and circumstances of the alleged incidents. PW1's versions given in the FIS/FIR, Section 164 Statement, and her testimony before the Court are conflicting, rendering her evidence unreliable and unworthy of absolute reliance.



9.1. It was further submitted by the learned counsel for the accused that the trial court failed to appreciate that the medical evidence, including the MLC, could not be treated as conclusive proof in view of the material inconsistencies in the testimony of PW1. In the absence of a credible and consistent version of the prosecutrix, the medical evidence, being merely corroborative in nature, could not by itself sustain the conviction.

10. The learned Additional Public prosecutor submitted that the version of PW1 has remained consistent. Her testimony has not been discredited in any way and sufficient to establish the offence punishable under Section 376 IPC as well as Section 4 of the PoCSO Act. It was further submitted that the testimony of PW1 stands duly corroborated by the evidence of PW11, the mother of the victim, as well as the medical evidence on record. It was argued that minor discrepancies in the testimony of the prosecution witnesses do not vitiate the



prosecution case when the core of the prosecution story stands proved.

11. It was submitted by the learned counsel for the PW1, the prosecutrix that there is no infirmity in the judgment calling for an interference by this Court.

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

13. The only point that arises for consideration in this appeal is whether there is any infirmity in the impugned judgment calling for an interference by this Court.

14. I will first refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW1/1, the FIS/FIR of PW1 recorded on 18.11.2015 in Hindi, roughly translated reads thus:- “... *In our street, two or three houses down ours, lives Abhilash (the accused) S/o Vijender, aged 18 years. We have known each other for one year. Our affair has been going on for the last three months. One month ago, Abhilash took me to his maternal aunt's (mausi's) house in*



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Shastri Park. He introduced me as his paternal aunt's (bua's) friend. Mausī was not at home, but mausa (maternal uncle) was there. After some time, mausa went outside. Then he offered me a cold drink. On drinking the same, I felt intoxicated/dizzy. Then Abhilash had physical relations with me. When I gained consciousness, I asked Abhilash about it; he apologized to me and I forgave him. On 16/11/15, Abhilash and I made a plan to visit his plot; that is the plot in Gali No. 8, Gautam Vihar. On 17/11/15 at 8:00 pm, he met me outside in the street. From there we went on foot. A room is built there. He offered me a cold drink. On drinking the same, I felt intoxicated/dizzy. Then Abhilash established physical relations with me. Abhilash promised me that he would marry me, but his family members are not willing/agreeing. I want to marry Abhilash.”

14.1. In Ext. PW1/2, the 164 statement of PW1, seen recorded on 22.12.2015, PW1 has stated thus:- *“It was Chhath Puja on 16/11/2015. I have known Abhilash for one or two*



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months because he was our neighbour. On 16/11/15, Abhilash called me and took me with him to Gautam Vihar. There, his house is being built behind the school. Abhilash took me into that house. Then, Abhilash gave me a cold drink. Upon drinking the same, I felt intoxicated/dizzy. When I regained consciousness, I found my clothes had been removed. Abhilash was sitting right there. I put on my clothes on and came back home. Later, when my stomach and private parts started hurting, I told my mother. Abhilash forcibly raped me. I have nothing else to say.”

14.2. PW1, when examined before the trial court, deposed that about 2 to 3 years back, when she was residing in Khaujuri, Delhi with her family, she met the accused at Budh Bazar, from where he took her to his aunt's (Bua) house. According to her, they had been friends for about an year. The uncle (fufa) of the accused, present in the house, offered her a cold drink. After consuming the drink she felt giddy and



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completely lost consciousness. She does not know what happened then. When she regained consciousness, the accused was present there. She was later dropped home. On the very next day, the accused again called her and took her to a house under construction situated behind his residence. There, the accused again offered her a cold drink. Initially, she did not consume it as she was alone and scared. PW1 immediately corrected herself by deposing that she consumed a little of the drink, became slightly tipsy, but remained conscious. She knew that the accused was raping her. After returning home, as she was in pain, she informed her mother (PW11) about the incident, whereupon her mother informed the police.

14.3. PW1 in her cross examination denied having stated to the police that the accused had offered her a cold drink while at his mausi's home. According to her, it was the house of the accused's fufa, and it was the fufa who had offered her the cold drink. PW1 admitted that on the next day she had



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voluntarily accompanied the accused and further admitted that she and the accused were having an affair. She also admitted that when the accused's family came to know about their relationship, they visited her house, complained about it pursuant to which a quarrel took place between the two families.

15. PW11, the mother of PW1, deposed that although she was unable to recall the exact date or year, the incident occurred about 5 to 6 years back, in the month of November or December. On the said day at about 6:00 PM, while she was inside her house, her daughter (PW1) was standing outside the house. When she came downstairs, she saw her daughter (PW1) talking to the accused, who thereafter took her daughter away. On witnessing this, she made a PCR call. A lady police officer reached the spot and recorded her statement. She and her husband were taken to the police station. PW11 further deposed that her daughter (PW1) and the accused came to the police station, where her daughter's statement was recorded and



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subsequently sent for medical examination. PW11, in the cross examination, denied the suggestion that there had been a quarrel between the two families resulting in the false implication of the accused.

16. PW8, Head Master, Oriental Model Public School, Arvind Nagar, Ghonda, Delhi produced the admission and withdrawal register along with the admission record and an affirmation letter given by the father of PW1 regarding her date of birth. The same were marked as Ext. PW8/1, Ext. PW8/2 and Ext. PW8/3. As per the records, the date of birth of PW1 is 26.04.2003.

17. PW17, Specialist, Obstetrics and Gynaecology, JPC Hospital, Delhi when examined deposed that she had seen Ex. PW17/1 MLC of PW2. PW17 identified the signatures of Dr. Midhat Siddqui, who had prepared the MLC. According to PW17, Dr. Midhat Siddqui had left the services of the hospital and her present whereabouts are not known to them. PW17



further deposed that as per Ext. PW17/1 MLC the local examination revealed that hymen was torn, posterior fourchette was congested, but no bleeding was seen.

18. Now, coming to the defence evidence. DW1, one of the neighbours of the accused, when examined, deposed that he had been residing at L-37, Gautam Vihar, Ghonda, Delhi for about forty years and that both Narender, the father of the accused, and S.N, the father of PW1, were his neighbours. In the year 2015, a quarrel had taken place between Narender and PW1's father, and that the parties were pacified by the local residents. According to DW1, at the time of the quarrel, S.N. (PW1's father) threatened Narender (father of the accused) that he would falsely implicate him in a criminal case. DW1 further deposed that, pursuant to the said threat, S.N. had deliberately got the present false case registered against the accused. DW1, in his cross examination, admitted that no crime had been registered regarding the quarrel alleged to have taken place



between Narender and the father of PW1 in the year 2015. DW1's version is reiterated by DW2, another neighbour of the accused.

19. DW3, the father of the accused, when examined, deposed that in the year 2014, a quarrel had taken place between him and S.N., the father of PW1, which was settled at the intervention of the police. According to DW3, PW1 was in a relationship with his son and wanted to marry the latter. On 17.11.2015, he visited PW1's house and complained to her father that she was insisting on marrying his son. The issue was pacified at the intervention of the local residents.

20. As noticed earlier, the accused has been charged of having committed the offences punishable under Section 376 IPC and Section 6 of the PoCSO Act. On the question of age of PW1, the prosecution relies on the testimony of PW8, who produced Ext. PW8/1 admission and withdrawal register of PW1 along with Ext. PW8/2 admission record and Ext. PW8/3



affirmation letter given by the father of PW1. The said testimony and record reveal the date of birth of PW1 as 26.04.2003. The prosecution case is that the incident occurred about a month before 18.11.2015. Therefore, PW1 should have been around 12 years of age at the relevant time. Relying on the testimony of PW8 and the aforesaid documents, the trial court concluded that the age of PW1 at the time of the incident was 12 years, 06 months and 22 days, and thus a minor. However, as per the court Charge PW1 was 16 years at the time of the incident. In the testimony of PW1 which is seen recorded on 04.02.2019, her age is recorded as 18 years. If that be so, her age must have been 14 years in the year 2015 when the incident is alleged to have taken place. Therefore, the evidence regarding the age of PW1 is not satisfactory.

21. The main question that arises for consideration is whether the version of PW1 regarding the commission of penetrative sexual assault after she was intoxicated by the



accused has remained substantially consistent throughout the prosecution case and is free from material contradictions or improvements so as to inspire confidence. It is also necessary to examine whether her testimony finds due corroboration from the other prosecution witnesses, the medical evidence, and the other materials brought on record, thereby establishing the prosecution case beyond reasonable doubt.

22. A careful perusal of Ext.PW1/1 FIS/FIR, Ext.PW1/2 Section 164 Statement and her testimony before the trial court and the other materials on record give various inconsistent versions regarding the place where the first alleged incident of sexual assault took place. In her Ext.PW1/1 FIS/FIR, PW1 has a case that the accused had taken her his mausi's house at Shastri Park, where the alleged incident occurred. According to her, the mausi was not at home. Only the mausa was at home, who also left a short time after their arrival. Then the accused gave her a drink. She lost consciousness, during which time the



accused raped her. In her 164 statement, she says that the accused took her to his house under construction. There he gave her a drink. She felt intoxicated/dizzy. When she regained consciousness, she found her clothes had been removed. Accused was very much present there. She put on her clothes and returned home. There is no specific reference to any sexual abuse or assault. However, when examined before the Court, PW1 deposed that the accused had taken her to the house of his bua. The relevant portion of the testimony of PW1 reads thus:-

“...I met Abhilash in Budh Bazar. From there, he took me to the house of his Bua. We had been friends for around one year. I do not remember where the house of his bua was. His fufa was in that house. There was no one else in that house. His fufa brought one cold drink for me. I consumed that cold drink and then became giddy. I became completely unconscious. I do not know what happened there. When I regained consciousness, the accused was present and they dropped me at home.”



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22.1. During cross examination, PW1 affirmed that it was the fufa who had offered the drink and went on to deny her earlier statement that it was the accused who had offered it. So, was the fufa also involved in the crime, because she says that she is unaware as to what had happened after she lost consciousness on drinking the cold drink offered by the fufa and that when she regained her senses, “they” dropped her home. If this version is to be believed, then fufa also has a role in the crime. But neither the chargesheet nor the court Charge says so.

23. Further, PW1 consistently maintained that she disclosed the incident to her mother after returning home. In her examination-in-chief, she specifically deposed that after the accused raped her in the under-construction house, she returned home and informed PW11, who thereafter called the PCR. Likewise, in her statement under Section 164 CrPC, PW1 stated that after returning home she experienced pain in her stomach and private parts and thereafter informed her mother. On the



other hand, PW11's testimony makes no reference whatsoever to PW1 returning home and narrating the incident of rape before the PCR call. Instead, according to PW11, the police had already been informed immediately after she saw PW1 leaving with the accused.

24. In light of the aforesaid inconsistencies, the prosecution version regarding the alleged commission of penetrative sexual assault does not inspire confidence. It is no doubt true that Ext. PW17/1, the MLC of PW1, records that the hymen was found torn and the posterior fourchette was congested. However, these findings, by themselves, are not conclusive proof that penetrative sexual assault had taken place. In the absence of reliable and cogent ocular evidence, the medical findings alone cannot conclusively establish the commission of rape.

25. Further, the conduct of PW1, also appears quite strange. According to PW1, after the first incident in which the



accused had intoxicated and raped her, the very next day he again called her. She admits that she voluntarily accompanied the accused and again consumed the cold drink offered by him resulting in her losing consciousness. The prosecution has not placed any material on record explaining the circumstances such as any threat or misconception of facts by the accused under which PW1 would once again repose trust in the accused, accompany him and consume what was offered to her despite the earlier sexual assault after intoxication. This unexplained conduct adds to the improbabilities already noticed in the prosecution case and creates a reasonable doubt regarding the manner in which the alleged incidents are stated to have occurred.

26. In view of the aforesaid inconsistencies, improbabilities and the surrounding circumstances emerging from the evidence on record, a reasonable doubt arises as to whether the accused had committed penetrative sexual assault



upon PW1 in the manner alleged by the prosecution. The prosecution has thus failed to establish the charge of penetrative sexual assault by the accused beyond reasonable doubt, and so the benefit of such doubt must necessarily enure to the accused.

27. In the light of the aforesaid circumstances, the conviction and sentencing of the appellant for the offence punishable under Section 376 IPC and Section 4 of the PoCSO Act is found unsustainable and hence liable to be set aside.

28. In the result, the appeal is allowed. The appellant is acquitted under Section 235(1) Cr.P.C. for the offence punishable under Section 376 IPC and Section 4 of the PoCSO Act. The appellant is set at liberty.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 24, 2026

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