



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

% *Judgment Reserved on: 04.05.2026*
Judgment pronounced on: 08.05.2026

+ **CRL.A. 844/2024 & CRL.M.(BAIL) 512/2026**

NIRMAL KUMAR Appellant

Through: Ms. Aishwarya Rao and Ms. Mansi
Rao, Advocates

versus

STATE OF NCT OF DELHI AND ANR. Respondents

Through: Mr. Utkarsh, APP for the State with
SI Reena Kumari, P.S. Budh Vihar.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) read with Section 482 of the Criminal Procedure Code, 1973 (the Cr.P.C.), the sole accused in Sessions Case No. 588/2022 on the file of the Additional Sessions Judge (PoCSO) North West, Rohini District Courts, Delhi, assails the judgement dated 12.12.2024 and order on sentence dated 22.07.2024, as per which he has been convicted and



sentenced for the offences punishable under Sections 366, 363 and 376(2)(n) of the Indian Penal Code, 1860 (the IPC) and Section 5 (1) read with 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 05.03.2022, at about 02:00 PM, the accused kidnapped PW1, a minor girl aged about 15 years, out of the keeping of the lawful guardian with the intent to force or seduce her into illicit intercourse, took her to the house of his brother at Haridwar, where he repeatedly committed aggravated penetrative sexual assault/ rape on her. Hence, as per the chargesheet/ final report, the accused is alleged to have committed the offences punishable under the abovementioned Sections.

3. On the basis of Ext. PW2/A FIS/FIR of PW2, given on 05.03.2022, Crime no. 204/2022, Budh Vihar Police Station, i.e., Ext. PX1/A FIR was registered by PW4, Sub-Inspector. PW6 Sub-Inspector conducted investigation into the crime and on



completion of the same, filed the chargesheet/final report alleging commission of the offences punishable under the aforementioned Sections.

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 21.07.2022, framed a Charge under Sections 363, 366, 376(2)(n) IPC and Section 5(1) read with 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, PWs. 1 to 6 were examined and Ext. PX1/A-D, Ext. PW1/A, Ext. PW2/A, Ext. PW3/A-D, Ext. PW4/A, Ext. PW5/A-C, and Ext. PW6/A-C 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 he has been falsely implicated in the present case and that PW1 had lodged a false case against him at the instance of PW2, her mother. The accused also submitted that he was told by PW1 and her mother that PW1 was 18 years old when he had visited their house.

7. After questioning the accused under Section. 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him.



8. No oral or documentary evidence was adduced by the accused.

9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, vide the impugned judgement dated 12.02.2024 held the accused guilty of the offences punishable under Sections 376(2)(n), 366 and 363 IPC and Section 5 (l) and 6 PoCSO Act. *Vide* order on sentence dated 22.07.2024, sentenced him to undergo rigorous imprisonment for a period of 20 years and to fine of ₹30,000/-, and in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 6 PoCSO Act; and to rigorous imprisonment for a period of 7 years each and to fine of ₹10,000/-, and in default of payment of fine, to simple imprisonment for a period of three months for the offences punishable under Sections 363 and 366 IPC. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.



10. The learned counsel for the appellant/accused submitted that the prosecution has failed to establish the ingredients of penetrative sexual assault as contemplated under Section 3 of POCSO Act and Section 376 IPC. PW1 made inconsistent statements in her Section 164 Statement and in her examination-in-chief. Further, PW1 refused to undergo internal examination, which has been recorded by the doctor in Ext.PX1/D MLC. (*Main apni androoni janch nahi karwana chahti*). Therefore, the trial court has erred in relying on the sole testimony of PW1, who can never be considered a sterling witness.

10.1. It was further submitted by the learned counsel for the appellant/ accused that PW1 has merely used the expression “physical relations” or “sharirik sambandh” in her Section 164 Statement without elaborating upon the nature of the act. Such vague testimony does not establish penetrative sexual assault and so no presumption under the PoCSO Act can



be drawn. It was pointed out that no effort had been made by the prosecutor or the trial court to elicit clear particulars regarding the alleged “physical relations”. “Physical relations” does not mean sexual intercourse and in support of the argument, reference was made to the dictums in **Sahjan Ali v. State, 2024 SCC OnLine Del 9079; Rahul v. State (NCT of Delhi), 2025 SCC OnLine Del 6517** and **Depesh Tamang v. State of Sikkim, 2020 SCC OnLine Sikk 24**.

11. The learned Additional Public Prosecutor submitted that the impugned judgment does not suffer from any infirmity warranting interference by this court as the trial court has duly considered each and every ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits. It was further submitted that the accused never had any defence as now canvassed on his behalf. While questioned under Section



313(1)(b) Cr.P.C., he simply denied the case claiming it to be a false implication by PW1 and her mother PW2.

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

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

14. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case Ext. PW2/A, the FIS/FIR given by PW2, mother of PW1 is a missing complaint. According to PW2, on 05.03.2022, at about 02:00 PM, her daughter (PW1) left the house without informing anyone. They searched for her daughter (PW1), but was unable to trace her. Some unknown person has enticed and taken away her daughter. Hence, appropriate legal action may be taken.



15. PW1, the victim, in Ext. PX1/B Section 164 Statement recorded on 26.03.2022 has stated thus:- She is in love with Nirmal Kumar(the accused). None of her family members were aware of the relationship. Even if she had told her family about the relationship, they would not have agreed to her marriage with him. So she eloped with Nirmal Kumar on the 5th of March. They got married at Haridwar on 07.03.2022 and thereafter went to the house of his elder brother, where they stayed for a few days. Thereafter, Nirmal Kumar started working. On the date of marriage, she was with her husband, on which day they had physical relations. After that nothing happened. Thereafter, she started sleeping with his sister-in-law while he slept with his brother. She wishes to live with Nirmal and does not want to go with her family members.

15.1. PW1, when examined before the trial court, deposed that she was unaware that the accused was a married man. According to PW1, the accused used to talk to her “very



sweetly and had shown rosy pictures to me aur isne muje fasa liya.” The accused repeatedly asked her to marry him and he used to make conference calls with his relatives, with whom she also used to speak. On 05.03.2022, the accused lured her and took her from Delhi to Uttar Pradesh, where he first took her to the house of his niece, and thereafter to Haridwar where the accused again insisted upon marriage and, believing him to be a bachelor, she married him on 07.03.2022. Thereafter, the accused took her to the house of his elder brother situated at Kelial Gaon, Bihar, where he established physical relations with her despite her refusal, at which time, she was below 18 years of age. They stayed there for about 20 days, during which time the accused repeatedly and forcibly had physical relations with her. Thereafter, the police came and brought both her and the accused back to Delhi.

15.2. PW1 in her cross-examination deposed that the accused used to call her three to four times a day and repeatedly



asked her to marry him, and that such requests continued from February till 05th March. PW1 admitted that she had not informed her mother about these interactions. PW1 denied the suggestion that she had threatened to end her life if the accused did not marry her. PW1 admitted that she had affection for the accused but she was unaware that he was a cheat and further stated that she no longer loved him (*Yeh baat sahi hai ki mai use pyar karti thi lekin mujhe ye nahi pata tha ki ye dhokebaaj hai. Ab mai us se pyar nahi karti*). PW1 denied the suggestion that she was deposing falsely or under pressure from her family members. She also denied that she was testifying at the instance or under the influence of her mother.

16. PW2, mother of PW1, supports the prosecution case.

17. PW3, Primary Teacher, MC Primary School, produced the school admission register and original birth certificate of PW1 and the same were marked as Ext. PW3/A



and Ext. PW3/B respectively. As per the same, the date of birth of PW1 is 31.01.2007.

18. The trial court has found the accused guilty of the offences punishable under Section 363, 366, and 376(2)(n) IPC as well as Section 6 PoCSO Act. In the light of Section 42 PoCSO Act, no separate sentence has been passed for the offence punishable under Section 376(2)(n) IPC. Section 363 IPC deals with punishment for kidnapping. Section 361 IPC, which defines kidnapping from lawful guardianship, says that whoever takes or entices any minor under sixteen years of age, if a male, or under eighteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, commits the offence of kidnapping from lawful guardianship. Section 366 IPC deals with kidnapping, abducting or inducing woman to compel her marriage. As per this Section, any person who kidnaps or



abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, is liable to be punished with imprisonment and fine. The Section also says that whoever by means of criminal intimidation as defined in the Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person is also liable to be punished.

19. PW1 in her statement under Section 164 CrPC, which is her first statement, has no case of inducement or enticement and stated that she had voluntarily joined the accused to marry him. On the other hand, her case in the box is that the accused repeatedly requested her to marry him and that



he lured her and took her first to UP and then to Haridwar, where he married her. As held in **S. Varadarajan v. State of Madras, 1964 SCC OnLine SC 36 : (1965) 1 SCR 243**, there is a distinction between “taking” and merely allowing a minor to accompany a person. Where a minor, having sufficient understanding, voluntarily leaves the protection of her guardian and joins the accused, it cannot be said that the accused has “taken” her, unless there is clear evidence of inducement or active participation in forming such intention. In the case on hand, there does not appear to be any specific act of inducement or active role on the part of the accused in causing PW1 to leave her lawful guardian’s custody. In fact the case of PW1 is that she loved the appellant/ accused, but later on she realised that he was already married and hence a cheat. Apart from the version of PW1, there are no materials to show that the accused was in fact a married man when PW1 eloped with him. Hence, I find that the essential ingredients of the offences punishable under



Sections 363 and 366 IPC have not been satisfactorily established. Accordingly, the trial court went wrong in convicting the appellant/accused for the offences punishable under Sections 363 and 366 IPC.

20. Coming to the offence punishable under Section 6 POCSO Act. The date of the incident in this case is 07.03.2022. As per Ext. PW3/A and PW3/B, the date of birth of PW1 is 31.01.2010. Therefore, PW1 was about 15 years old at the time of the incident. The fact that PW1 was a minor is not disputed.

21. The only question that requires consideration is whether the aforesaid materials on record is sufficient to attract the ingredients of the offence contemplated under Section 5(l) punishable under Section 6 of the PoCSO Act. Section 5(l) of the PoCSO provides that whoever commits penetrative sexual assault on a child more than once or repeatedly shall be deemed to have committed aggravated penetrative sexual assault.



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Section 3 of PoCSO Act defines penetrative sexual assault. As per the Section, a person is said to commit “penetrative sexual assault” if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

22. The entire prosecution case rests upon the testimony of PW1 to establish that the accused committed penetrative sexual assault. In the Section 164 CrPC statement as well as in testimony before the trial court, PW1 has only used the expression “physical relation” or “*shareerik sambandh*”,



without actually describing the nature of the act committed by the accused. Ext. PX1/D MLC is not disputed by the accused, and the same is seen marked on consent under Section 294 Cr.P.C. PW1 was unwilling to undergo complete medical examination. Further, the doctor in Ext. PX1/D MLC in column C under the heading “Local examination of genital parts” has recorded thus: -“*Internal examination not done. Patient not willing*”. Therefore, there is no material to show whether the hymen was intact or torn or whether there was any injury or of any sort on the genitals of PW1. Further, PW1 in her Section 164 Statement has only a case that on the date of marriage she had “physical relations” with the appellant/ accused and thereafter there was never any such relations. But PW1 in the box has a case that the appellant/ accused had repeatedly raped her several times. Hence, in the light of such unsatisfactory testimony of PW1 coupled with the absence of any medical



evidence, the benefit of doubt will have to be given to the accused.

23. It is true that Section 29 of the POCSO Act provides that the Court shall presume that the accused has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. However, this statutory presumption is not automatic and can operate only after the prosecution has first established the foundational facts constituting the alleged offence. From the materials on record and testimony of PW1, it cannot be concluded that the prosecution has established its case beyond reasonable doubt against the accused.

24. In the result, the appeal is allowed. The appellant/accused is acquitted under Section 235(1) Cr.P.C. of the offences punishable under Sections 363, 366, 376(2)(n) IPC and Section 5(1) read with 6 of the PoCSO Act. He is set at liberty and his bail bonds shall stand cancelled.



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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 8, 2026

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