



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

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Judgment Reserved on: 28.01.2026
Judgment pronounced on: 02.02.2026

+ CRL.A. 55/2023 and CRL.M.A. 1231/2026 & CRL.M.(BAIL)
82/2023

ASHOK KUMAR@AK

.....Appellant

Through: Mr. Chetan Bhardwaj, Ms. Priyal
Bhardwaj and Mr. Priyanshu
Vishwakarma, Advocates.

versus

STATE

.....Respondent

Through: Mr. Digam Singh Dagar, APP for the
State.
Ms. Astha and Ms. Megha singh,
Advocates (DHCLSC) for
prosecutrix.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374(2) the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the sole accused in SC No. 561 of 2017 on the file of the Special Court under the Protection of Children from Sexual Offences Act, 2012, (the



PoCSO Act) Rohini Courts, Delhi, assailing the judgment dated 23.08.2022 as per which he has been convicted and sentenced for the offences punishable under Section 6 of the PoCSO Act and Section 376 (2) (f) and (i) of the Indian Penal Code, 1860 (the IPC).2. The prosecution case is that on 26.06.2017 at N-9A-33, Lal Bagh, Azadpur, New Delhi, the appellant/accused outraged the modesty and committed penetrative sexual assault on PW1, his minor stepdaughter.

2. On the basis of Ext. PW1/A FIS of PW1, given on 12.07.2017, Crime No. 273/2017, Adarsh Nagar Police Station, that is, Ext. P-1, FIS was registered by PW6, Woman Sub-Inspector (WSI). PW6 conducted investigation into the crime and on completion of the same filed the charge-sheet/final report alleging commission of the offences punishable under Section 376 IPC and Section 6 of the PoCSO Act.

3. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him as



contemplated under 207 Cr.PC. After hearing both sides, the trial court as per order dated 08.11.2017, framed a charge under Section 354, Section 376 (2) (f) and (i) IPC and Sections 6, 10 of the PoCSO Act, which was read over and explained to the accused, to which he pleaded not guilty.

4. On behalf of the prosecution, PWs.1 to 7 were examined and Exts. PW1/A-C, PW4/A-C, PW5/A, PW6/B-C, P-1, P-2 and P-5 were marked in support of the case.

5. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.PC regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. He submitted that he had been falsely implicated in this case at the behest of PW2, his mother in-law.

6. After questioning the accused under Section. 313 CrPC, compliance of Section 232 CrPC was mandatory. In the case on hand, no hearing as contemplated under Section 232 CrPC 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. No oral or documentary evidence was adduced by the accused.

7. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 23.08.2022 held the accused guilty of the offences punishable under Section 376 (2)(f) and (i) IPC and Section 6 of the PoCSO Act and hence sentenced him to undergo rigorous imprisonment for a period of 20 years and to a fine of ₹8,000/-, and in default of payment of fine, to undergo simple imprisonment for 30 days. Aggrieved, the appellant/accused has preferred this present appeal.



8. The learned counsel appearing on behalf of the appellant submitted that the latter has been falsely implicated by PW1 at the behest of PW2, the maternal grandmother of PW1. It was submitted that there are several contradictions and improvements in the testimony of PW1 and PW2. The exact date of the incident is also not clear. PW2 had sought the assistance of the accused to get her daughter, that is, the wife of the accused and the mother of PW1 released on bail. But the accused was unable to do so. Hence, the false implication. It was also submitted that neither the dress of the victim nor that of the accused had been seized or sent for chemical examination. The bed sheet was also not seized or subjected to any examination. No traces of semen was found either in the private parts of the victim nor in the wearing apparel or bed sheet. Hence, the case of penetration/sexual assault cannot be believed, argued the learned counsel.

9. *Per contra*, it was submitted by the learned Additional Public Prosecutor that the testimony of PW1 corroborated by the



testimony of PW2 clearly proves 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.

10. Heard both sides and perused the records.

11. 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 26.06.2017 at N-9A-33, Lal Bagh, Azadpur, New Delhi, the residence of the accused, the step-father of PW1. Exhibit PW1/A FIS of PW1, the victim, was recorded on 12.07.2017. In the FIS, PW1 has stated thus:- “I live in the abovementioned address with my family. We are three sisters and one brother. I study in the 6th standard. My mother is in jail in Narayanpur, Bihar since June. Ashok, is my step-father. From the day my mother has been in jail, my father touches me inappropriately and caresses my body. Before the festival of Eid, on 26.06.2017, my father removed his pants and my *pyjama* and



committed sexual assault/*galatkaam* with me at my house which caused pain and difficulty while urinating for the next 2-3 days. The day before yesterday, I told my maternal grandmother (Nani)

12. PW1/C, the 164 statement of PW1, is seen recorded on 13.07.2017. In the said statement PW1 states thus:- “Since the time mummy was locked in jail, my father used to move his hands over my body in a dirty way. Just 3-4 days before Eid, at night, papa took off my pants, took off his own pants, and did a dirty act on me. When I screamed and cried, he pressed his hand over my mouth and said that if I screamed or told anyone, he would kill my siblings.”

13. PW1, when examined before the court, stood by her case in the FIS and in her 164 statement. She deposed that in the previous year before the festival of Eid while everyone was asleep, her father talked to her inappropriately and threatened to kill her brother if she informed anyone of the incident. Her father removed



her clothes and his pant and inserted his private part into her private part/vagina which caused her pain. She further deposed that after some days her maternal grandmother visited her upon which she narrated the said incident to her.

14. PW2, the maternal grandmother of PW1 deposed that, when she went to meet her grandchildren at Lal Bagh, she found PW1 quiet and dull. When she enquired the matter, PW1 started crying. PW1 disclosed the abuse to her, pursuant to which the police was informed.

15. PW7, CMO, BJRM Hospital deposed that, she had been deputed to appear and depose on behalf of Dr. Mansi Vadhera who had left the services of the hospital and that her whereabouts were not known. She identified the handwriting and signature of the aforesaid doctor who had examined PW1 and issued the certificate. The certificate has been marked as Ext. PW5/A. In the certificate, it is stated that the internal medical examination had been conducted. On examination, the hymen was found not intact and



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little finger could be inserted in part, through the introitus.

16. It is true that there is some discrepancy regarding the date on which the incident occurred. However, it needs to be borne in mind that PW1 was a young girl of 11 years and therefore, minor discrepancies are bound to rise. PW2, her grandmother is also not an educated person. Therefore, if at all any mistake has been committed in referring to the date of the incident, that alone cannot be a ground to disbelieve her version.

17. PW1 has no case of ejaculation by the accused and hence absence of semen on her private parts is of no consequence. In such circumstances, non-seizure of the bed sheet or the wearing apparel of either PW1 or the accused has no consequence. The learned counsel for the appellant/accused quite persuasively and strenuously argued that the present case is a false one and that the accused has been falsely implicated because he refused to help PW2 to bail out her daughter who was in judicial custody. There are no materials to probabalize the defence version. Admittedly,



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the accused is the stepfather of PW1. At the relevant time, PW1 was staying with the accused. Therefore, he did have access to PW1. The testimony of PW1 has not been discredited in any way. The testimony of PW1 and PW2 is corroborated by the medical evidence. It was submitted by the learned counsel for the appellant/accused that there is no tear in the hymen and that it only says that it admits little finger. It is true that the word torn has not been used in exhibit PW5/A MLC. However the relevant findings of the doctor reads thus:- *“Labia majora appears healthy. Post fourchette & labia minora appear red. Hymen not intact little finger can be inserted half through the inhoitus.”*

18. PW1 at the time of the incident was only 11 years old. There is no explanation for the aforesaid status of her hymen. It was submitted that it could have been due to various other reasons also. However, the same has not been brought out either through the testimony of the doctor or through PW1. Not even a suggestion has been put to PW1 that she had indulged in any strenuous



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physical activities indicating the possibility of a tear in hymen due to the said reason. A whole reading of the materials on record does not raise any doubts regarding the prosecution case.

19. 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 that has been imposed on the accused be reduced. On going through the impugned judgment, I find that the trial court did consider this argument also and has given plausible reasons for awarding the sentence. The trial court did take into account the circumstances from which the appellant/accused came from and also his medical condition. The trial court imposed a period of 20 years taking into account the fact that the appellant/accused is the stepfather of the minor girl. The reasoning given by the trial court are certainly sound and I fully agree with the same. However, at the relevant time the offence under Section 5 of the PoCSO Act was punishable with rigorous imprisonment



for a term not less than 10 years, which could extend to imprisonment for life. Therefore, the minimum sentence to be imposed was 10 years. Hence in the said circumstances, I find that the substantive sentence of rigorous imprisonment for a period of 15 years would serve the ends of justice.

20. In the result, the appeal is partly allowed. The conviction of the accused for the offence under Section 5 of the PoCSO Act is confirmed. However, the sentence of rigorous imprisonment for 20 years is modified to a period of 15 years.

21. Applications, if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 02, 2026/mj