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

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Judgment Reserved on: 04.05.2026
Judgment pronounced on: 08.05.2026

+ **CRL.A. 607/2023 & CRL.M.(BAIL) 588/2026**

PARVEEN KUMAR

.....Appellant

Through: Mr. Shivek Trehan, Advocate
(DHCLSC) with Ms. Manika Pandey,
Advocate.

versus

STATE (GNCT OF DELHI) & ANR

.....Respondent

Through: Mr. Utkarsh, APP for the State.
Mr. Saurabh Kansal, Mr. Raghav Vij,
Mr. Suraj K. Jha and Mr. Pratham
Malik, Advocates for the complainant.

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.PC) read with Section 383 Cr.PC, the sole accused in SC No. 23/2018 on the file of the Additional Sessions Judge-07, (PoCSO), West District, Tis Hazari Courts, Delhi, assails the judgment dated 18.05.2023 and the order

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on sentence dated 27.05.2023 as per which he has been convicted and sentenced for the offences punishable under Sections 363, 342, 324, 377, and 506(II) of the Indian Penal Code, 1860 (the IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act) .

2. The prosecution case is that in the intervening night of 04.02.2018-05.02.2018 between 12 midnight and 12:30 A.M, at Vishal Property, D-5/193, Kanwar Singh Nagar, Delhi, the accused, kidnapped PW1, a minor boy, aged 16 years, wrongfully confined him at Khasra No. 19/10, Kamruddin Nagar road, Kanwar Singh Nagar, Delhi; voluntarily caused hurt to PW1 by hitting his legs with a hammer and committed carnal intercourse against the order of nature. The accused also threatened PW1 with dire consequences in case he revealed the incident to others. Hence, as per the charge-sheet/final report dated 12.04.2018, the accused was alleged to have committed the offences punishable



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under Sections 323, 342, 363, 377, 506 IPC and Section 4 of the PoCSO Act.

3. On the basis of Exhibit PW1/A FIS/FIR of PW1, given on 05.02.2018, crime no. 67/2018, Nihal Vihar Police Station, i.e., Exhibit PA-02 FIR dated 05.02.2018 alleging the commission of offences punishable under Sections 323, 342, 363, 377, 506 IPC and Section 4 of the PoCSO Act, was registered by PW4, Head Constable. PW8 was entrusted with the investigation of the case on 07.03.2018, who conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report dated 12.04.2018 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.PC. After hearing both sides, the trial court, *vide* order dated 04.06.2018, framed a charge under Section 6 of the PoCSO Act and Sections 363, 342, 323, 377 and



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506 IPC, which was read over and explained to the accused to which he pleaded not guilty. Further, *vide* order dated 10.05.2023, the charge under Section 323 IPC was altered to Section 324 IPC by invoking Section 216 Cr.PC.

5. On behalf of the prosecution, PWs. 1 to 9 were examined and Exhibits PA-1 to PA-5, PW1/A-D, P1, P2, PW2/DX1, PW3/DX1- DX2, PW4/X, PW4/A-C, PW5/A, PW6/A-B, PW7/A-B and PW8/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.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 claimed that he had been falsely implicated. He further stated that he was running a shop for repair of gas *chulhas*, utensils, and their components. PW1 came to his shop for repair of his gas *chulha*, fry pan, and cooker. He demanded ₹500/- as repair charges. After some negotiation with



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PW1, the charges was settled at ₹450/-. On the following day, when PW1 came to his shop to take back the articles repaired instead of paying the agreed amount of ₹450/-, the former paid only ₹200/-. When he demanded the remaining amount from PW1, the latter threatened him by saying that he would have to face consequences. Thereafter, some police officials came to his shop, took ₹4,500/- from his pocket, and a false case was registered against him at the instance of PW1 and his family members. He has not sexually assaulted/abused PW1.

7. After questioning the accused under Section. 313(1)(b) Cr.PC, compliance of Section 232 Cr.PC was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.PC 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**



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2888). Here, the accused has no case that non-compliance of Section 232 Cr.PC has caused any prejudice to him.

8.No oral or documentary evidence were adduced on behalf of the defence.

9.Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, *vide* the impugned judgement dated 18.05.2023, held the accused guilty of the offences punishable under Sections 363, 342, 324, 377, 506(II) IPC and Section 6 of the PoCSO Act. *Vide* order on sentence dated 27.05.2023, the accused has been sentenced to undergo rigorous imprisonment for a period of 15 years, along with fine of ₹6,000/-, and in default of payment of fine, to simple imprisonment for a period of 1 month for the offence punishable under Section 6 of the PoCSO Act; to rigorous imprisonment for a period of 2 years, along with fine of ₹1,000/-, and in default of payment of fine, to simple imprisonment for a period of 1 month for the offence punishable under Section 363 IPC; to rigorous



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imprisonment for a period of 6 months, along with fine of ₹1,000/, and in default of payment of fine, to simple imprisonment for a period of 15 days for the offence punishable under Section 342 IPC; to rigorous imprisonment for a period of 2 years, along with fine of ₹1,000/-, and in default of payment of fine, to simple imprisonment for a period of 15 days for the offence punishable under Section 324 IPC; and to rigorous imprisonment for a period of 3 years, along with fine of ₹1,000/-, and in default of payment of fine, to simple imprisonment for a period of 1 month for the offence punishable under Section 506 (II) IPC. The sentences have been directed to run concurrently. Aggrieved, the accused has come up in appeal.

10. It was submitted by the learned counsel for the appellant/accused that the entire prosecution case solely rests on the testimony of PW1, which is riddled with inconsistencies. It was contended that while PW1, in his Section 161 Cr.PC statement alleged both oral and anal penetration, in Section 164 Cr.PC



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statement, the allegation of anal penetration finds no mention. Further, PW1 made improvements in his testimony before the trial court, where he set up new allegations including assault with screw driver, blade and other objects which were not mentioned in his earlier versions. Such embellishments discredit the testimony of PW1 and indicate higher possibilities of tutoring, goes the argument. It was also submitted that certain portion of PW1's testimony are hearsay in nature, particularly regarding the condition in which he reached home as the mother of PW1, who is the source of such information, was not examined.

10.1. There is no cogent evidence to establish the offence of wrongful confinement or criminal intimidation. It was urged that the essential elements of penetrative sexual assault has not been proved beyond reasonable doubt by the prosecution and that the nature of injuries are simple in nature and they do not support the version set up by the prosecution regarding the brutal assault or forcible sexual act. Emphasis was laid on Exhibit PW5/A MLC to



augment the contention that the findings in MLC are suggestive and not determinative.

10.2. It was next contended that the trial court erred by relying on PW7/A FSL report as the prosecution has failed to establish an unbroken chain of custody of the seized samples and reliable link evidence connecting the samples to the accused. Discrepancies also exist between the seizure memos and the road certificate regarding the articles sent. These discrepancies cast serious doubt in the prosecution case, goes the argument.

10.3. It was lastly submitted that despite the alleged incident occurring in a populated locality, no independent witness have been examined. The testimony of PW2 and other witnesses does not inspire confidence. The prosecution failed to examine material witnesses, including the mother of PW1, whose testimony, according to the learned counsel, is crucial. Therefore, in such circumstances, the reliance on the sole testimony of the child witness is unsafe.



11. *Per contra*, the learned Additional Public Prosecutor supported the impugned judgment and order on sentence and submitted that it does not suffer from any illegality or infirmity calling for an interference by this Court. However, the learned prosecutor pointed out that at the relevant point in time, the offence was punishable with minimum 10 years which could extend to life or if it is for a term, not exceeding 14 years. However, the trial court has erred in sentencing the appellant/accused to rigorous imprisonment for a period of 15 years.

12. Heard both sides and perused the records.

13. The principal issue that falls for consideration in the present appeal are:

- i. Whether there is any infirmity in the impugned judgement calling for an interference by this court;
- ii. Whether the order on sentence, in respect of the conviction under Section 6 of the POCSO Act, is



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sustainable in law, particularly in light of the statutory sentencing framework applicable at the time of commission of the offence, which prescribed a minimum sentence of ten years extendable to life imprisonment, and the imposition of a sentence of fifteen years' rigorous imprisonment by the trial court is in consonance with the settled legal position or calls for appropriate modification.

14.I shall make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Exhibit PW1/A, the FIS/FIR dated 05.02.2018 of PW1, the victim, reads thus:- On 04.02.2018, i.e., a day prior to the date of incident, he along with his mother and his three sisters went to attend a wedding in their neighbourhood at around 9:00 P.M. After the wedding programme ended, and while on his way home, a man (the accused) approached him and told him that the former would give him a game and asked him to join the former. When he



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declined, the accused grabbed his hand and forcibly took him to a shop in front of Hanuman Dharam Kanta, Kanwar Singh Nagar. The accused opened the shop's shutter, took him inside, closed the shutter, and made him sit down. When he told the accused that he wanted to go home, the latter responded by saying that he would let him go soon and offered him Maaza juice. Despite his refusal, the accused forcibly made him drink the juice. The accused caught hold of him and began committing lewd acts. The accused attempted to insert his penis into his mouth. When he resisted, the accused hit his legs with a hammer. The accused also beat, kicked and punched him. Then the accused threw him onto the floor inside the shop, forcibly removed his pants, and inserted the former's penis into his anus. Thereafter, the accused threatened him with dire consequences in case he revealed the incident to others. (“मुझे पकड़ कर गन्दी हरकत करने लगा और अपना लिंग मेरे मुँह में डालने लगा जब मैंने इसका विरोध किया तो उसने हथोड़े से मेरे पैरों पर मारा और लात-घूसो से मेरी पिटाई की और मुझे दुकान के अन्दर जमीन पर डालकर जबरदस्ती मेरी पैंट उतारकर



मेरी लेट्रीन वाली जगह में अपना लिंग डालकर मेरे साथ गलत काम किया और गलत काम करने के बाद मुझे धमकी दी कि इस बारे में किसी को कुछ बतलाया तो जान से मार दूँगा’)

PW1 further stated that there were gas stoves and small cylinders kept inside the shop. After the incident, he somehow reached home and narrated the incident to his father (PW3), who then took him to the hospital. PW1 also stated that he can identify the person who abused him.

15. Exhibit PW1/B Section 164 Cr.PC statement of PW1, the victim, seen recorded by the Magistrate on 08.02.2018 reads thus:- He went to a party along with family on the night of 04.02.2018. When he was about to leave, an uncle (the accused) asked him to accompany the latter who promised to give him a video game. He went along with the said uncle (the accused). The accused took him inside a shop and when he asked for the game, the accused did not give any. Then, when he asked the accused to let him go, the accused refused to let him go, and slapped him. The accused hit him with a knife and a hammer and committed lewd



acts on him. The accused made him drink juice laced with some substance, removed his pants and put the former's private part into his mouth. When he resisted, the accused beat him and hit him on the head again with a hammer. (“उन्होंने मेरे साथ गंदी हरकत भी की थी। उन्होंने मेरी पेंट उतार दी। उन्होंने मुझे माजा में कुछ पिलाया था। उन्होंने अपना पेशाब करने वाला पार्ट लेकर मेरे मुँह में डाल दिया। मेरे मना करने पर उन्होंने मुझे मारा। उन्होंने मुझे हथौड़े से फिर सर पर मारा”) He cannot recall what happened thereafter. The accused had hit him on the face, head, and neck with a knife and a hammer.

15.1. PW1, when examined before the trial court, more or less stood by his version in the earlier statements. PW1 in the box has also a case that not only did the accused brutally beat him up with a hammer and screw driver, but had also slashed his face with blades and scratched him with nails. The accused after assaulting him, threw him at some distance away from that shop (“*mujhe uthakar usne kahi bahar dusri jagah phenk diya. Woh jagah uss dukaan se dur thhi*”). PW1 further deposed that when he gained



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consciousness, it was still dark. When he reached his house, he saw his family waiting outside. As soon as he reached home, he collapsed and lost consciousness. Thereafter his family members took him to the hospital. When he gained consciousness, his mother told him that when he reached home, his shirt, pants and his shoes were blood stained. His father (PW2) informed the police. PW1 indentified the accused in the box. The hammer stated to have been used by the accused was identified by PW1 and the same has been marked as Ext. P1. PW1 also identified the underwear, he was wearing at the relevant time, which has been marked as Ext. P2.

15.2. PW1, in his cross examination, deposed that he has no prior acquaintance with the accused. PW1 denied the defence version that there was a quarrel between him and the accused relating to payment of repair charges of a gas stove, frying pan, etc., which led to the registration of this case.



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16. PW2, owner of Khasra No. 19/10, Kanwar Singh Nagar, Nangloi, Delhi, deposed that the one of the shops in the property had been rented out to the accused, who was running a tea shop there. At the time of the incident, the accused was residing in the said shop.

17. PW3, the father of PW1, deposed that on the date of the incident, his wife and daughters returned home at around 10:00 P.M or 10:30 P.M. His wife was under the impression that PW1 had returned home. When he told her that PW1 had not returned home, she returned to the place of the function, but could not locate PW1. Hence, he along with his neighbours searched for PW1 till about 2:00 A.M. to 2:30A.M. By the said time, PW1 returned home drenched in blood. PW1 could barely walk. When he enquired the matter, PW1 told him that an uncle (the accused) had persuaded him to accompany him on the pretext of giving him a video game. The accused had offered to give video games to two to three other children also. But, instead of taking all of them



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along, the accused took PW1 alone with him, assuring the latter that he would hand over all the video games meant for the other children to him. (“*sabke video games tujhe hi de doonga*”) PW3 further deposed that his son (PW1) further told him that the accused, under the pretext of giving him a video game, had committed “*galat kaam*” with him. His son told him that the accused had removed the former’s clothes and inserted the latter’s penis into his anus, thereby committing penetrative sexual assault upon him. PW3 further deposed that his son had also told him that the accused had physically assaulted him using a hammer (*hathoda*), chisel (*chheni*), screwdriver (*pechkas*), etc. On hearing this, he informed the police. He waited for about 30 minutes, however, the police did not come and so, he took his son to Bhagwan Mahavir Hospital, where he was provided medical treatment. The police subsequently arrived at the hospital and took the child for medical examination to Ambedkar Hospital. His son was discharged in the evening of 05.02.2018.



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17.1. PW3 in his cross examination deposed that the place of incident is about 10 minutes walking distance from his house. PW3 also deposed that there were injuries on the entire body of his son. Blood was oozing from his hand and his left eye was shut and bruised. There were injuries on his son's face also. PW3 denied having sent any utensils for repair to the accused or that there was a quarrel between the accused and his son relating to the payment of repair charges. According to PW3, he himself being a technician, there was no necessity to send the articles for repair to the accused.

18. PW5, CMO, Bhagwan Mahavir Hospital, Pitampura, Delhi, deposed that on 05.02.2018, a boy aged 16 years (PW1) was brought in emergency by his father (PW3) with a history of assault and loss of consciousness. PW5 further deposed that after examining PW1, he referred the latter to surgery emergency for further management and treatment as the boy was found unconscious. He had prepared Ext. PW5/A MLC.



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19.PW6, head constable, Nihal Vihar, police station, deposed that on 15.03.2018, he collected three sealed *pullandas* and two sample seals from MHC(M) *vide* RC No. 41/21/18 and deposited the same at FSL, Rohini. PW6 further deposed that the case property was not tampered with so long as it was in his possession.

20.PW7, Senior Forensic Chemical Examiner (Assistant Director) Regional FSL, Chanakyapuri, New Delhi, deposed that on 15.03.2018 three sealed parcels received in FSL Rohini were allotted to him for DNA examination. The seals were intact on the packets. On examination, he found that the DNA profile generated from the source of exhibit “p” (blood sample of PW1) to be similar with that of the DNA profile generated from the source of exhibit “1n₁” (Cotton wool swab), “1n₂” (microslide) and “4” (underwear of the accused). He prepared Ext. PW7/A FSL report. PW7, in his cross examination admitted that DNA can be contaminated during transporting and packaging. According to PW7, the percentage



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accuracy of gene-mapper ID-X is more than 99%. He denied the suggestion that the percentage accuracy was only 80%. PW7 further deposed that DNA examination was processed three times to avoid any chance of technical error during analysis. In the case on hand, the results were the same on all three occasions.

21. The appellant/accused stands convicted of the offences punishable under Sections 363, 342, 324, 377, 506(II) IPC and Section 6 of the PoCSO Act. In order to bring home the offences under these sections, the prosecution is required to establish that the accused had kidnapped the minor victim, wrongfully confined him, caused hurt by dangerous weapons, committed carnal intercourse against the order of nature, subjected him to aggravated penetrative sexual assault within the meaning of Section 6 of the PoCSO Act and had also criminally intimidated him. Section 6 of the POCSO Act provides punishment for aggravated penetrative sexual assault. The essential ingredients include: (i) commission of penetrative sexual assault as defined under Section 3 thereof; and



(ii) existence of aggravating circumstances as enumerated under Section 5 thereof.

22. In the written submissions submitted, it is contended that there are several inconsistencies, improvements, contradictions in the testimony of PW1 and PW3 which undermines the prosecution case. The argument reads thus:-

***“F. INCONSISTENCIES/IMPROVEMENTS/CONTRADICTIONS
IN TESTIMONIES)***

38. The testimonies of the victim (PW1) and the father of the victim (PW3) have various inconsistencies/ improvements/ contradictions which undermines the prosecution’s case.

i. Allegations of forceful carnal intercourse

39. The victim in his 161 statement to the police alleges that he was subjected to carnal intercourse but in his 164 statement he contradicts himself and does not mention being subjected to penile penetration.

ii. Allegation of forcefully been taken to the site of the incident and improvements regarding the weapon of injury

40. In his Section 161 CrPC statement, the victim alleged



that he was forcibly taken by the appellant and hit with a hammer on his head and knees. In his Section 164 CrPC statement, he changed his version to say that he accompanied the appellant to the shop voluntarily and then was hit by a hammer and knife. In his chief examination, the victim deposed that he accompanied the appellant to the shop, was hit with a hammer and screwdriver, slashed in the face with a blade.

iii. Father's improvements in his testimony

41. In is police statement, PW3 (father of the victim) merely confirmed that the police recorded the victim's statement, without narrating the incident. However, in his testimony before the court, PW3 gave a detailed description of the incident, introducing new facts, including the use of a chisel by the appellant, an allegation never made by the: victim himself."

23. Statements made under Section 161 Cr.P.C. are statements made to the police during the course of investigation and the same cannot be used except for the purpose stated in the proviso to Section 162(1) Cr.P.C. Under the proviso to Section 162(1) Cr.P.C., such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in



Section 145 of the Evidence Act and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance for the testimony of a witness in court. [See **Tahasildar Singh v. State of UP, AIR 1959 SC 1012; Satpal v. Delhi Administration, (1976) 1 SCC 727 and Delhi Administration v. Lakshman Kumar, 1985 KHC 741: (1985) 4 SCC 476**].

23.1. Now, the question is what constitutes a contradiction or an omission amounting to contradiction and how can the same be proved? The contradiction under Section 162 is between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him.

23.2. A three - Judge Bench of the Apex court in the case of **V. K. Mishra v. State of Uttarakhand, 2015 (9) SCC 588**, after due consideration of Section 161 Cr.PC and Section 145 of the Evidence Act, held that the statements under Section 161 CrPC recorded during the investigation are not substantive pieces of



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evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under S.145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary. The court cannot *suo motu* make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 Cr.PC 'if duly proved' clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction. Under Section 145 of the Evidence Act when it



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is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross - examination. The attention of witness is drawn to that part and this must reflect in his cross - examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should



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be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot *suo motu* make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.

23.3. In **Anees v State Government of NCT, 2024 KHC 6256: AIR 2024 SC 2297**, it has been held that the words 'if duly proved' used in Section 162 Cr.PC clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can be looked into, but they must be duly proved for the purpose of contradiction by eliciting admission from the



witness during cross - examination and also during the cross - examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction (See also **Tahsildar Singh v State of UP, 1959 KHC, 577:AIR 1959 SC 1012; Munna Pandey versus State of Bihar, 2023 KHC 6817: AIR 2023 SC 5709 and Ramu Appa Mahapatra versus State of Maharashtra, 2025 KHC 6103:AIR 2025 SC 961**).

24. Coming to the case on hand, on going through the testimony of PW1 and PW3, I do not find that the procedure contemplated under Section 145 of the Evidence Act was resorted to at any point of time and, therefore, the appellant/accused cannot at this point of time rely on the alleged contradictions in the testimony of PW1 and PW3.

25. Another argument advanced is regarding the material



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objects/case property in the case. According to the appellant/accused, the trial court has concluded that Ext. PW5/A MLC and Ext. PW7/A FSL corroborates the statement of the prosecution witnesses. However, the trial court failed to take into consideration the fact that chain of custody had not been maintained at all throughout the period of investigation. As per Ext. PW4/X, the seizure memo relating to PW1 states that the swab kit and his underwear had been seized, packed and sealed. Ext. PW8/C seizure memo of the appellant/accused notes that one blood gauze and one underwear had been seized, packed and sealed. However, the hammer alleged to have been used for assaulting PW1 purported to have been seized as per Ext. PW4/C seizure memo was never sealed. The articles are stated to have been seized on 05.02.2018 by ASI Ved Prakash. Going by the aforesaid seizure memos, five objects/articles had been seized for the purpose of investigation. But, there is no record of the aforesaid articles being deposited in the *malkhana*. PW4 and PW9



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testified that after the articles were handed over by the doctor, the same were in the possession of ASI Ved Prakash, the Investigating Officer (I.O). However, there is no record to show as to when or how the seized articles were deposited in the *malkhana* if, at all, they were deposited. ASI Ved Prakash, the IO, died during the stage of investigation. Hence, there is no evidence of any conclusive timeline that can be set forth to explain when the seized articles were deposited; what was the reason for the delay in sending the articles to the FSL, or as to whether the articles were ever deposited in the *malkhana*. This is a major defect in the investigation whereby the credibility of the evidence on record has been severely damaged and the chain of custody broken. Though PW4 claimed that the case property was deposited in the *malkhana*, the said statement cannot be verified as there is no *malkhana* record. Even the MHC(M) who is supposed to have maintained the register was never examined before the trial court. Similarly, there was every possibility of the samples being



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tampered/manipulated by the police officers. The hammer, one of the weapons alleged to have been used by the appellant/accused, was never sealed after its alleged seizure. There are no materials on record to show that the same was stored properly by the officer concerned. Ext. PW4/A, the road certificate, shows that only three articles were sent on 15.03.2018 to the FSL, namely, the swab kit of the victim; blood gauze of the accused and underwear of the accused. The underwear of PW1 was never sent for FSL. There is also an inordinate delay of more than one month in forwarding the seized articles to the FSL. There is no record that the articles seized were stored properly during the period before being sent for FSL. Though Ext. PW4/X and Ext. PW4/C seizure memos say that PW1's underwear and the hammer had been seized but the same does not find a mention in Ext. PW4/A road certificate. But the FSL records the victim's underwear as part of parcel-1, which is the swab kit. This shows that possibility of the articles being tampered with while in the possession of the police. The hammer



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which was alleged to have been used by the appellant/accused to hit the victim was never sent for FSL examination. When the link in the chain of custody has repeatedly been broken at all stages of the investigation, the argument advanced is that the credibility of the evidence let in by the prosecution and its witnesses is severely undermined. In support of the arguments, reference was made to the dictums in **Karandeep Sharma v. State of Uttarakhand, 2025 SCC OnLine SC 773** and **Dinesh v. State, 2025 SCC OnLine Del 4586**.

26. At the risk of repetition, I once again refer to the testimony of PW4, PW6, PW9 and PW8. PW4, Constable, Nihal Vihar Police Station, deposed that on 05.05.2018, in his capacity as the duty officer, he had accompanied ASI Ved Prakash, the IO, to Mahavir Hospital, Pitampura, Delhi and collected the MLC of the injured. The doctor had declared the injured unfit for statement. The doctor had handed over to the IO one sealed *pullanda* and sample seal which the IO seized as per Ext. PW4/X seizure memo.



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According to PW4, Ext. PW4/B is the disclosure statement of the accused and that at the instance of the accused, one hammer had been seized from his shop at Kanwar Singh Nagar near Hanuman Dharam Kanta, Delhi, as per Ext. PW4/C seizure memo. Thereafter, they returned to the police station and the case property was deposited in the *malkhana*. The testimony of PW4 that the case property had been deposited in the *malkhana* is not seen cross-examined or challenged.

26.1. PW6, also a Constable of Nihal Vihar police station deposed that on 15.03.2018, as directed by the IO, he had collected three sealed *pullandas* and two sampled seals from MHC(M) for depositing the same at the FSL, Rohini *vide* RC No. 41/21/18. Thereafter, he had deposited the same at the FSL. He had handed over the acknowledgement of copy of the RC to MHC(M). PW6 further deposed that as long as the case property remained with him, the same had not been tampered with. He further testified thus:- “*Copy of RC is on the file and according to the original RC record*”



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*brought by the present MHC(M), the same is **Ext. PW-6/A (OSR)** bearing my signatures at **point 'A'**. Copy of acknowledgement is also in file and according to original acknowledgement record brought by the present MHC(M), the same is **Ex. PW-6/B (OSR)** bearing my signatures at **point 'A'**.” Apart from a suggestion that is seen put to PW6, there is practically no cross-examination of PW6.*

26.2. PW8 Sub-Inspector, Nihal Vihar police station deposed that on 15.03.2018, he directed PW6 to collect the sealed parcels from the MHC(M) for depositing the same at the FSL. The sealed exhibits were deposited by PW6 at the FSL. PW8 also deposed that ASI Ved Prakash, the IO in the case is no more. PW8 identified the signature and handwriting of the IO and the documents which were prepared by the IO. He also identified the handwriting and signature of the IO in Ext. PW8/C and Ext. PW4/X seizure memos of the blood gauze, samples underwear of the accused and the victim respectively which, according to him,



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were prepared by the IO. PW8 was never cross-examined by the appellant/accused.

26.3. PW9, another Constable of Nihal Vihar police station deposed that on 05.05.2018, as directed by ASI Ved Prakash, the IO, he took the accused for medical examination to the SGM Hospital. After the medical examination was conducted, the doctor had handed over to him the blood gauze, sample and another sealed parcel along with the sample seal. He returned to the police station along with the accused, the sample and the seal given by the doctor and handed over the same to the IO who seized the same as per Ext. PW8/C seizure memo. The testimony of PW9 is also not seen challenged or cross-examined except for a suggestion that he was never part of the investigating team or that he had never taken the accused to the hospital for examination.

27. That being the position, I find no reason(s) to disbelieve the seizure or their safe custody till it was forwarded to the FSL.



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28. Be that as it may, Ext. PW6/A road certificate shows that the following items were sent to the FSL. They are:-

- “1. One white Box Carton containing swab kit of victim Rohan, MLC No - 369/18 sealed with seal of BHM Govt. of NCT of Delhi, Pitampura, Delhi.*
- 2. One sample seal of BHM Govt of NCT of Delhi, Pitampura, Delhi.*
- 3. A white cloth parcel containing Blood gauge of the Accused Parveen Kumar SGM No 21561, MLC No 1720 sealed with seal of SGMH Mangolpuri, Delhi.*
- 4. A white cloth parcel containing underwear of Accused Parveen Kumar, SGM No 21561, MLC No 1720 sealed with seal of SGMH Mangolpuri, Delhi.*
- 5. One sample seal of Mangolpuri, Delhi.”*

28.1. The underwear of the victim that is alleged to have been seized does not find a mention in Ext. PW6/A. But Ext. PW7/A FSL report says that the said underwear was part of parcel-1 that was received at the FSL. This is certainly an anomaly in the prosecution case.

28.2. The FSL report marked as Ext. PW7/A or the result of



the examination is not based on examination of the underwear of the victim. On the other hand, the results of examination and conclusion in Ext. PW7/A FSL report reads thus:-

“RESULTS OF EXAMINATION

*The source of exhibits '1n₁', '1n₂', '1p' & '4' were subjected to DNA isolation. A Male DNA profile was generated from the source of exhibits '1n₁' (cotton wool swab) '1n₂' (Microslides), '1p' (Blood collection of victim) & '4' (underwear of accused). The alleles from the source exhibits '1n₁' (cotton wool swab) '1n₂' (Microslides) & '4' (underwear of accused) are **accounted** in the alleles from the source of exhibit '1p' (blood collection of victim) .*

CONCLUSION

*The DNA profiling (STR analysis) performed on the exhibits is sufficient to conclude that the DNA Profile generated from the source of exhibit '1p' (blood collection of victim) is **similar** with the male DNA Profile generated from the source of exhibits '1n₁' (cotton wool swab) '1n₂' (Microslides) & '4' (underwear of accused). The exhibit '3' (Blood gauze of accused) has been preserved in this laboratory for future reference, if any.”*



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29. As rightly pointed out on behalf of the appellant/accused, there is certainly discrepancy between the items mentioned in the road certificate and the articles mentioned as received in the FSL report. But even if the FSL report is ignored, that alone also cannot be a ground to automatically lead to the acquittal of the accused because the scientific evidence can only corroborate the testimony of the victim. If the said testimony is credible and believable, there is no bar in the Court relying on the same.

30. Another argument advanced is that Ext. PW5/A MLC does not have any corroborative value as the same does not corroborate the testimony of PW1. The case of PW1 is that the appellant/accused had beaten him up brutally and had hit him on his legs, head and face with a hammer and screwdriver and that the accused had even slashed his face with a blade and scratched him with nails. However, Ext. PW5/A MLC records that the injuries were simple and blunt. None of the injuries listed in the certificate



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indicate that grievous injuries were caused. The allegation of PW1 that he was hit on the knees with a hammer does not find a mention in the MLC. There is also nothing in the MLC to show that there was any anal rape. If PW1 is to be believed, the assault would have resulted in injuries on his anal area. However, no such injuries have been noted, which will disprove the case of carnal intercourse. Further, the doctor who examined the victim, was also never examined. Two doctors had examined PW1. But Dr. Amit who actually conducted an internal examination and made the crucial observations in the MLC, was never examined. Therefore, the prosecution case is not supported by medical evidence and therefore, this is yet another anomaly in the case put forward by the prosecution, goes the argument.

31. The relevant entries in Ext. PW5/A MLC under the heading “*Particulars of injuries or Symptoms, in case of poisoning*”, the doctor has recorded thus:-



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“Nasal Bleeding — Present G.C. — fair.

P/A — soft, non-tender

L/E

① *Multiple small Abrasions & Bruises over face, head & Neck.*

② *clotted Blood on Nasal opening*

③ *Swelling & Blackening all around ® eye.*

④ *® cheek, Maxilla, & Mandible swelling*

⑤ *Swelling & Blackening Below ® eye.*

P/R — Rectal swabs were taken & Matted hair was taken in separate packets

— Perianal region was wet and swollen.....”

31.1. In the column relating to the kind of weapon used, the doctor has opined “blunt”. PW5 CMO, Bhagwan Mahavir Hospital, Pitampura, Delhi deposed that on 05.05.2018, the victim boy (PW1) was brought to the emergency ward by his father with an alleged history of assault and loss of consciousness. He had examined the boy and prepared Ext. PW5/A MLC. After examining the patient, he had referred him to the surgery emergency for further management and treatment as the boy was found to be unconscious. In his cross-examination, he admitted that he had no personal knowledge of the present case. According



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to PW5, he had found injuries on the person of the victim and, therefore, he had referred him to surgery. To a question whether he had mentioned any injury found on the person of the victim in the MLC, he answered in the negative. But he added that he had referred the injured to surgery because of the injuries seen on the body of the person. Apart from these two questions, no other questions are seen to put to PW5, the doctor.

32. According to PW1, he was beaten by the accused on his legs with a hammer, screwdriver and blade had been used to slash his face. The MLC shows that there were multiple abrasions and bruises over face, head and neck. Blood had clotted on the nasal opening. There was swelling and blackening all around the right eye. The swelling was seen on the cheek, maxilla, mandible and below right eye. The perianal region was found wet and swollen. The injuries were spoken to by PW3, the father also. There might have been slight exaggeration of the injuries caused by the accused in the testimony of PW1. But the medical evidence more or less



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corroborates the testimony of PW1 and, therefore it is not a case where the medical evidence totally rules out any case of sexual abuse or harassment as spoken by PW1.

33. It is true that materials on record relating to the seizure of the hammer from the shop of the accused are quite unsatisfactory. Ext. PW4/B stated to be the disclosure statement of the accused and the seizure/recovery of the hammer from the room of the accused as per Ext. PW4/C Seizure memo are apparently inadmissible in evidence because of the bar contained under Section 25 of the Evidence Act. The same by no stretch of imagination can be brought under Section 27 of the Evidence Act also. But recovery of weapon used for the crime is not a *sine qua non* for coming to a conclusion regarding the guilt of the accused (**Rakesh v. State of U.P., (2021) 7 SCC 188**).

34. It is true that there is only the testimony of PW1, the victim, in support of the case. On going through the testimony of PW1, I find no reason(s) to disbelieve him. Minor discrepancies



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are natural, particularly when the witness is a child who has undergone a traumatic experience and the same cannot be used to discard an otherwise reliable testimony. It is also impermissible to rely upon isolated words or sentences from the testimony of a witness to draw conclusions. The evidence must be appreciated in its entirety and not by reading portions thereof in isolation. (See **Mustak Vs. State of Gujarat, (2020) 7 SCC 237** and **Mukesh Vs. State for NCT of Delhi, AIR 2017 SC 2161**).

35. The argument that no independent witnesses were examined is not fatal to the prosecution case because the incident in this case took place inside a closed shop and no materials have come on record to show that there were any other witnesses present in and around the locality. It is well settled that the competency of a child witness depends on the satisfaction of the trial court, as to the child's understanding and ability to depose and though courts must remain alive to the possibility of tutoring, there is no bar in law to base conviction solely on the testimony of a



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child witness who withstands cross-examination (See **State of Rajasthan v. Chatra, 2025 SCC OnLine SC 566**). It is also well settled law that a child victim's testimony requires no corroboration to be considered credible and Section 29 of the Protection of Children from Sexual Offences Act, 2012 creates a statutory presumption of guilt once the foundation facts are established. (**Bhanei Prasad @ Raju V State of Himachal Pradesh, 2025 INSC 934**).

36. In the case on hand, PW1 was not a very young child but aged about 15 to 16 years at the time of the incident. Therefore, PW1 is a witness who could certainly have understood and comprehended the things that happened to him and capable of narrating it to the authorities concerned. The defence version that the appellant/accused has been falsely implicated due to a dispute regarding repair charges, seems highly improbable. No materials have been brought in to show that there was any reason(s) whatsoever for PW1 or his family to falsely implicate the accused.



Further, PW3, the father of the victim deposed that as summoned by the police, he and his son had gone to the police station at which time, the accused was also present. In the words of PW3 – “.... *the accused was also present there and at that time, he was laughing and had no remorse.*” This part of the testimony of PW3 is never seen challenged or cross-examined. On an overall appreciation of the materials on record, I do not find any reason(s) to doubt the prosecution case. Hence, I find that the impugned judgment does not suffer from any perversity or illegality calling for an interference by this court.

37. The only question that remains for consideration of this court is on the quantum of sentence awarded by the trial court. The trial court has awarded a sentence of 15 years for the offence punishable under Section 6 read with 5 (l) & (n) of the PoCSO. The sexual abuse in this case took place during the intervening night of 04.02.2018-05.02.2018. Section 6 of the PoCSO Act as it then stood reads thus:-



*“6. Punishment for aggravated penetrative sexual assault
— Whoever, commits aggravated penetrative sexual assault,
shall be punished with rigorous imprisonment for a term
which shall not be less than ten year but which may extend to
imprisonment for life and shall also be liable to fine”*

38. In the light of the dictum in **Ravinder Singh v. The State Govt. of NCT of Delhi, (2024) 2 SCC 323**, the trial court could not have imposed a sentence of 15 years, though the High Court and the Apex Court are empowered to do so. Hence the sentence imposed by the trial court is modified thus: considering the nature and gravity of the offence and the facts of the present case, the minimum sentence of 10 years would not suffice. Accordingly, the sentence is modified to a period of 14 years' rigorous imprisonment.

39. In the result the appeal is partly allowed. The conviction of the accused for the offences punishable under Sections 363, 342, 324, 377 and 506(II) IPC and Section 6 of the PoCSO Act is confirmed. However, the substantive sentence of



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imprisonment imposed by the trial court for the offence punishable under Section 6 of the PoCSO is modified to 14 years.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 08, 2026
kd/p'ma