



2026:DHC:4271



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

% *Judgment reserved on: 12.05.2026*
Judgment pronounced on: 15.05.2026

+ **CRL.A. 1251/2025 & CRL.M.(BAIL) 1865/2025**

JAGABANDHU JENAAppellant

Through: Ms. Vrinda Bhandari, Advocate
(DHCLSC) with Ms. Pragya
Barsaiyan, Advocate

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Utkarsh, APP for the State with
W/SI Pinki, P.S. Dabri.
Ms. Inderjeet Sidhu, Advocate
(DHCLSC) with Ms. Devyani Singh,
Advocate for victim.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 415 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the sole accused in Sessions Case No. 286 of 2018 on the file of the



2026:DHC:4271



Additional Sessions Judge (FTSC) (POCSO)-01, Dwarka Courts, New Delhi, assails the judgement dated 03.05.2025 and order on sentence dated 16.05.2025, as per which he has been convicted and sentenced for the offence punishable under Section 5(m) read with 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 06.03.2018 at about 09.30 p.m. at House No. 569, Street No. 15, Mahavir Enclave Part III, the accused inserted his finger into the urinating part of PW1. Hence, as per the charge sheet/final report, the accused is alleged to have committed the offence punishable under Section 6 of the PoCSO Act.

3. On the basis of Ext. PW1/A FIS/FIR of PW1 given on 07.03.2018, Crime no. 104/2018, Dabri Police Station, i.e., Ext. A3 FIR was registered by CW17, Assistant Sub-Inspector. PW14 Assistant Sub-Inspector conducted investigation into the crime and



on completion of the same, filed the chargesheet/final report alleging commission of the offence punishable under the aforementioned Section.

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 of the Code of Criminal Procedure, 1973 (Cr.P.C). After hearing both sides, the trial court, *vide* order dated 02.06.2018, framed a Charge under Section 5(m) read with Section 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 15 were examined and Ext. PW1/A-B, Ext. PW2/A, Ext. PW3/A, Ext. PW6/A-D, Ext. PW7/A-B, Ext. PW8/A, Ext. PW10/A-C, Ext. PW11/A-B, Ext. PW13/A, Ext. PW14/A-F, Ext. PW15/A, Mark A to Mark C, Ext. A2, Ext. A3 and Ext. A5 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 PW1 had been residing with him and his wife for the last 4 to 5 years and that they were raising her as their own daughter. On the day of the incident, he was sleeping at home as it was his day off, while his wife (PW13) had gone to the market. PW1 was playing downstairs and riding a bicycle with her friend. After some time, she came home crying and was unable to explain clearly what had happened. When PW13 returned home, PW1 informed her that she had fallen and sustained an injury in her genital area. On checking, PW13 found bleeding from the PW1's urinating part. Thereafter, he immediately took PW1 along with his cousin brother (PW12) to a clinic and thereafter to the DDU Hospital, pursuant to which,



according to him, a wrong case was registered against him. He submitted that he was falsely implicated and arrested from the hospital.

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. DW1 was examined on behalf of the accused. No 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 judgment dated 03.05.2025 held the accused guilty of the offence punishable under Section 5(m) and Section 6 of the PoCSO Act. *Vide* order on sentence dated 16.05.2025, sentenced him to undergo rigorous imprisonment for a period of 10 years and to fine of ₹2,000/-. Aggrieved, the accused has preferred this appeal.

10. It was submitted by the learned counsel for the appellant that there are material improvements in PW1's statement recorded under Section 164 Cr.P.C. as she stated for the first time that the accused had committed such acts with her twice before. However, the said fact was neither stated in the FIR/FIS nor reiterated during her deposition before the court. Immediately upon noticing the bleeding, the accused himself took PW1 to a nearby clinic and thereafter to DDU Hospital for medical



treatment. It was argued that had the accused actually committed the alleged offence, he would not have voluntarily taken PW1 to the hospital. PW13, who is the *bua* of PW1, deposed that PW1 had informed her that she had sustained injuries after falling while riding a bicycle. PW13 was the first person to whom PW1 narrated the cause of injury, and, therefore, her testimony assumes importance. Lastly, the prosecution has failed to establish the guilt of the accused beyond reasonable doubt, and the benefit of doubt ought to be extended to the appellant.

11. *Per contra*, the learned Additional Public Prosecutor supported the impugned judgment and submitted that PW1 has remained consistent throughout her testimony and, therefore, there is no reason to doubt her version. The defence advanced by the accused is self-contradictory and seems like an afterthought. The medical evidence further corroborates the testimony of PW1.



There is no infirmity in the impugned judgment calling for an interference by this Court.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment 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. PW1/A FIS/FIR of PW1 recorded on 07.03.2018 reads thus:- She is studying in Class I at Saint Tego Public School. On the night of 06.03.2018 at around 09:30 p.m., her mother (PW13) had gone to Mangal Bazar to purchase vegetables. During this time, she was alone at home with her father (the accused). She was lying in the room, and her father was lying down with her while watching television. While they were watching TV, her father was showing her affection, and he held her by her arm. Her father lowered her



underwear and inserted his finger into her urinating part (पापा ने मेरी थोड़ी सी कच्ची उतारी और अपनी एक उँगली मेरे पेशाब करने वाली जगह में घुसा दी). She experienced sharp pain, so her father removed his finger and instructed her not to tell anyone, at which time her mother returned with the vegetables. Later in bed, her mother noticed wetness on her lower part. Her mother initially thought that she had urinated. (जब मम्मी ने सोते हुए मेरे नीचे गीला देखा तो मम्मी ने सोचा मैंने पेशाब कर दिया है) When the light was turned on, her mother saw blood on her underwear. Her mother changed her underwear, placed a cloth inside the new one, and woke her father up as she was bleeding. On her mother's insistence, her father called a doctor, who advised taking her to Deen Dayal Hospital. Her father and *chacha* then took her to Deen Dayal Hospital.

15. In Ext. PW1/B, the 164 statement of PW1, seen recorded on 13.03.2018, she has stated thus - On Tuesday, her



father (the accused) did something wrong to her. The accused inserted his finger into her urinating part. (जहाँ से हम Toilet करते है वहाँ अपनी ऊँगली घुसाई). She felt pain, and bleeding also occurred. Her father called a doctor, who advised taking her to Deen Dayal. Her father then took her to Deen Dayal on the bike. Her father has done this to her twice before.

16. PW1 when examined deposed that she was residing in Delhi with her *bua*, namely, Ranjeeta (PW13) and her *foofa*, the accused, namely, Jagbandhu Jaina. She used to address her *bua* as “mummy” and the accused as “daddy”. She was studying in Class III at St. Tagor Public School. She informed her *bua* that the accused had committed a wrong act with her, as a result of which she started bleeding. On her *bua*’s instruction, the accused took her to the hospital, where she was examined by a doctor. She was unaware as to who had called the police. Her mother was also at



the hospital. She was later taken to the Nirmal Chaya Ashram. She had not told the police about the incident and did not know if her Bua had done so. She identified her signature in Ext. PW1/A and Ext. PW1/B Section 164 Cr.P.C. statement. PW1 could not recall if the doctor had taken her clothes during the medical examination. She identified Ext. P1, her blood-stained top/frock, Ext. P2, her *samij* and Ext. P3, bedsheet. She identified the accused before the court.

16.1 The prosecutor is seen to have sought permission to “cross-examine” PW1 as she was silent on some facts. The request was allowed. On further examination, PW1 admitted that the incident occurred on 06.03.2018 at approximately 09:30 p.m. Her *bua* had changed the panty she was wearing at the time of the incident before taking her to the hospital. The accused had inserted his finger into her urinating part, causing the bleeding.



16.2 PW1 in her cross-examination denied the suggestion that she had gone out to play with her friends on the date of the incident. She denied the suggestion that her friend had a bicycle and that on the day of the incident, she had gone to ride the bicycle. She denied the suggestion that the bleeding from her urinating part was caused by itching, scrubbing, or a fall while playing. She denied the suggestion that the accused had not committed any wrong act with her, or that the police had tutored her regarding what to state before the court and that she had deposed accordingly.

17. PW13, the *bua* of PW1 and the wife of the accused, deposed that in the year 2018, PW1 was about 8 years old and was residing with her and her husband, the accused. PW1 used to address her as mother and the accused as daddy. She does not remember the exact date, month or year. On that day, at about 08:00–08:30 p.m., she had gone to the Mangal Bazar nearby to



purchase vegetables, at which time PW1 was playing outside the house. At about 09:30 p.m., when she returned, she saw PW1 sitting on the stairs leading from the ground floor to the first floor and weeping. On enquiry, PW1 did not tell her anything. She then took PW1 to their house and the latter went to the bathroom. When PW1 came out of the bathroom, she noticed a few drops of blood falling from her private part (vagina). She then enquired the matter and then PW1 told her that while riding a bicycle, the latter had fallen and sustained injury on her private part. She then informed her husband, the accused, about the injury sustained by PW1. They took PW1 to a nearby clinic, but found the clinic closed. The accused then called the doctor, as the doctor's number was displayed on the board outside the clinic. The doctor informed the accused over the phone that such incidents sometimes happen with children and advised them to take PW1 to DDU Hospital. The accused, along with his cousin brother (PW12), took PW1 to DDU



Hospital. Later, she also reached DDU Hospital. The police met her in the hospital, and she narrated the aforesaid facts to them regarding the injury sustained by PW1. The accused was arrested by the police later. She does not know anything else about the incident.

17.1. The prosecutor sought permission of the trial court to “cross-examine” PW13 on the ground that she had resiled from her earlier statement. The request was allowed. On further examination by the prosecutor, PW13 denied having given any statement to the police.

18. PW12, the brother of the accused, deposed that he does not remember the exact date, month or year of the incident. However, the incident had taken place about three years back. At about 12:00 midnight, his cousin brother (the accused) called him on his mobile phone and informed him that PW1 was unwell and had to be taken to the hospital. He went to the house of the accused



on his motorcycle and accompanied the accused in taking PW1, aged about 6 to 7 years, to DDU Hospital. PW1 was examined by the doctor, and thereafter, the doctor asked the accused to bring his wife to the hospital. The accused requested him to bring his wife to the hospital. Accordingly, he went home and brought his *bhabhi* (PW13) to the hospital. PW12 was never cross-examined.

19. I also make a brief reference to the testimony of the defence witness. DW1, a neighbour, deposed that the accused was residing with his wife and minor daughter. He had cordial relations with the accused and used to converse with him in the evenings after returning from work. On the day of the incident at about 09:30 p.m., he was watching television in the house of the accused along with the latter. The wife of the accused and his daughter had gone to the market to purchase vegetables. He remained in the house of the accused for about one to two hours. After some time, the wife of the accused (PW13) returned with their daughter



(PW1) and informed him that PW1 had sustained injuries while riding a bicycle. Within half an hour, the accused, along with his brother, took PW1 to a medical facility, the name of which he was unable to recall.

20. Before the trial court, the Investigating Officer had moved an application seeking bone ossification test of PW1, which was allowed on 01.05.2018. As per Ext. A2 bone ossification report, the age of PW1 stated as “bone age estimation of between 8 to 10 years.” The accused has not disputed the fact that PW1 is a minor.

21. The testimony of PW1, the victim, constitutes the foundation of the prosecution case. A careful reading of Ext. PW1/A FIS/FIR; Ext. PW1/B statement under Section 164 Cr.P.C.; and the testimony of PW1 before the trial court shows that she has remained consistent on all material particulars. It is well settled that conviction can be based on the sole testimony of the



prosecutrix, provided that such testimony is of sterling quality, inspires confidence and is free from material contradictions or infirmities. At the same time, where the case rests solely upon the oral testimony of the prosecutrix, the court must subject such evidence to careful scrutiny, and if reasonable doubt arises as to its reliability on material particulars, the benefit thereof must go to the accused. [See **Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21** and **Nirmal Premkumar v. State, 2024 SCC OnLine SC 260**].

22. The defence of the accused as is seen from the suggestions put to PW1 is that she had sustained injuries due to a fall while riding a bicycle or while playing. However, PW1 categorically denied the said suggestions. No material(s) has been brought out in her cross-examination to doubt or disbelieve her testimony.



23. The local examination of genital parts of PW1 in Ext.
PW3/A MLC reads thus:

“Local examination of genital parts:

B. External Genitalia

I. Labia Majora Any swelling, tears, edematous, bruises, abrasion:

II. Labia Minora Scratch, bruising, fingernail marks tear, infection:

III. Fourchette Bleeding, tear: bleeding tear

IV. Vulva injury, injury bleeding, discharge: Bleeding

V. Perineum: soaked with blood

C. Hymen – Intact/Torn: If Torn – Site, Nature, Extent of Injury:

Torn

Injury – fresh or old/oedema/congestion/tenderness:

fresh

*D. Vagina & Cervix (any Bleeding/ tear/ discharge/ oedema/ tenderness)**

Speculum examination (if possible):

A 2 cm long vaginal tear

1 cm deep tear in perineal post-wal

E. Anus (encircle the relevant)



No bleeding”

(Emphasis supplied)

The medical evidence fully corroborates the version of PW1.

24. According to the learned defence counsel, there are material improvements in the 164 statement of PW1 as she, for the first time, stated that the accused on two earlier occasions had also committed such acts. It is true that PW1 has not mentioned this fact either in her FIS/FIR or in her testimony before the court. However, this omission is not of such a nature so as to demolish the prosecution case especially when PW1 withstood the cross-examination.

25. The evidence of PW13, though partly hostile, still supports the prosecution case to a certain extent. PW13 admitted that when she returned from the market, she found PW1 weeping and later noticed bleeding from her private part. She also admitted



that PW1 was immediately taken to the hospital. Thus, the testimony of PW13 corroborates the factum of injury and the conduct immediately following the incident. Her testimony remains unchallenged as there was no cross-examination conducted on behalf of the accused. Merely because PW13 attempted to attribute the injuries to a fall from a bicycle would not be sufficient to discard the otherwise reliable testimony of PW1, particularly when PW13 is the wife of the accused. The defence of false implication taken by the accused in his statement under Section 313 Cr.P.C. has remained merely assertions unsupported by any cogent material. Except for giving suggestions in cross-examination, no evidence was brought on record to substantiate the plea that PW1 sustained injuries accidentally or that the accused had been falsely implicated.

26. It is also significant to mention that PW1 was residing with the accused and PW13 and used to address the accused as her



“daddy”, which establishes the position of trust and confidence occupied by the accused in the life of PW1. There is no reason for PW1 to make out a false case against the accused, a father figure.

27. In view of the aforesaid discussion, it can only be concluded that the prosecution has succeeded in proving the guilt of the accused beyond reasonable doubt. Accordingly, this Court finds no infirmity in the findings recorded by the trial court holding the accused guilty for the offence punishable under Section 5(m) read with Section 6 of the PoCSO Act.

28. The appeal *sans* merit is dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 15, 2026