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

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Judgment Reserved on: 02.02.2026

Judgment pronounced on: 05.02.2026

+ CRL.A. 397/2017

BABU YAMIN

.....Appellant

Through: Ms. Monika Tripathy, Mr. Saksham
Singh and Mr. Gautam Yadav,
Advocates.

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, (the CrPC) the sole accused in SC No. 153 of 2013 on the file of the Special Court under the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act), Patiala House Courts, New Delhi, assails the conviction and the sentence imposed upon him for the offence punishable under Section 10 of the PoCSO Act.



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2. The prosecution case is that on 08.09.2013 at about 4:30 PM, the accused committed aggravated sexual assault on PW4, a minor aged about 3 years, at RZ-224/6, Gali No. 4, J Block, West Sagarapur, New Delhi by removing the victim's under-garment and holding her tightly. Thus, as per the Charge sheet/final report, the accused was alleged to have committed the offences punishable under Sections 354, 354D IPC and Sections 8, 9 (m) read with section 10 of the PoCSO Act.

3. On the basis of Ext. PW3/A FIS of PW7, given on 08.09.2013, Crime no. 179/2013, Sagarapur Police station, that is, Ext. PW7/B FIR was registered by PW7 Assistant Sub-Inspector (ASI). PW9 conducted investigation into the crime and on completion of the same filed the charge-sheet/final report alleging commission of offences punishable under the above mentioned Sections.

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



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contemplated under section 207 of Cr.PC. After hearing both sides, the trial court as per order dated 31.10.2013, framed a Charge under Sections 9(m) and 10 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 9 were examined and Exts. PW3/A-F, PW5/A, PW6/A, PW7/A-B, PW8/A-C, PW9/A-B were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313 CrPC 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 as Ram Naresh (PW2, the paternal uncle of PW4) and family wanted him to vacate his house and leave the area as years back, he had married a widow, which was not acceptable to the latter.



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7. 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 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.

8. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, vide the impugned judgment dated 31.03.2025 held the accused guilty of the offence punishable under Section 10 of the PoCSO Act and hence sentenced him to undergo rigorous imprisonment for a period of 5 years and to fine of ₹ 10,000/-, and in default of



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payment of fine, to undergo simple imprisonment for five months.

Aggrieved, the accused has preferred this present appeal.

9. It was submitted by the learned counsel for the appellant/accused that the prosecution has misconceived the act of the accused in holding PW4, the victim. It was submitted that PW4 was of tender age and incapable of comprehending things in the correct perspective and so it would not be just and proper to decide the case solely on her testimony, as there exists a strong possibility that she may have been tutored due to the existing dispute between PW2's family and the accused, who wanted the accused to vacate the house he was occupying due to his affair and marriage to one Nathi Devi.

10. Per Contra, it was submitted by the learned Additional Public Prosecutor that the conviction and sentence do not suffer from any infirmity warranting interference in the present appeal. It was submitted that apart from an inconsistency in the testimony of PW4, the victim, and PW3, her mother, with regard to the person



to whom the victim had first disclosed the incident, there are no contradictions or inconsistencies of such nature as to affect the prosecution case. The aforesaid discrepancy being minor, cannot be put against the prosecution.

11. Heard both sides and perused the records.

12. 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.

13. I shall first briefly refer to the evidence on record relied on by the prosecution in support of the case. Exhibit PW3/A, the FIS of PW3, the mother of the victim, was recorded on the very same day of the incident, i.e., 08.09.2013. In the FIS, PW7 has stated thus:- "...My elder brother-in-law, Sh. Ram Naresh, lives with his family in the back part of the house No. RZ-224/6, Gali No. 4, J-Block, West Sagarpur. My daughter Vanshika regularly plays at his house and in the street with my brother-in-law's children and other children. Today, at about 4:30 PM, my daughter



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Vanshika went out to play and returned home crying after a while at around 5:00 PM. She said, “Mommy, the old uncle living in the back alley opened my underwear and held me tightly; I am in pain”. (“ मम्मी पीछे वाली गली में रहने वाले बुढ़े अंकल ने मेरी कच्छी खोली है और मुझे जोर से पकडा है मेरे हाई (दर्द) हो रही है।”) Upon this, I went with my child to the back alley of our house, which is the house of Nathi Devi at RZ-224/6, Gali No. 4, J-Block, West Sagarpur. Pointing toward an old man present in that house named Babu Yamin, my daughter stated that the old uncle had opened her underwear. I immediately went to my brother-in-law's house and informed him about this, and my brother-in-law called the police.”

13.1. PW3 when examined before the trial court deposed that on 08.09.2013 at around 5:30 PM, PW4 her daughter was playing at the house of her brother-in-law (PW2) which is just behind her house. After some time, her sister-in-law (PW1) told her that PW4 who went to her crying told her that accused had pulled down her underwear. She along with her family members went to the house



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of accused where they found accused lying in a completely intoxicated condition and with his underwear open. PW3 further deposed that PW4 pointed towards the accused and told her that the said uncle had pulled down her underwear. When they questioned the accused about this, he did not reply. Thereafter, her husband rang up the police.

13.2. PW3 in her cross examination deposed that her daughter had come home along with PW1 (badi mummy) and told her about the incident, after which they had all gone to the house of the accused where he was found alone in an intoxicated condition. PW3 denied the suggestion that they had concocted a false story about intoxication of the accused or lying in the house with his underwear open or that the accused having pulled down the underwear of PW4. PW3 further denied the suggestion that she and her family wanted to purchase the house of accused, and hence they got him falsely implicated in the case.



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14. PW4 in her statement recorded under Section 164 CrPC marked as Ext. PW3/F, in response to a question as to what the accused did, stated that the latter had removed her underwear.

14.1. PW4 in her examination before the trial court, stood by her case in Ext. PW3/F Section 164 statement. To a question as to whether the accused had pulled down her underwear, she responded in the affirmative by nodding her head. On being asked what she was wearing at that time, she stated that she was wearing a kameez. Further, she deposed that she had gone to the house of PW1 after the incident and informed the latter about the accused pulling down her underwear. During cross examination, PW4 was asked whether she was telling the truth that the uncle had pulled down her underwear, to which she responded in the affirmative by nodding her head. When further asked whether she was stating so at the instance of PW1, PW4 responded in the negative by nodding her head.



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15. PW1, the aunt of the victim, deposed that on the date of the incident, PW4 informed her that the accused, who was residing opposite their house, had removed her underwear. PW1 further deposed that she conveyed the same to PW2, her husband and to the parents of PW4. All of them went to the accused's residence and found him in an intoxicated condition with his underwear open. When confronted about the incident, the accused denied the allegation, after which the police were informed.

15.1. PW1 in her cross examination deposed that PW3 informed the police regarding the incident and that the police reached the spot by around 5 PM. She further deposed that Nathi Devi also resides in the same house in which the accused occupies one room and that the said house consists of two rooms and that both of them have been living as husband and wife. PW1 further stated that they have been residing in the said area for about eight years and that the accused had been residing there even prior thereto. PW1 denied the suggestion that the parents of PW4 wanted



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to purchase the house of the accused and had falsely implicated him in the present case to compel him to sell his house.

16. PW2, uncle of the victim, deposed that on 08.09.2013 at around 05:00 PM he was at his house along with his family members and guests. At that time, PW4, his brother's daughter, came to his house and informed PW1, his wife, that an uncle had removed her underwear. According to PW2, when all of them proceeded to the house of the accused they found a small boy residing near the house of the accused, who upon inquiry told them that the accused had pulled down PW4's underwear. They found the accused in a completely intoxicated condition and with his underwear open.

17. Sexual assault defined in Section 7 of the PoCSO Act says that if any person, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or



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does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

18. The materials on record clearly indicate that the accused removed the undergarment of the victim. Immediately after the incident, the accused was also found to be in a state of undress. This is spoken of by all the witnesses, whose testimony have not been discredited in any way and so I find no reason(s) to disbelieve them. The act of the accused in removing the undergarment of the child makes his intention clear. The sexual intent, which is a necessary ingredient to be established for making out an offence under Section 7 of the PoCSO Act stands substantiated.

19. It is also settled law that the sole testimony of a victim can be relied upon to decide a case of sexual assault, provided it is clear, trustworthy and reliable, as held in **Ganesan v. State, (2020) 10 SCC 573**. Hence, it would be wrong to contend otherwise or to insist for corroboration. The defence put forth by the accused,



namely, that PW4's family wanted him to vacate the said house on account of his relationship with Nathi Devi appears improbable. Moreover, it is neither reasonable nor rational to suggest that a minor child would be used as a tool in such a bizarre dispute. Therefore, I do not find any reason(s) to reject or discard the testimony of PW4 or the other prosecution witnesses. In such circumstances, the finding of guilt of the accused by the trial court for the offence punishable under Section 10 of the PoCSO Act suffers from no infirmity calling for an interference by this Court

20. In the result, the appeal sans merit is dismissed. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 05, 2026
ABP