



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

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Judgment Reserved on: 09.02.2026

Judgment pronounced on: 17.02.2026

+ CRL.A. 1271/2018

DEEP CHAND @ DEEPU

.....Appellant

Through: Ms. Saahila Lamba and Ms. Nidhi
Sharma, Advocates.

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for the
State, W/SI Soni Lal, P.S. Nabi
Karim

Mr. Himanshu Anand Gupta,
Ms. Mansi Yadav, Mr. Sidharth
Barua, Mr. Shekhar Anand Gupta,
Ms. Navneet Kaur, Ms. Shivani
Rampal and Mr. Mike Desai,
Advocates for DSLSA

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374(2) read with 383 of the
Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by
accused no. 1 (A1) in Sessions Case No. 133/2013 on the file of



Special Judge (PoCSO Act)/Additional Sessions Judge-01 (Central), Delhi, assailing the judgment dated 25.09.2018 and order on sentence dated 01.10.2018 as per which he has been convicted and sentenced for the offences punishable under Sections 363, 376(2)(i) of the Indian Penal Code, 1860 (the IPC) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO).

2. The prosecution case is that on 10.05.2013, at about 7:00 AM at Chinnot Basti, Nabi Karim, Delhi, accused no.1 (A1) kidnapped PW4, a minor, from the lawful guardianship of her father and took her to House No. MSC-20, Mohalla Yogmaya, Delhi, where on the night of the same day, he committed rape and penetrative sexual assault upon her. It is further alleged that accused nos. 2, 3 and 4 (A2, A3 and A4), in furtherance of their common intention and pursuant to a criminal conspiracy, wrongfully confined PW4 and facilitated the commission of the offence.



3. On the basis of Ext. PW1/ A FIS of PW1, given on 10.05.2013, Crime No. 95 of 2013, Nabi Karim Police Station, that is, Ext. PW3/A FIR was registered by PW15, Woman Sub-Inspector (WSI). PW15 conducted investigation into the crime and on completion of the same filed the charge-sheet/final report alleging commission of the offences punishable under Sections 363, 366, 376(2)(i) IPC and Section 4 of the PoCSO against A1 and commission of offences punishable under Sections 368, 120-B, 34 IPC and Section 17 of the PoCSO Act against A2, A3 and A4.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court as per order dated 04.09.2013, framed a Charge under Sections 363, 376, 368 and 34 IPC and Section 4 of the PoCSO Act against A1 and a Charge under Section 368 read with Section 34 IPC against A2, A3 and A4. The charge was read



over and explained to the accused persons, to which they pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 16 were examined and Exts. PW1A, PW3/A-C, PW4/A-B, PW4/D1-D2, PW5/A-I, PW6/-B, PW7/A, PW7/DA, PW8/A-E, PW/8-DA, PW9/, PW9/DA, PW10/A-C, PW11/A-C, PW12/A-D, PW13/A-B, PW14/A, PW15/A-L and PW16/A.

6. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. They denied all those circumstances and maintained their innocence, stating that they had been falsely implicated in the present case.

7. After questioning the accused persons 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. versus State of Kerala, 2009 (3) KHC 89; 2009 SCC OnLine Ker 2888**). In the case on hand, A1 has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him.

8. The accused persons did not adduce any oral or documentary evidence in support of their defence.

9. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment and order on sentence, found A1 guilty under Section 235(2) Cr.P.C. of the offences punishable under Sections 363, 376(2)(i) IPC and Section 4 of the PoCSO Act. A2 to A4, as well as A1, have been acquitted under Section 235(1) Cr.P.C of the charges under Section 368 read with 34 IPC. Accordingly, A1 has been sentenced to rigorous imprisonment for a period of 10 years



along with fine of ₹2,500/- for the offence punishable under Section 376(2)(i) IPC, and in default of payment of fine, to undergo simple imprisonment for two months and to undergo rigorous imprisonment for a period of 4 years along with payment of fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment of 30 days for the offence punishable under Section 363 IPC. No separate sentence has been passed for the offence punishable under Section 4 of the PoCSO Act in light of Section 42 of the PoCSO Act. The sentences have been directed to run concurrently. Benefit under Section 428 Cr.P.C has also been granted. Aggrieved, A1 has come up in appeal.

10. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellant/A1 by the trial court are sustainable or not.

11. It was submitted by the learned counsel for the appellant/A1 that there are contradictions in the testimony of PW1 and PW2 with regard to the clothes worn by PW4 at the time she



was found by PW2 at Mother Dairy. It was submitted that the appellant has been falsely implicated with the sole intention of grabbing his property, as PW4 and her parents are tenants in the house of the appellant. It was further submitted PW4 during her examination admitted that there was a dispute between the mother of the appellant, the owner of the premises, and her father. It was pointed out that the appellant is alleged to have taken PW4 from a busy locality in broad day light. However, no resistance was shown by her. It was further pointed out that PW4 remained in contact with her parents throughout, and her parents were fully aware of her whereabouts.

12. It was submitted by the learned Additional Public Prosecutor that there is no infirmity in the impugned judgment calling for an interference by this Court.

13. Heard both sides and perused the record.

14. I shall briefly refer to the evidence on record relied on by the prosecution in support of the case. In Ext. PW1/A FIS of PW1,



the father of the victim, recorded on 10.05.2013, it is stated thus:

“...I am a permanent resident of Village Dadahi, Police Station Parihar, District Sitamarhi, Bihar. I work in Nabi Karim making leather purses. I have two sons and two daughters, of whom PW4 is the third child/daughter, aged approximately 14 years. On 10.05.2013, at around 7:00 AM, my daughter left home to go to Govt. Girls Sr. Sec. School, Ram Nagar, Nabi Karim. But she has not returned home. I have searched for PW4 extensively on my own, but she could not be found anywhere. I suspect that some unknown person has enticed and kidnapped my daughter.”

15. Ext. PW4/B, the statement given by PW4 under Section 164 CrPC, is seen recorded on 13.05.2013. In the said statement, PW4 has stated thus:-“Deepchand is the son of our landlady and lives on the third floor. For about 1–2 months, Deepak kept trying to talk to me, but I would not talk to him. 10.05.2013 was the last day of our school. On that day, Deepu told me, “Let's go for a walk.” He had told me many times that he loves me and wants to



elope and marry me, so I went with him. Deepu brought me to his paternal aunt's (*bua*) house, where his mother also met me. After a while, I felt like going home, but everyone started saying, "stay here for now," and they began stopping me from leaving. Deepu's paternal uncle (*fufa*) made me talk to my parents on the phone. I said to my father (*abbu*) on the phone exactly what Deepu's *fufa* told me to say. I did not tell the truth to my *abbu*. During all this, Deepu stayed at his own home so that no one would suspect anything. Deepu came at night. I said I wanted to go to my house, but no one allowed me to go. Deepu and I stayed together that night. Deepu asked me to take off my clothes, but I refused. Then Deepu forcibly removed my clothes and did wrong acts (*ganda kaam*) with me. I did not scream, nor did I hit Deepu. I had once given a New Year's greeting card to Deepu with a message written on it. I do not love Deepu. The next day, 11.04.2013, Deepu's mother came and scolded Deepu. Then Deepu's brother came and instructed me not to take Deepu's name when I returned home.



After coming home, I told my father everything truthfully.”

16. PW4, when examined before the trial court on 18.02.2014, deposed that on 10.5.2013 at about 7 AM, while on her way to school, A1 met her at Kura Khata, Nabi Karim. A1 told her that he loved her and that he would marry her, and asked her to accompany him. However, she refused, stating that she had to go to school. A1 forcibly took her by holding her arm to the house of his *bua*, Sweeti. Sweeti gave her *salwar kurta* to wear and gave her a new name, Shivani. When she said that she wanted to make a call to her mother, Sweeti refused. Anil, the *fufa* of A1, came to the house at 03.30 P.M. He permitted her to talk to her mother. However, he asked her not to name A1 and only tell her mother whatever they instructed. She spoke to her mother and told her that she was in Ajmeri Gate as per the instructions given by Anil as he had threatened her. Thereafter, she spoke to her father, and told him that she was at Ajmeri Gate and with Ali, as instructed by Anil. At that time, A1 and his *bua* Sweeti were also present there.



Thereafter, they disconnected the phone and removed the SIM card from the mobile phone. PW4 further deposed that A1 was not present when she spoke to her parents on the phone, as he had already left for his house. A1 returned to *bua*'s house by 10 PM. After taking dinner, Anil asked A1 to go to his house, but Sweeti refused and stated that she would sleep on the roof, and that she and A1 could sleep in the room. A1 tried to have physical relations with her, but she refused. A1 bite her and threatened her. Thereafter, he forcibly had physical relations with her. Next day morning, by about 8:30 AM, her aunty Rani came and scolded A1. PW4 further deposed that in the evening, Rani aunty again came and told them that her father had lodged an FIR and asked her to return home, and not to take A1's name. Rani aunty told her that since she was a minor, A1 would be in trouble. Thereafter, Anil and Rani aunty's brother left her near Mother diary, Nabi Karim, where her mother (PW2) met her, and she returned home. PW4 also deposed that Sweeti had washed the clothes she was wearing at the



time of the incident. She had washed the undergarments that she was wearing at the time of the incident and kept in her school bag, and the same were not handed over to anyone. PW4 deposed stated that she first disclosed about the physical relations to Rani aunty and then to her mother at the police station when her statement was recorded.

16.1. PW4 in her cross-examination, deposed that A1 and his mother are the landlords of the premises that they reside in. According to PW4, she had resisted the attempt by A1 to take her along with her. However, A1 dragged her to the house of his *bua* from Kuda Khatta. PW4 admitted that she did not raise any alarm when she was taken to the house of Sweety.

17. PW1, the father of PW4, deposed that on the next day of lodging Ext. PW1/A FIS, his wife met their daughter while the former went to fetch milk. His wife informed him of the return of their daughter. He then took her to the police station. PW1 in the cross-examination deposed that when his daughter left for school,



she was in her uniform. But on the next day, when his wife met his daughter, the latter was wearing another dress.

18. PW2, the mother of PW4, when examined, deposed that on 11.05.2013, at about 4 PM to 4.30 PM, when she went to buy milk, she met her daughter, who was looking perplexed. She noticed some scratches on PW4's neck. She brought her daughter home. Thereafter, she informed her husband, who took PW4 to the police station. PW2, in her cross-examination, deposed that when PW4 returned on the next day, she was still wearing her uniform.

19. A1 has been convicted for the offences punishable under Sections 363, 376IPC and Section 4 of the PoCSO Act. For a conviction under Section 363 IPC, the prosecution must prove the essential ingredients of Section 361 IPC. Section 361 defines kidnapping from lawful guardianship as whoever takes or entices any minor under sixteen years of age, if a male, or under eighteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound



mind, without the consent of such guardian, commits the offence of kidnapping from lawful guardianship. It was argued by the learned counsel for A1 that PW4 was taken from a busy locality in broad daylight by A1. Despite the presence of members of the public, PW4 did not raise any alarm. PW4's testimony reveals that she merely asked the appellant softly to leave her. Further, PW4 in her 164 statement as well as in her testimony before the trial court, admitted that she had contacted her parents while she was in the house of Sweety, the *bua* of A1. However, in the Ext. PW1/A FIS, the case of PW1 is that he was unaware of her whereabouts. No explanation is forthcoming as to why PW1 never informed the police about it. Such conduct is inconsistent with a case of kidnapping from lawful guardianship and indicates that PW4 was not taken or enticed out of the keeping of her lawful guardian without consent. In the absence of any overt act on the part of the accused showing "taking" or "enticement," the essential ingredients of Section 361 IPC are not satisfied, and consequently,



the offence under Section 363 IPC is not made out, goes the argument.

19.1. It was further pointed out that there are material inconsistencies in the testimony of PW1 and PW2 regarding the clothes worn by PW4 when she was found the next day near Mother Dairy.

20. A reading of the testimony of PW4 to which I have already referred to in detail raises doubts regarding the prosecution case of kidnapping. There appears to be no enticing or taking away of PW4 as alleged by the prosecution. Hence, I find evidence unsatisfactory and lacking to find A1 guilty of the offence punishable under Section 363 IPC.

21. Now coming to the offence of rape as contemplated under Section 375 IPC as well as the offence of penetrative sexual assault as contemplated under Section 4 of the PoCSO Act. The prosecution relies on the testimony of PW4 as well as the medical and scientific evidence to prove the case of rape. The MLC shows



her hymen to be torn and slightly congested. PW4 had consented to her internal examination and hence, samples were collected and sent for forensic examination. As per Ext.PW10/AFSL Report, the DNA profile generated from vaginal swab and smear, cervical swab matched with the DNA profile generated from the blood sample of the accused.

22. A close reading of the testimony of PW4 to which I have referred to in detail shows at best a consensual relationship. As per the Charge, at the time of the incident on 10.05.2013, PW4 was 14 years of age. PW4 during her cross-examination deposed that she was around 14 to 15 years and A1, 20 to 21 years at the time of the incident. PW1 and PW2, her parents, also deposed that PW4 was around 14 years old at the time of the incident. PW12 and PW13 are the witnesses examined by the prosecution to prove the age of PW4. PW12, Principal, MCD School, Ram Nagar Bhawan, Arakasha Road, Delhi who produced the original admission and withdrawal register of the school, deposed that as per the



admission register, the date of birth of PW4 is 06.05.2000. The copy of the admission register is Ext. PW12/A. The copy of the admission form submitted by the parents at the time of admission of PW4 in the school on 03.08.2007 has been marked as Ext. PW12/B. PW12 further deposed that on 13.03.2008, the parents of PW4 had filed an application, a copy of which was marked as Ext. PW12/C for change of date of birth as 18.06.1999.

22.1. PW13, Lab Assistant, Govt. Girls Senior Secondary School No. 1, Ram Nagar deposed that PW4 was admitted in the school on 03.04.2012 to the sixth standard. As per the admission register, the date of birth is 18.06.1999.

23. It is not clear from the testimony of either PW12 or PW13 as to the basis on which the date of birth of PW4 was changed from 06.05.2000 to 18.06.1999. It is not clear whether PW4 had any birth certificate issued by a Corporation/municipality/panchayat. The testimony of PW12 and PW13 is not satisfactory to prove the date of birth of PW4 as it is



not clear the basis on which the age was corrected/changed.

24. During the course of arguments, learned counsel for A1 submitted that A1 and PW4 are presently married and that they have two children. It is not clear as to when they got married, whether it was during the alleged minority of PW4 or after she had attained majority. In the circumstances of the case and as the evidence regarding minority of PW4 is not quite satisfactory, I find that A1/the appellant is entitled to the benefit of doubt.

25. In the result, the appeal is allowed, and the impugned judgment is set aside. The appellant/A1 is acquitted under Section 235(2) Cr.P.C. of all the offences charged against him. He is set at liberty and his bail bond shall stand cancelled.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 17, 2026/ER