



2026:DHC:5537



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

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Judgment Reserved on: 08.07.2026
Judgment pronounced on: 13.07.2026

+ **CRL.A. 278/2020 and CRL.M.(BAIL) 440/2020**

SHAMBHU

.....Appellant

Through: Mr. Himanshu Anand Gupta,
(DHCLSC) with Mr. Karan Jain, Ms.
Mansi Yadav, Mr. Shekhar Anand
Gupta, Mr. Mike Desai and Ms.
Navneet Kaur, Advocates.

versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Sheetal, P.S. Hauz Khas

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal filed under Section 374(2) read with Section 383 of the Code of Criminal Procedure, 1970 (Cr.P.C.), by the sole accused in Sessions Case No. 7836/2016, on the file of the Additional Sessions Judge-05 (POCSO), South District, Saket Courts, New Delhi, assails the judgment dated 12.12.2019 and order on sentence dated 19.12.2019 as per which the accused has



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been convicted and sentenced for the offences punishable under Section 376(2) of the Indian Penal Code, 1860 (the IPC) and Section 6 of the Protection of Children from Sexual Offences, 2012 (the PoCSO Act).

2. The prosecution case is that, during the period of one year preceding 01.08.2016, at House No. 222-C, Second Floor, Shahpur Jat, New Delhi, the accused on several occasions committed penetrative sexual assault upon PW1, a minor girl aged about 11–12 years. It is further alleged that, during the said period, the accused criminally intimidated PW1 by threatening to kill her. Hence, as per the charge-sheet/final report, the accused was alleged to have committed the offences punishable under Sections 376(2)(f) and (n), 506 IPC and Section 6 of the PoCSO Act.

3. On the basis of Ext. PW1/B FIS/FIR of PW1, given on 01.08.2016, Crime no. 603/2016, Hauz Khas police station, that is, Ext. PX FIR was registered by CW16, Sub-Inspector. PW8, Sub-Inspector (SI), was entrusted with the investigation of the case. On



completion of the investigation into the crime, the chargesheet/final report was filed alleging the commission of the offences punishable under the aforementioned sections.

4. Another person, namely, Tinku, was also named in Crime no. 603/2016 and was subsequently arrayed as an accused in the supplementary charge-sheet. However, he could not be traced during the course of investigation. Consequently, he was declared a proclaimed offender by the trial court *vide* order dated 16.09.2017.

5. 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.P.C. After hearing both sides, the trial court, *vide* order dated 15.12.2016, framed a Charge under Sections 376(2), 506 IPC and Section 6 of the PoCSO Act, which was read over and explained to him, to which he pleaded not guilty.



6. On behalf of the prosecution, PWs. 1 to 8 were examined and Ext. PX-1, Ext. PX-2, Ext. PX-3, Ext. PX-4, Ext. PX-5, Ext. PX-6, Ext. PX-7, Ext. PX, Mark PW1/A, Ext. PW1/B, Ext. PW3/A-D, PW 6/A-C, Ext. PW7/A, Ext. PW8/A-C, Ext. PW8/C1-C4, Ext. PW8/D-F, Mark PW8/A to PW8/B, Ext. EX 'A' and Ext. EX 'B'.

7. 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 them in the evidence led by the prosecution. He denied all those circumstances and maintained his innocence. He submitted that he had sexual intercourse with PW1 with her consent and that the latter at that time was above 18 years of age. According to accused, the present case was registered against him only because PW1 was pressurized by her sister, who is his wife, to do so.

8. After questioning the accused under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the



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case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen to have been 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.

9. No oral or documentary evidence was adduced by the accused in support of his case.

10. Upon consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 12.12.2019, convicted the accused for the offences punishable under Section 376(1) IPC and Section 6 of the PoCSO Act. Accordingly, the accused was sentenced to undergo rigorous imprisonment for a period of thirty years and fine



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of ₹1,000/- and in default of payment of the fine, to rigorous imprisonment for a period of thirty days. Aggrieved, the accused has preferred this appeal.

11. It was submitted by the learned counsel for the appellant/accused that the prosecution failed to prove that PW1 was a minor at the time of the incident. The school records regarding PW1's date of birth are unreliable because they were prepared based on the oral statement of PW4, the mother of PW1, without any supporting documents. Further, PW4 herself admitted that she had mentioned an incorrect age of PW1 at the time of school admission.

11.1 It was further submitted that PW1 has consistently stated that she was a major, that the relationship was consensual, and that her earlier allegations were made due to fear of her sister, the accused's wife. The testimony of PW1 that she was a major remained unrebutted, as the prosecution did not challenge it during trial. Therefore, the prosecution failed to prove the appellant's guilt



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beyond reasonable doubt, entitling the appellant to the benefit of doubt.

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

13. Heard both sides and perused the record.

14. The only point that arises for consideration in this appeal is whether there is any infirmity in the impugned judgment calling for an interference by this Court.

15. I shall first briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW1/B, the FIS/FIR of PW1, prosecutrix, recorded on 01.08.2016, reads thus: *“My elder sister Kavita had gone to her in-laws' house in village Sunraha, District Darbhanga, Bihar about one year ago. My jijaji (the accused), who lives in Ashok Nagar, Delhi, works as a driver. He used to come to our house every Sunday in Shahpur Jat to get his clothes washed. My mother (PW4) works as a maid.*



In the evening, when my mother is not at home, my jijaji comes to our house. He had been forcibly establishing physical relations with me for about last one year. He threatened to kill me and my sister, Kavita, if I revealed the incident to anyone. During the aforesaid period, my jijaji (the accused) has established relations with me several times. A boy named Tinku (absconding accused) used to live in our neighbourhood. For about one year, he also used to forcibly take me to his room and establish relations. I told my jijaji (the accused) about this matter. However, my jijaji (the accused) did not take any action regarding this. I kept enduring everything silently because my jijaji (the accused) used to threaten me. Necessary action should be taken against my jijaji (the accused) and my neighbour Tinku.

16. Ext. PX5 164 statement of PW1 is seen recorded on 02.08.2016, wherein she stated thus:- For the last one year, her didi (elder sister) had been living in her village. Her mother (PW4) leaves for work in the morning and returns in the evening. Her



jijaji (the accused) used to come to their house sometimes from the office to get his clothes washed, and then he used to do *galatkaam* with her. The accused used to kiss her, take off her clothes, and have sex. The accused used to come on Saturdays and Sundays. A boy named Tinku (absconding accused) used to live near her house, who had also been doing *galat kaam* with her. She told the accused about Tinku, however, the latter did not take any action. She did not tell her family about the acts of the accused out of fear. The accused used to threaten her that if she told anyone at her home, he would assault/kill her and her family members as well.

17. PW1 when examined deposed that she had not attended school. She was residing with her mother and brother at Shahpur Jat, New Delhi. There were four brothers and sisters in the family. Her elder sister, Kavita, was residing separately at some distance. Her *jija* (the accused) was working as a driver and was residing in Noida. A boy, namely, Tinku, was residing in their neighbourhood. Tinku used to have sexual intercourse with her by forcibly



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inserting his penis into her vagina against her wishes. She had made a complaint to her *jija* (the accused), who informed her mother (PW4), and thereafter her mother (PW4) informed the police. Her *jija* did not usually visit their house and only came when her mother was present. The police took her to the Child Welfare Committee (CWC), where she narrated the incident and her thumb impressions were obtained. Thereafter, she was sent to Courage and Helping Home and was subsequently taken to a hospital for medical examination. After examination, the doctor informed her that she was pregnant. She had informed the doctor that the child had been fathered by Tinku. She had given birth to a male child. She had not signed any medical documents in the hospital. She identified the accused as her *jija*. PW1 deposed that the accused was in jail because he had established sexual relations with her with her consent, and her mother (PW4) had lodged a complaint against him. The accused had sexual relations with her two or three times with her consent, and she became pregnant as a



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result. PW1 admitted giving Ext. PW1/A 164 statement. However, she denied her signatures on the document. No police official met her at the hospital or in connection with the present case, and she did not give any statement to the police. She did not wish to state anything further except that the accused had established sexual relations with her with her consent and that she had made the 164 statement under pressure from her sister, who was opposed to the relationship.

17.1 The prosecutor is seen to have requested permission of the trial court to “cross-examine” PW3 on the ground that she had resiled from her previous statement. Permission was granted by the trial court. On further examination, PW1 deposed that the accused was residing elsewhere and was employed as a driver. The accused used to visit their house every Sunday to get his clothes washed. Her mother (PW4) worked as a housemaid and used to leave the house at about 7:00 a.m., return at about 2:00 p.m., again leave at about 4:00 p.m., and return by about 7:00 p.m. The accused used



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to come to the house at different times. She could not recall when her sister had married the accused but estimated that the marriage had taken place about fifteen years earlier, when she herself was about five or six years old. She had never attended school except that, after coming to Delhi from her village about seven years earlier, her mother had got her admitted to the first standard. She could not recall when the accused established sexual relationship with her for the first time. When asked if she had considered that her conduct might spoil her sister's family life, she replied, "*mujhe tab yeh samajh nahi thi.*" The sexual relationship between her and the accused continued for about a year. Tinku had forcibly established sexual relations with her. She was unaware that she would conceive by having sexual relationship with the accused and reiterated, "*mujhe is baat ki samajh nahi thi.*" Her mother (PW4) had noticed that she had become pregnant. She did not inform the accused about it because she was afraid. She denied the suggestion that the accused had threatened to kill her and her sister if she



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disclosed their relationship. She admitted that the police had arrested the accused, but she was unaware of the reason for his arrest. She admitted that she had appeared before the Magistrate and had signed the statement recorded before her. She admitted her signature on Ext. PW1/A 164 statement. She admitted that the accused had gone to jail based on her statement and that she did not want the latter to remain in jail. She was deposing truthfully before the court, and that her earlier statement had been made under pressure from her sister. She had never informed the police, the court, or any other authority that her earlier statement had been made under pressure from her sister. She denied the suggestion that the accused had established sexual relations with her forcibly or by threatening her. Her sister was residing with them. She denied the suggestion that she was concealing the fact regarding forceful sexual intercourse because she wished to save the matrimonial home of her sister and the accused.



17.2 PW1 in her cross-examination deposed that she was about 19 years old when she first established sexual relations with the accused. She admitted that she had attended school only for two or three days before dropping out due to financial constraints. She admitted that she had left school because she appeared/looked much older than her classmates. She denied the suggestion that she had been 13–14 years old at the time of her admission in school. She admitted that her age recorded in the school was less than her actual age. She admitted that she had made her statement before the Magistrate under pressure from her sister. She admitted that the police had recorded her statement on the basis of which the crime had been registered and that she had given the said statement under pressure from her sister.

18. PW4, the mother of PW1, deposed that she has three daughters and one son. Her two daughters were married, and her elder daughter was married to the accused. She was working as a domestic worker, whereas the accused was employed as a driver.



The accused used to visit their house to get his clothes cleaned. Since she was working, she was generally not present at home. On 05.07.2016, she came to know that her younger daughter (PW1) was pregnant. She, along with her daughter (PW1), went to the house of her employer and narrated the entire incident. Her daughter (PW1) disclosed that she had become pregnant by her *jija* (the accused). PW4 deposed that PW1 had consensually made physical relations with the accused. Thereafter, her employer contacted a lady from an NGO, who took both of them to the CWC, Lajpat Nagar. On 01.08.2016, the police recorded the statement of her daughter (PW1) and she was medically examined at AIIMS. Her daughter (PW1) had also disclosed that one boy, namely Tinku, who was residing in the same building, had forcibly established physical relations with her. Tinku had vacated the premises prior to the registration of the FIR. A site plan was prepared at the instance of her daughter. The accused had left Delhi and gone to Bihar about two to three months before they



came to know about the pregnancy of her daughter (PW1). PW1 had delivered a baby. She identified the accused before the trial court.

18.1 PW4 in her cross-examination admitted that PW1 had disclosed to her that she had established physical relations with the accused with her consent. At the time of admission of her daughter (PW1) in school, her actual age was about 18 years, whereas at the time of her deposition, she was about 20 years old. She had her daughter's (PW1) age recorded as 06 years in the school records because the school teacher had refused to admit her unless her age was shown as six years.

19. PW6, Principal, Nagar Nigam Pratibha Girls School, Shahpur Jat, New Delhi, was examined to prove the age of PW1. She produced the original admission record of PW1. According to PW6, PW1 had been admitted to the school based on Ext. PW6/A application/registration form. As per the admission and withdrawal register produced by her, PW1 had been admitted to the first



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standard and her admission entry was recorded at Serial No. 6334 in the admission register. The copy of the relevant page of the admission register containing the admission entry of PW1 was marked as Ext. PW6/B. As per the school records, the date of birth of PW1 is 08.03.2004. The then in-charge (Admission) of the school issued Ext. PW6/C certificate regarding PW1's date of birth and had handed over the same to the Investigating Officer (IO) during the course of the investigation.

19.1. PW6 in her cross-examination admitted that no document(s) relating to the birth of PW1 had been submitted by her parents at the time of admission. At the relevant time, it was the routine practice of the school to record the date of birth of students on the basis of the version given by their parents. PW6 deposed that she had not personally verified the date of birth of PW1. She admitted that she could not say whether the parents of any student had disclosed the age of the student on the lower side at the time of admission.



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20. The prosecution relies upon the school records produced by PW6, the Principal of Nagar Nigam Pratibha Girls School, to establish that PW1's date of birth is 08.03.2004. As per Ext. PW6/B admission register, PW1 would have been about 12 years old at the time of registration of the FIR. PW6 admitted in her cross-examination that no birth certificate or any other document relating to the birth of PW1 had been produced at the time of admission. She further admitted that the date of birth was recorded solely on the basis of the version furnished by the parents and that she had not personally verified the date of birth. PW6 also conceded that she could not say whether parents had disclosed the age of the student on the lower side at the time of admission. Thus, the school records are not based on any certificate or document. Ext. PW6/C certificate is obviously inadmissible as it is a certificate given by the school authority to the investigating officer (IO) during the course of investigation. The same can only be treated as a statement given in writing by a witness to the IO



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during the course of investigation and hence, a statement under Section 161 Cr.P.C. Therefore, it is hit by Section 162 Cr.P.C. and so is not admissible in evidence and hence is liable to be discarded (See **Sasi v. State of Kerala 2019 KHC 465: 2019 (3) KLT 561**).[See also **Kali Ram v. State of H.P., 1973 KHC 634:1973 (2) SCC 808; Kanu Ambu Vish v. State of Maharashtra, 1971 KHC 469: 1971 (1) SCC 503; Datar Singh v. State of Punjab, 1975 KHC 789 : (1975) 4 SCC 272 and C. Chenga Reddy v. State of A.P., 1996 KHC 1264 : 1996 (10) SCC 193**].

21. More importantly, PW4, the mother of PW1, substantially undermined the reliability of the school records. She deposed that at the time of admission of PW1 in school, her actual age was about 18 years and that she got PW1's age recorded as 6 years because the school teacher had refused admission unless her age was shown as six years. This testimony of the mother is apparently a false statement as rightly found by the trial court because a perusal of Ext. PW6/A, which also contain the



photograph of PW1, shows that PW1 at the time of admission was indeed a young child and certainly not 18 years as claimed by the mother before the trial court. But in the light of the testimony of the mother, doubts do arise about the actual age of PW1. Though PW1 certainly was not 18 years, as claimed by her mother, at the time of admission in the school, there is no clear or cogent material on record regarding her actual age also.

22. PW1 deposed before the trial court that she was a major at the time of the incident. She has a further case that she left school because she appeared much older than her classmates and admitted that her age recorded in the school was less than her actual age. The prosecution did not produce any birth certificate, municipal record, hospital record, or any other independent document to corroborate the date of birth entered in the school register. The only source for the entry was the statement of the parent, and that very parent, namely PW4, admitted that the age entered in the school records is incorrect. Therefore, the



prosecution has failed to prove beyond reasonable doubt that PW1 was a minor at the relevant time.

23. The trial court has convicted the accused for the offences punishable under Section 376(2) IPC and Section 6 of the PoCSO Act. Since it has not been proved that PW1 was a minor on the date of the incident, the conviction under Section 6 of the PoCSO Act cannot be sustained and is liable to be set aside. Further, PW1 repeatedly claimed before the trial court that it was a consensual sexual relation. She also denied the prosecution's suggestion that the accused had established sexual relations forcibly or by threatening her and specifically denied that the accused had threatened to kill her or her sister if she disclosed the relationship. Therefore, the prosecution case of rape as defined under Section 375 IPC has not been made out and hence his conviction under Section 376 IPC cannot be sustained.

24. In the light of the aforesaid, the appeal is allowed and the impugned judgment by which the accused has been convicted



and sentenced for the offences punishable under Section 376(2) IPC and Section 6 of the PoCSO Act is set aside. The accused is acquitted under Section 235(1) Cr.P.C. of the offences punishable under Section 376(2) IPC and Section 6 of the PoCSO Act. The accused is set at liberty and his bail bond shall stand cancelled and the sureties, if any, shall stand discharged.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 13, 2026

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