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

% ***Judgment reserved on: 13.05.2026***
Judgment pronounced on: 16.05.2026

\+ **CRL.A. 1128/2017**

RAJESH .....Appellant

Through: Mr. Harsh Prabhakar, Mr. Dhruv Chaudhry, Mr. Shubham Sourav and Mr. Vijit Singh, Advocates with appellant in person.

versus

STATE .....Respondent

Through: Mr. Ajay Vikram Singh, APP for the State.
Mr. Vaibhav Tomar, Advocate for victim.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) read with 482 of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the sole accused in Sessions Case No. 77/2014 on the file of the Additional

Sessions Judge, North West-01, Rohini District, Delhi, assails the judgement dated 14.07.2015 and order on sentence dated 16.07.2015, as per which he has been convicted and sentenced for the offence punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 20.11.2013, at House No. R-1126, Mangolpuri, Delhi, the accused committed aggravated sexual assault on PW6, a minor girl aged 11 years, by catching hold of her and touching/pressing her breast with sexual intent. Hence, as per the chargesheet/final report, the accused is alleged to have committed the offences punishable under Sections 354A of the Indian Penal Code (the IPC) and 10 of the PoCSO Act.

3. On the basis of Ext. PW8/A FIS/FIR of PW1, given on 20.11.2013, Crime no. 724/2013, Mangolpuri Police Station, i.e., Ext. PW4/A FIR was registered by PW4 Head Constable. PW9, Assistant Sub Inspector conducted investigation into the crime and

on completion of the same, filed the chargesheet/final report 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.P.C. After hearing both sides, the trial court, *vide* order dated 08.05.2014, framed a Charge under Section 354 IPC and Section 9(m) read with 10 of the PoCSO Act against the accused. The Charge was read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 10 were examined and Ext. PW2/A-B, Ext. PW4/A-C, Ext. PW5/A-D, Ext. PW7/A-D, Ext. PW8/A-B, Ext. PW9/A-D and Ext. PW10/A 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 he was falsely implicated at the behest of PW1, the mother of the victim.

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. No oral or 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 judgement dated 14.07.2015 held the accused guilty of the offence punishable under Sections 10 of the PoCSO Act. *Vide* order on sentence dated 16.07.2015, sentenced him to undergo rigorous imprisonment for a period of 5 years and to fine of ₹5,000/-, and in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 10 of the PoCSO Act.

10. The learned counsel for the appellant submitted that the prosecution case suffers from serious infirmities. It was submitted that there are material inconsistencies between the FIS/FIR of PW1, the mother of PW6; the statement under Section 164 Cr.P.C. and testimony of PW6. The initial DD entry, which recorded a quarrel, was subsequently improvised by PW6 to falsely implicate the accused in a case of sexual assault. It was submitted that the

defence case is further probabilised by the medical evidence, as the history of PW6 recorded in the MLC prepared by PW10 does not align with the prosecution's version, nor did PW1 disclose the exact factum of the incident to PW10 during the medical examination of PW6. There is also discrepancy regarding whether PW6 had visited the house of the accused prior to the date of the incident. On one hand, the MLC recorded by PW10 records the time of examination of PW6 at 07:20 P.M. on 20.11.2013, at which time PW1, her mother is also supposed to have been present. But the arrest memo Ext. PW7/B, in which PW1 is a witness, records the time of arrest of the accused to be at 07:30 P.M. According to the learned counsel, it was physically impossible for PW1 to have been present at both the locations within such a brief ten-minute window, which is another reason to doubt the prosecution case. Reference was made to the dictums in **Devinder vs. State of Haryana 1997 SCC (Cri) 570**and **Shivaji Dayanu Patil vs. State**

of Maharashtra (1989) 1 Supp. SCC 758 in support of the aforesaid arguments.

11. *Per contra*, it was submitted by the learned Additional Public Prosecutor that the impugned judgment does not suffer from any infirmity warranting interference by this court as the trial court has duly considered each and every ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits. The testimony of PW6 is corroborated by the testimony of PW1, her mother. No contradiction, whatsoever, has been brought out in their respective testimonies. The witnesses have given consistent statements all throughout the proceedings. Their testimony has not been discredited in any way and hence, there is no reason(s) to disbelieve them.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in this appeal is whether there is any infirmity in the conviction entered and sentence passed by the trial court warranting an interference by this Court.

14. I shall first briefly refer to the evidence on record relied on by the prosecution in support of the case. Ext. PW8/A, the FIS/FIR of PW1, the mother of the victim, was recorded on the very same day of the incident, i.e., 20.11.2013. In the FIS, PW1 has stated thus: “I reside at the above-mentioned address and am a homemaker. I live on the third floor of the said building. Vicky, s/o Surjeet, has been living as a tenant on the fourth floor of the same building for the last 3 years. Vicky’s brother-in-law, Rajesh (the accused), s/o Kishan Lal, lives as a tenant in the street behind our house at R-1136, Mangolpuri, Delhi. Today, around 2:30 PM, Vicky’s wife sent my daughter PW6, aged about 10 years, to Rajesh’s room to call her daughter Kajal. My daughter went to

Rajesh's room to fetch Kajal. About 10-15 minutes later, my daughter (PW6) came back running and started crying. I asked her what happened, and if "*mama*" (the accused Rajesh) had hit her or said something. My daughter (PW6) told me that Rajesh Mama sent Kajal away from the room, and caught hold of her and then started moving his hand over her chest ("मेरा हाथ पकड़कर मुझे रोक लिया व मेरी छाती पर हाथ फेरने लगा"), at which point she ran away crying. I informed Kajal's mother about Rajesh. Shortly after, Rajesh himself arrived there to return a key, at which time his sister beat him."

15. Ext. PW5/B, the 164 statement of PW6, the child victim, is seen recorded on 13.07.2017. In the said statement PW6 states thus:- "Yesterday afternoon at 2:30 PM, I went to pick up my friend Kajal from her mama's house. It was time for Kajal's tuition, so at the request of her mother, I went to call her from her mama's house, which is located in the street behind our house.

Kajal's uncle sent Kajal downstairs and asked me to stay back. Then, her mama, Rajesh (the accused) grabbed my hand and pressed my chest. ("फिर उसके मामा Rajesh ने मेरा हाथ पकड़ा और छाती दबाई।") When I tried to pull my hand away, he pressed even harder. ("मैंने हाथ छुड़ाना चाहा तो और दबाने लगे।"). I then ran away from there and told my mother about this."

16. PW6 while examined stood by her version in the 164 statement. PW6 in her cross examination admitted that she does not know the address of the accused and it was her mother who had told her about the same. PW6 also deposed that on an earlier occasion, Kajal's mother had taken her to the house of accused, at which time, two other people ("bade mama" and "mami") used to reside there.

17. PW1, the mother of the victim, when examined before the trial court, stood by her version in Ext. PW8/A FIS/FIR given by her. She deposed that after PW6 told her about the incident, she

informed Rani, the sister of the accused. Rani gave beatings to the accused, after which she called the police. The police arrested Rajesh (the accused) *vide* arrest memo Ext. PW7/B and his personal search was conducted *vide* memo Ext. PW7/C. PW6 was then taken to Sanjay Gandhi Memorial (SGM) hospital for her medical examination.

17.1. PW1 in her cross examination deposed that Kajal, daughter of Rani, was already there at the house of the accused when PW6 was sent to call Kajal. Her daughter informed her that she was going to the house of the accused to call Kajal at the request of Rani and also about the location of the house. PW1 further deposed that it was her daughter's first visit to the house of the accused on the date of the incident. She denied the suggestion that she had lodged a false complaint and that no such incident had taken place.

18. PW10, Chief Medical Officer, SGM Hospital, Delhi, deposed that on 20.11.2013, at about 07:20 P.M., he examined PW6 who was brought by PW3, Constable. PW6 was accompanied by her mother. He issued Ext. 10/AMLC which bears his signature. There were no fresh external injuries found on PW6. He referred PW6 to SR (Gynae) for further examination.

19. PW3, Constable, then posted at PP SGM Hospital, Mangolpuri Police Station deposed that on 20.11.2013, at about 03:15 P.M., she received information from the duty officer at Mangolpuri Police Station through telecom about the incident at R-1334, Mangolpuri, Jagra. She reduced the information into writing *vide* DD No. 15PP in the DD Register, that is, Ext. PW3/A. She then conveyed it to Head Constable Meer Singh (PW8) for further action.

20. PW8, Head Constable, Mangolpuri Police Station deposed that on 20.11.2013, on receipt of DD No. 15PP, he

proceeded to the residence of PW1. PW1 produced the accused before him. He recorded PW1's statement and handed it over to PW7, who registered the FIR, that is Ext.PW4/A. The further investigation into the case was assigned to PW9, before whom he produced the accused. The accused was arrested *vide* Ext. PW7/B, arrest memo bearing his signature. The personal search of the accused was carried out *vide* memo Ext. PW7/C, which also bears his signature.

21. PW7, Head Constable, supported the version of PW8.

22. PW9, Assistant Sub-Inspector, Mangolpuri Police Station testified regarding the various steps taken by him during the course of investigation and on completion of investigation, he submitted the final report/charge sheet before the court.

23. The accused has been found guilty of the offence of aggravated sexual assault as contemplated by Section 8 of the PoCSO Act. Sexual assault has been defined under Section 7 to

mean that whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch such parts of that person or any other person, or does any other act with sexual intent involving physical contact without penetration, is said to commit sexual assault. Section 9(m) classifies an offence as aggravated sexual assault when sexual assault is committed upon a child below the age of 12 years. PW6, the victim herein, is admittedly below 12 years.

24. According to the learned counsel for the appellant/accused, the sole testimony of PW6 is insufficient to prove the prosecution case beyond reasonable doubt. The first and foremost aspect pointed out to substantiate the said argument was that the history that was revealed by PW1, the mother, to PW10 the doctor, who examined PW6 does not reveal any sexual assault. The story of sexual assault comes up only when the FIR/FIS was given by PW1. The story of sexual assault was an afterthought.

Moreover, the history was narrated by the mother and not by the victim to the doctor. PW6 stated to the doctor that the accused had only pulled her hand. No other overt act by the accused was revealed by PW6 or her mother to the doctor. This according to the learned counsel for the appellant/accused is a major aspect to suspect the prosecution case. In support of the arguments, reference was made to the dictums in **Devinder (*supra*)** and **Shivaji Dayanu Patil (*supra*).**

25. **Devinder (*supra*)** was a case where the appellant therein was convicted and sentenced *inter alia* for the offence punishable under Section 302 IPC. Paragraph 7 and 8 of the said judgment reads thus –

> *" 7. Having carefully gone through the entire materials on record, we are unable to sustain the impugned judgement. Though apparently there is no reason to disbelieve the two eye witnesses, there are certain underlying circumstances which persuade us to give the benefit of reasonable doubt to the appellant. According to the prosecution case - and as testified by*

Jagdish immediately after the assault Ramphal was taken to the hospital by him (Jagdish) and Umesh (not examined), who were present at the time of the assault. Dr. Jain testified that at the time of admission Ramphal was fully conscious and his blood pressure and pulse were normal. From the medico legal report (Ex. PS) that the doctor sent to the police after examining Ramphal we find that apart from his name, the father's name of Ramphal, his address, his occupation and an account as to how the injuries were caused find place. Obviously, all these particulars had been furnished by Ramphal, and/or Jagdish and Umesh, who had accompanied him. In that context it was expected, if really the appellant was the assailant, that his name would be disclosed by all or any of them while furnishing the cause of the injuries. It can therefore, be legitimately inferred that at the earliest available opportunity the name of the appellant was not disclosed.

8. It was, however, contended by Mr. Malhotra appearing on behalf of the respondent that since the F.I.R. was lodged by Jagdish with promptitude and therein the name of the appellant as the assailant had been mentioned, non- disclosure of his name earlier before the doctor, who was under no statutory obligation to record the name of the assailant, was of no moment. If the F.I.R. was recorded at 2.40 P.M. (on July 26, 1986) as indicated therein we might have persuaded ourselves to accept the

contention of Mr., Malhotra but we find, surprisingly enough, that no special report in respect of the registration of the case was sent to the Magistrate on that day: and, indeed, as the evidence on record unmistakably shows that it was forwarded to the Magistrate only after the case was converted to one under Section 302 IPC consequent upon the death of Ramphal on July 27, 1986, and received in his office at 10 P.M. This glaring circumstance prompts us to hold that the F.I.R.. did not see the light of the day the till the death of Ramphal and the version of the prosecution that the F.I.R. was recorded on July 26, 1986 is not true."

(Emphasis Supplied)

25.1. As is evident from a reading of the aforesaid paragraphs, it is clear that the prosecution case was disbelieved not solely on the ground that the name of the accused had not been revealed to the doctor at the earliest point of time, but the materials on record were quite unsatisfactory and it appeared from the materials on record that the FIR was ante-dated.

26. **Shivaji Dayanu Patil (*supra*)** was also a case involving an offence under Section 302 IPC. The prosecution case was that the wife of the person murdered therein had actually witnessed the accused assaulting her husband. Admittedly, immediately after the incident the close relatives arrived at the scene of crime. But the wife of the deceased never disclosed the name of the assailant to any of the said relatives or to anybody else. The materials on record also showed that a doctor who arrived at the house shortly thereafter was informed that the family did not suspect anybody. One of the close relatives when examined before the trial court also deposed that nobody had informed him that it was the accused or any other person who had caused injuries to the deceased. In the said circumstances, it was held that the conduct of the wife of the deceased was highly unnatural because if a wife had actually seen an assailant giving fatal blows to her husband, she would name the said assailant to all present and to

the police at the earliest possible opportunity. There were no materials on record to justify the highly unnatural and improbable conduct of the wife of the deceased. Even when her statement was recorded by the police immediately after the incident, a different version had been narrated by her than what she stated before the trial court. In such circumstances, it was held that the nondisclosure of the name of the assailants at the earliest possible opportunity was a matter which raised serious doubts about the prosecution case.

27. The facts of the aforesaid cases are apparently not applicable to the facts of the case on hand. In Ext. PW10/A, MLC, a hard copy of which was handed over during the course of arguments, the column relating to the history and description of the incident in the first page reads thus -

> *"CMO Notes*
> *Alleged H/o Molestation,*
> *Attempted by a 30 year old man*

today at about 2:30 pm
at his residence
as told by mother (Renu)
... conscious/oriented
.....
No fresh external injury seen."

In the second page, it reads -

"Description of the incident
A/h/o m/o molestation by the child's (.....) friend's uncle (mama) at about 2:30 pm. He tried to pull her towards himself but could not attempt any further as ..... ran away.
No h/o any physical assault
No h/o loss of consciousness"

28. Therefore, though the exact overt act of the accused is not referred to, there is still a reference to history of molestation. It is true that the name of the accused was not disclosed to the doctor at the time of examination. In **Pattipati Venkaiah v. State of A.P., 1985 KHC 700: AIR 1985 SC 1715**, while dealing with the

contention that the eye - witnesses did not care to disclose the names of the assailants to the doctor, the Apex Court held that a doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person. His primary concern is to save the life of the person brought to him and inform the police in medico legal cases. In **Bhargavan v. State of Kerala, 2004 KHC 39: AIR 2004 SC 1058** also, the Apex Court relying on **Pattipati Venkaiah (*Supra*)** reiterated that non - disclosure of the names of the assailants to the doctor is really of no consequence as his primary duty is to treat the patient and not to find out by whom the injury was caused.

29. The mere fact that PW6 did not specify the exact overt act of the accused or his name to the doctor or the omission of the doctor to record it in the MLC is not a ground to reject either the MLC or the evidence of PW6. It was not the concern of the doctor who examined PW6 as to who all are involved in the offence or

the nature of the offence committed. That is a matter for the Investigating Officer to investigate and find out. The victim/injured/aggrieved person need disclose the same to the investigating agency, though there is no harm in disclosing the same to the medical officer also. The case of the prosecution cannot be found to be unbelievable only on the ground that PW6 victim did not do so to the doctor who examined her in the light of the remaining materials on record.

30. I have already referred to the testimony of PW6 in detail. PW6 when examined stood by her case. Nothing was brought out in her cross examination to disbelieve or discard her testimony. No materials have been brought out to show that any enmity existed between PW6 and the accused. Therefore, there is no reason whatsoever for her to have falsely implicated the accused.

31. The next argument advanced was regarding the time of arrest of the accused and the time of examination of PW6. As per the prosecution case, PW6 was examined by PW10, the doctor, on 20.11.2013 at 07:20 PM. The accused was arrested on the same day at 07:30 PM. Ext. PW7/B, the arrest memo shows the place of arrest asMangolpuri. Therefore, the argument of the learned counsel for the appellant/accused is that it was impossible for PW1, the mother, to have been present within a short span of 10 minutes at the place of arrest which is quite far off from the hospital where PW6 was being examined, at which time PW1 is also supposed to have been present. This was pointed out as yet another major defect in the prosecution case.

32. It is true that no materials have come on record regarding the distance between the place where the accused was arrested and the place where the hospital is situated. But even assuming that it was impossible for PW1 to have reached the place

of arrest of the accused within a matter of 10 minutes, the same alone is also not a ground to disbelieve PW6 or throw out the entire prosecution case because for a defect in the investigation or for the fault of the investigating officer, PW6 cannot be faulted. It is a settled position of law that a defective investigation alone cannot be a reason to acquit an accused, if the rest of the evidence is strong enough to prove the crime. (See **State of U.P. v. Hari Mohan,2000 KHC 1753: (2000) 8 SCC 598;Ganga Singh v. State of M.P.,2013 KHC 4515: (2013) 7 SCC 278** and **Veerandra v. State of M.P.**, **2022 KHC 6548: (2022) 8 SCC 668**).

33. PW6 in her 164 statement stated that the accused grabbed her hand and pressed her chest. When she tried to pull her hand away he pressed even harder. ("मामा Rajesh ने मेरा हाथ पकड़ा और छाती दबाई।मैंने हाथ छुड़ाना चाहा तो और दबाने लगे"). PW6 while examined before the trial court reiterated her version. ("काजल के मामा ने काजल को घर से बाहर नीचे भेज दिया और मुझे

रुकने को कहा।फिर उसके मामा Rajesh ने मेरा हाथ पकड़ा और छाती दबाई।"). Therefore, it is clear that PW6 has consistently spoken regarding the overt act of the accused. It is true that PW1, the mother, who gave the FIS/FIR has only stated that the accused had moved his hand over her daughter's chest (मेरा हाथ पकड कर मुझे रोक लिया व मेरी छाती पर हाथ फेरने लगा). Admittedly, PW1 had not seen the incident. What is narrated in FIS/FIR by PW1 is what according to her was narrated to her by her daughter. Moving his hand over her breast or pressing her breast does not make much of a difference because the offence is made out by the accused touching the breast of the child with sexual intent. The accused has no case that the touching, moving or pressing PW6's chest/breast was not with any sexual intent. He only takes up a case of bare denial and false implication. Therefore, the aforesaid testimony of PW1 and PW6, even if considered to be an inconsistency is

immaterial and so, is not a ground to disbelieve the prosecution case.

34. Moreover, criminal courts should not be fastidious with mere omissions in the First Information Statement, since such statements cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. (See **Rattan Singh vs The State Of Himachal Pradesh 1997 (4) SCC 161**). 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.

35. The learned counsel for the appellant/accused also made a reference to the D.D. entry which reads thus –

" DD No - 15 PP Dated 20-11-13 PP SGMH PS MangolPuri

SI *इतला आमद PCR*

Call वहवालागी

समय 3:15 pm दर्ज है कि DO / M. Puri ने बजरिये T/Phone इतला दी है कि R- 1334 M. Puri झगड़ा from ct. गुरदयाल 2097 / PCR Ph. No 9250874269 हस्ब आमद इतला PCR Call दर्ज रोजनामचा की गई जो बजरिये टेलिफोन HC Meer Singh No 543 / OD को बतलाई गई जो उचित कार्यवाहीअमल में लायेंगे

Note - True copy

W/ct. Manju No 2319/ OD
PP SGMH P.S
MangolPuri
PIS No. 28091229"

35.1. Referring to the same, the argument advanced is that that the D.D. entry records only a quarrel. There is no case of any molestation or sexual assault. The subsequent FIS/FIR is only an afterthought. This is yet another defect in the case of prosecution. I am afraid, I disagree with the argument advanced by the learned counsel. The incident is alleged to have taken place on 20.11.2013 at about 02:30 PM, at R-1126, Mangolpuri, Delhi. The FIS/FIR

was recorded on the same day at 04:45 PM which is without much delay. The FIS/FIR also makes out an offence punishable under Section 10 of the PoCSO Act. Therefore, merely because the DD entry does not refer to the act of molestation or sexual assault is also no ground to disbelieve the prosecution case especially in the light of the testimony of PW6, whom I find no reason(s) to disbelieve.

36. The act of the accused in catching hold of PW6 and then pressing her breast would certainly come within the definition of sexual assault as contemplated under Section 7 of the PoCSO Act. The offence of sexual assault when perpetrated upon a child below 12 years of age as in the present case, where PW6, the victim was a girl of about 11 years, assumes the nature of aggravated sexual assault within the meaning of Section 9(m) of the PoCSO Act. The offence under Section 9(m) punishable under Section 10 of the PoCSO Act prescribes a minimum sentence of 05

years which can extend to 07 years. The trial court has only imposed a sentence of imprisonment of 5 years. No ground for interference is made out.

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

CHANDRASEKHARAN SUDHA
(JUDGE)

MAY 16, 2026
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