



2026:DHC:5865



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

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Judgment Reserved on: 21.07.2026

Judgment pronounced on: 24.07.2026

+ **CRL.A. 119/2017**

ANIL

.....Appellant

Through: Mr. Azhar Qayam, Mr. Narender Kumar, Mr. Shahmuddin Zehri, Mr. Zubair Khan and Ms. Priyanka Singh, Advocates

versus

STATE

.....Respondent

Through: Ms. Manjeet Arya, APP for State with SI Lal Chand
Mr. Abhimanyu Singh, Advocate
(*Amicus Curiae*) for Victim

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the sole accused in Sessions Case No. 236/2014 on the file of the Additional Sessions Judge-01, North Rohini, New Delhi, assails the judgement dated 05.05.2016 and order on sentence dated



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11.05.2016, as per which he has been convicted and sentenced for the offences punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act) and Section 376(2)(i) of the Indian Penal Code, 1872 (the IPC).

2. The prosecution case is that around 01:00 P.M.- 01:30 P.M. on 30.10.2014, at E-315, Shahbad Dairy, Delhi, the accused committed aggravated penetrative sexual assault on PW1, a minor girl aged 3 years. Hence, as per the chargesheet/final report, the accused is alleged to have committed the offences punishable under Sections 376 IPC and 4 of the PoCSO Act.

3. On the basis of Ext. PW2/A FIS/FIR of PW2, given on 30.10.2014, Crime no. 1257/2014, Shahbad Dairy Police Station, i.e., Ext. PW2/B FIR was registered by PW10 Assistant Sub Inspector. PW12, Sub Inspector, conducted investigation into the crime and on completion of the same, filed



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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 09.02.2015, framed a Charge under Section 6 of the PoCSO Act against the accused. Thereafter, the trial court amended the charge, and *vide* order dated 02.05.2016, framed a Charge under Sections 6 of the PoCSO Act and 376(2)(i) IPC. 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 12 were examined and Ext. PW2/A-E, Ext. PW3/A, Ext. PW4/A, Ext. PW6/A-B, Ext. PW7/A, Ext. PW8/A-B, Ext. PW9/A-B, Ext. PW10/A-B, Ext. PW/12/A, Ext. PW/12/C, and Ext. F-1 were marked in support of the case.



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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 has been falsely implicated at the behest of PW1's father due to a money dispute. The accused also submitted that on the date of the incident, he was "*heavily drunk to the level of unconsciousness*".

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**,



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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 05.05.2016 held the accused guilty of the offences punishable under Sections 6 of the PoCSO Act and 376(2)(i) IPC. *Vide* order on sentence dated 11.05.2016, sentenced him to undergo rigorous imprisonment for a period of 20 years and to fine of ₹5,000/-, and in default of payment of fine, to simple imprisonment for a period of 15 days for the offence punishable under Section 6 of the PoCSO Act. No separate sentence has been awarded for the offence punishable under Section 376(2)(i) IPC.



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10. The learned counsel for the appellant/accused submitted that the impugned judgment is contrary to the facts and circumstances of the case, is bad in law as the trial court has failed to appreciate the materials on record and is, therefore, liable to be set aside. It was submitted that no case for penetration is made out and thus the conviction under Section 6 of the PoCSO Act is liable to be set aside.

11. *Per Contra*, it was submitted by the learned Additional Public Prosecutor that there is no infirmity in the judgment of the trial court calling for an interference by this Court.

12. Heard both sides and perused the materials on record.

13. The only point that arises for consideration in this appeal is whether there is any infirmity in the impugned judgement warranting an interference by this Court.



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14. I will briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW2/A, the FIS/FIR of PW2, the mother of the minor victim, recorded on 30.10.2014, reads thus: *“On 30.10.14 at around 1:00 to 1:30 PM during the day, my daughter Ankita (PW1) came to me crying and told me, “Mummy, when I was playing outside, Anil uncle (the accused) called me and took me along with him. He pulled down my pajami (pants), and opened his pants. Then he lay on top of me and began rubbing his private parts against my private parts, which soiled my pajami.”* (अनिल अंकल मुझे बुलाकर ले गया और मेरी पाजामी नीचे सरका दी और अपनी पैन्ट खोल ली फिर मेरे ऊपर लेट गया और अपने शू-शू से मेरी शू-शू पर घसने लगा जिससे मेरी पाजामी गंदी हो गई). *Ankita (PW1) then started crying. Taking my daughter Ankita along, I went to Anil’s slum dwelling (झुग्गी) and asked him what he had done to my daughter (PW1). He fell at my feet, began asking for*



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forgiveness, and said, “I made a mistake.” My daughter pointed at Anil and told me, “Mummy, it’s him, he lay on top of me, made my pyjamas dirty, and was rubbing against me.” (मेरी बेटी ने अनिल को देखकर इशारा करके बतलाया कि मम्मी यही है इसी ने मेरे ऊपर लेट कर मेरी पाजामी गंदी की थी और घस रहा था) When I tried to slap Anil, he fled from the spot.”

14.1. PW2, in her 164 statement marked as Ext. PW2/E recorded on 31.10.2014, reads thus: *“Yesterday, at around 1:30 PM, a boy named Anil (the accused) took my daughter Ankita (PW1) from the street to his house and forcibly established physical relations with her. (Anil नाम का लड़का मेरी बेटी Ankita को गली में से उठा कर अपने घर ले गया और उसके साथ जबरदस्ती शारीरिक संबंध बनाए।) When my daughter told me, I went to confront him. He fell at my feet and said, “Bhabhi ji, I made a mistake, please forgive me.” When I tried to beat him, he ran away from there.”*



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15. PW1, the minor victim when examined before the trial court, deposed that on the day of the incident, she was playing when the accused took her to his house. He gave her something to eat. He then made her lie down. He touched his penis on her urinary part and he made her *pajami* (pants) dirty. She also deposed that the accused had beaten her. PW1, in her cross-examination, admitted that the accused was her neighbour and previously known to her. She admitted that a quarrel took place between her father and the accused. However, PW1 was unable to explain whether the quarrel had taken place on the date of the incident or before.

16. PW2, the mother of PW1, examined before the trial court, reiterated her version in Ext. PW2/A FIS/FIR and Ext. PW2/E Section 164 Statement. She deposed that on 30.10.2014 at about 01:00-1:30 P.M., her daughter (PW1) was playing in the *gali*/street outside. After some time, her daughter (PW1) came back weeping and told her that, the accused had taken her to his



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house, made her lie on the cot, slid her *pajami* down and rubbed his penis on her urinary part after which the *pajami* became dirty. She then took her daughter (PW1) to the house of the accused. The accused admitted his guilt and started to apologize for his act. She tried to slap him, but he managed to escape. She then called her husband, and after narrating the incident to him, they searched for the accused. The accused could not be found, after which she reported the matter to the police.

16.1. PW2, in her cross-examination, stood by her version in Ext. PW2/A FIS/FIR, Ext. PW2/E Section 164 Statement and her examination-in-chief. She denied that she had a dispute with the accused over a drainage system. She denied that due to the said dispute, she had falsely implicated the accused in the present case.

17. Section 6 of the PoCSO Act prescribes punishment for aggravated penetrative sexual assault, while Section 376(2)(i) IPC deals with aggravated forms of rape. To



bring home an offence punishable under the aforesaid sections, the prosecution must establish (i) that the victim is a child; (ii) that there was penetration, however slight; and (iii) that the act falls within any of the aggravated categories, *inter alia*, where the perpetrator is a relative or a person in a position of trust or authority or when the child is under 16 years of age (under the IPC)/12 years of age (under the PoCSO Act).

18. In the case on hand, the age of PW1, i.e., 3 years old is undisputed. Thus, the offence falls under the aggravated category. On a combined reading of Ext. PW2/A FIS/FIR, Ext. PW2/E Section 164 Statement, and in the respective testimonies of PW1 and PW2, it is consistently established that the accused undressed PW1 and himself and then rubbed his penis against the urinary part of PW1. The question is whether the aforesaid act would constitute penetrative sexual assault as contemplated under Section 3 PoCSO Act. Section 3 PoCSO Act reads thus:-

“A person is said to commit “penetrative sexual assault” if—



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(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person”

19. The rubbing of the penis of the accused against the private part of PW1 does not apparently come within clauses (a) to (d) of Section 3 of the Act. Therefore, the case of penetrative sexual assault under Section 3 or aggravated penetrative sexual assault as contemplated under Section 5 PoCSO Act cannot be held to have been made out from the materials available on record.



20. When this aspect was pointed out to the learned Additional Public Prosecutor, the attention of this Court was drawn to Ext F-1 FSL Report. The conclusion in Ext. F-1 FSL Report reads thus:-

“DNA profile generated from the source of exhibit ‘1h-1’ (vaginal microslide), exhibit ‘1h-2’ (vaginal cotton wool swab), exhibit ‘li’ (cervical mucus collection), exhibit ‘lo-2’ (pyjama of victim), exhibit ‘lo-3’ (underwear of victim), exhibit ‘2c’ (semen sample of accused and exhibit ‘2e’ (Underwear of accused) is matching with the DNA profile generated from the source of exhibit ‘2f’ (blood sample of accused) and ‘2g’ (blood swab of accused).”

21. In the FIS/FIR; the 164 statement and the testimony, the witnesses have a consistent case of ejaculation by the accused. From a reading of all the materials available on record, it appears that the accused had not merely touched but rather rubbed his private part against the private part of the victim. The offence thus committed passes the threshold of sexual assault as contemplated under Section 7 of the PoCSO



Act, but falls short of the threshold of penetrative sexual assault as contemplated under Section 3 PoCSO Act.

22. In **Suo Moto Writ Petition (Criminal) No. 1/2025** dated 10.02.2026 before the Hon'ble Supreme Court, the accused persons took the minor victim with them as a pillion rider on their motorcycle after assuring her mother that they would drop the victim at her residence. But, the accused persons took her near a culvert and dragged her towards it. There, they grabbed her breasts, and broke the string of her pyjama. When the victim started to scream, two passersby came to her rescue. The Special Judge (POCSO), Kasganj issued summons to the accused for the offences punishable under Section 376 IPC read with Section 18 of the PoCSO Act. The High Court revised the same to be a Charge under Section 354B IPC and Sections 9 and 10 of the PoCSO Act. The Apex Court, setting aside the order of the High Court, held that the act of the accused persons, prima facie, made out a case of attempt to commit rape. The dictum in



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SCC 442 was referred to and it was reiterated that there is a distinction between “preparation” and “attempt” to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of “preparation” consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. An “attempt” to commit the offence, starts immediately after the completion of preparation. “Attempt” is the execution of *mens rea* after preparation. “Attempt” starts where “preparation” comes to an end, though it falls short of actual commission of the crime.

23. In the case on hand, the accused after undressing himself and the victim, proceeded to rub his penis against the private part of PW1. Therefore, he reached the stage much after preparation and his intention is clear from the overt act committed. He did enter the stage of attempting penetrative



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sexual assault. In the testimony of PW1 to which I have already referred to, she does not have a case of penetration. According to her, the accused “*apni susu wali jagah meri susu wali jagah par lagai aur meri pajami gandi kar di....*”. It is true that this act does not come under any of the clauses of Section 3 PoCSO Act. But it certainly demonstrates an attempt to commit penetrative sexual assault.

24. PW1 was below 12 years at the time of the incident. Therefore, the offence that is made out is one punishable under Section 18 PoCSO Act read with 6 PoCSO Act, that is, attempt to commit aggravated penetrative sexual assault on a child who was below 12 years. The offence under Section 18 of the Act is liable to be punishable with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one-half of the longest term of



imprisonment provided for that offence or with fine or with both.

25. In case on hand, the trial court found the accused guilty of the offence under Section 6 PoCSO Act and thus convicted him to rigorous imprisonment for twenty years. For the reasons stated herein above, the offence of penetrative sexual assault has not been made out. An attempt to commit penetrative sexual assault as contemplated under Section 18 read with 6 PoCSO Act is made out. In terms of Section 57 IPC, the maximum sentence that can be awarded for the aforesaid offence is, therefore, ten years. The accused is seen to have been old enough to be the father of PW1. In such circumstances, no leniency is called for.

26. In the result, the appeal is partly allowed. The conviction and sentence of the appellant/accused is modified to the offence punishable under Section 18 read with Section 6 POCSO Act. The sentence awarded by the trial court is



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accordingly modified to rigorous imprisonment for a period of ten years.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 24, 2026/kd