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

% *Judgment Reserved on: 23.07.2026*
Judgment pronounced on: 29.07.2026

+ **CRL.A. 1190/2025 & CRL.M.A. 25100/2025**

SHAH NAWAZ

.....Appellant

Through: Ms. Swati Verma and Ms. Aradhana
Chaudhary, Advocates.

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Nisha Sharma, P.S. Kalindi Kunj.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 415(2) of the Code of Criminal Procedure, 1973 (the Cr.P.C.) read with 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the B.N.S.S.), the sole accused in Sessions Case No. 255/2021 on the file of the Additional Sessions Special Judge (FTSC), (POCSO ACT), South



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East, Saket Court, New Delhi, assails the judgement dated 22.05.2025 and order on sentence dated 04.07.2025, 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) and Section 354B of the Indian Penal Code, 1872 (the IPC).

2. The prosecution case is that 4-5 days prior to 30.04.2021, at around 11:00 P.M., in House No. 218, near Bismillah Colony, Khadda Colony, Jaitpur, Delhi, the accused, the father of PW3, a minor girl aged 10 years, attempted to commit aggravated penetrative sexual assault on her and criminally intimidated her. Hence, as per the chargesheet/final report, the accused is alleged to have committed the offences punishable under Sections 354 IPC, 506 IPC, and 10 of the PoCSO Act.

3. On the basis of Ext. PW2/A FIS/FIR of PW3 given on 30.04.2021, Crime no. 249/2021, Kalindi Kunj Police Station, i.e.,



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Ext. PW4/B FIR was registered by PW4 Head Constable. PW8, 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 28.10.2021, framed a Charge under Section 6 PoCSO Act read with 18 PoCSO Act and 354B IPC against the accused, wherein the period of the alleged incident was stated to be 4-6 days prior to 03.04.2011. Thereafter, the trial court amended the Charge *vide* order dated 04.11.2024 to modify the period of the incident to be 4-5 days prior to 30.04.2021. The Charge was read over and explained to the accused, to which he pleaded not guilty.



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5. On behalf of the prosecution, PWs 1 to 10 were examined and Ext. PW 1/A-G, Ext. PW 2/A-B, Ext. PW3/B, Ext. PW4/B-C, Ext. PW5/A-B, PW7/A and Ext. PW8/B-C 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. He submitted that there was an ongoing property dispute and hence the false implication.

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



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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 22.05.2025 held the accused guilty of the offence punishable under Sections 10 of the PoCSO Act and 354B IPC. *Vide* order on sentence dated 04.07.2025, the trial court sentenced him to undergo rigorous imprisonment for a period of 7 years and to fine of ₹25,000/-, and in default of payment of fine, to simple imprisonment for a period of 2 months for the offence punishable under Section 10 of the PoCSO Act. No separate sentence has been awarded for the offence punishable



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under 354B IPC.

10. The learned counsel for the appellant/accused submitted that the impugned judgment is contrary to the facts, circumstances of the case and, is bad in law as the trial court has failed to correctly appreciate the materials on record and, is therefore, liable to be set aside. There is also significant delay in the registration of the FIR. It was further submitted that there are inconsistencies in the FIS/FIR; the 164 Statement and the testimony of PW3. It was further submitted the date and time of the incident are not mentioned in the 164 Statement. The MLC does not corroborate the testimony of PW2 and PW3. PW2 refused internal examination of PW3 and thus, an adverse inference has to be drawn by the Court. The siblings of PW3 were not examined by the prosecution. The learned counsel also pointed out that no site plan of the scene of occurrence has been prepared.

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. Further, reliance was placed on the decision of the Apex Court, in **State of Punjab v. Gurmit Singh, 1996 AIR SC 1393** to contend that the testimony of PW3 alone is sufficient for conviction, and that the courts should neither demand corroborative evidence as a rule nor reject the case over minor discrepancies. Further, it was submitted that there is no evidence adduced to probabalise the defence version that there existed a property dispute between the accused and PW2.

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.

14. I will first briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext.



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PW2/A, the FIS/FIR of PW3, the minor victim, recorded on 30.04.2021 reads thus: *“4–5 days ago, around 11:00 PM, while we were all sleeping, I woke up and saw that my father, Shah Nawaz, (the accused) was lying on top of me. He had removed his clothes and had also taken off my pants. Frightened, I screamed, which woke my mother (PW2) up, and she pushed my father of me. After this incident, we were scared and nervous, and since a lockdown was in place, we could not go to the police station...”*

14.1. PW3, in the 164 statement marked as Ext. PW3/A recorded on 01.05.2021, states thus: *“When we were sleeping at night, Papa (the accused) took off his pants and lay down on top of me. I woke up and screamed. Then Mammi (PW2) also woke up. Mammi pushed Papa away and took me to another room and bolted it from the inside, but Papa broke the bolt. Then Papa started to pull me towards him. Then Mammi took me to another room and locked it from inside. When I told Mammi about the*



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incident, Papa threatened me, and he had even made a sword to kill us...”

15. PW3, the minor girl, when examined before the trial court, deposed that approximately two days before reporting the incident, at around 11:00 P.M., she was sleeping with her mother (PW2). When she woke up, she saw her father (the accused) was trying to lie on top of her. He was naked. Her dress of the lower part had been pulled off. When her father (accused) was attempting to mount her, his elbow touched her thighs. She woke up instantly. Her hands touched her mother's (PW2) face due to which PW2 woke up. She deposed that when PW2 saw the scene, the former pulled away her father. Thereafter, her mother (PW2) took all of them to another room and latched the door. However, her father started banging on the door and tried to break in. The latch of the door broke, but, somehow her mother (PW2) kept them all safe in the other room for the entire night. Her father then



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started beating her mother (PW2). When her mother reported the matter, her father left the house. The police then took her to the hospital for medical examination. PW3 admitted that she had earlier stated that the incident took place 4-5 days before the date of reporting, i.e. 30.04.2021. Actually, it took place two days before the date of reporting. It was due to lapse of time, she was unable to recall the exact duration.

15.1. PW3, during her cross examination, stood by her version. PW3 admitted that on the date of the incident, her brother had also been sleeping along with them. All of them used to retire for the night after her father (accused) returned home from work in the night. PW3 denied any quarrel between her parents prior to the incident. But after the incident, a quarrel took place between her parents as her mother was trying to save her.

16. PW2, the mother of PW3, when examined, supported the version of her daughter. On the date of the incident, she along



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with her children were sleeping on the floor of her room. At around 11:30 P.M., she woke when her daughter (PW3) raised an alarm. She saw that her husband (the accused) was lying on top of her daughter (PW3), who was sleeping next to her. The accused was fully naked. The lower pant worn by her daughter (PW3) had also been pulled down. She scolded the accused and took her daughter (PW3) to another room and bolted the latches of the door from inside. The accused started knocking on the door and broke the latches. He then started quarrelling with her. She did not immediately go to the police station to report the incident as it was night time. On the next day, there was lockdown. She had made a call to the police after which a police official visited her residence and enquired about the incident.

16.1. PW2, more or less stood by her case in the cross-examination.

17. It is true that the FIS/FIR in the present case was not



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lodged on the date of the incident itself. But it was lodged only on 30.04.2021. However, the testimony of PW2 makes it clear as to why the delay happened. The incident happened during the night. The next day was a lockdown. This aspect of her testimony has not been discredited. All delays are not fatal to the prosecution case. In the case on hand, in the circumstances spoken to by PW2, the delay seems quite natural and unavoidable.

18. Further, the reliance on the absence of bruises or abrasions on PW3 is without merit, inasmuch as the Charge is not one of penetrative sexual assault, but only an attempt to commit aggravated penetrative sexual assault. It is not the case of the prosecution that there was penetration by the accused or that there were injuries. Thus, PW2's refusal for the internal examination of PW3 and thereafter the report in the MLC showing that there were no external injuries, is immaterial. Further, the lack of an internal site plan of the rooms where the incident took place is also not



fatal to the prosecution case.

19. On going through the testimony of PW3, I do not find any reasons to disbelieve her. The testimony of PW3 appears clear, cogent, natural and consistent enough to establish the offence. She has narrated the incident in a very natural manner, describing the sequence of events leading up to the grave incident, the act itself, including her immediate reaction thereafter. Nothing has been elicited to discredit PW3, during her cross examination. The testimony of PW2 further corroborates the version narrated by PW3, particularly, regarding the disclosure made by PW3 about the incident; the confrontation with the accused and the subsequent conduct of the accused of banging on the door.

20. The learned counsel for the appellant contended that the siblings of PW3 also ought to have been examined as it has come on record that they were also present at the time of the alleged incident. Non-examination of the siblings does not in any way cast



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a doubt in the mind of the Court in the light of the clear testimony of PW3 and her mother. As held by the Apex Court in **Ganesan v. State, (2020) 10 SCC 573**, the sole testimony of victim regarding the sexual assault, if found credible and reliable, requires no corroboration and is sufficient in law to sustain a conviction. Corroboration may be sought as a matter of prudence where the evidence appears tutored or suffers from material contradictions. The Court must, however, carefully rule out the possibility of tutoring and, upon finding the testimony to be natural and reliable, act upon it (See **State of Madhya Pradesh v. Balveer Singh, 2025 SCC OnLine SC 390**). The competency of a child witness depends on the satisfaction of the trial court as to the child's understanding and ability to depose; non-administration of oath is not fatal; and though courts must remain alive to the possibility of tutoring, there is no bar in law to base conviction solely on the testimony of a child witness who withstands cross-examination



(See **State of Rajasthan v. Chatra**, 2025 SCC OnLine SC 566).

21. The discrepancies pointed out are minor in nature and do not go to the root of the matter. Variations in the narration of events, especially by a child witness and her mother recounting a traumatic incident, are bound to occur and, in fact, lend authenticity rather than detract from it.

22. Now coming to the question of whether PW2 tutored PW3 to falsely implicate the accused due to an impending property dispute between the spouses. However, on a combined reading of the materials on record, it is seen that apart from a mere suggestions put to PW2, there is no documentary material(s) adduced to prove such defence. It is true that in a criminal case, the accused has the right to remain silent. However, if he takes up a specific defence then the onus would be on him to establish the same, though the degree of proof required is only on the basis of preponderance of probabilities (See **Harbhajan Singh v. State of**



Punjab, AIR 1966 SC 97; V.D. Jhingan v. State of U.P., AIR 1966 SC 1762; and Munshi Ram v. Delhi Administration, AIR 1968 SC 702). No materials have been brought on record by the appellant to establish that there were ongoing proceedings between PW2 and the accused before the alleged incident, or even after the alleged incident. It is improbable that a minor child would falsely implicate her own father in an offence of such a grave nature, in the absence of any compelling reasons. Therefore, there are no cogent materials to substantiate the contention that PW3 was tutored by PW2 due to the disputes pending between the spouses.

23. As held in **Gurmit Singh (Supra)**, it cannot be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. The inherent bashfulness of the females and the



tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

24. In the case on hand, with the available materials on record, I find that the prosecution has succeeded in establishing the prosecution case beyond reasonable doubt, whereas the defence setup has turned out to be highly improbable.

25. Now coming to the question as to the offence committed by the accused. The trial court by the impugned judgment has found the accused guilty of the offence punishable



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under Section 10 of the PoCSO Act and 354B IPC. Sexual assault has been defined under Section 7 of the PoCSO Act to mean that whoever, with sexual intent, touches the vagina, penis, anus or breast of a 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 twelve years. Section 9(n) classifies an offence of sexual assault being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child. Further, an offence under 354B IPC is made out when:- (i) a man assaults or uses criminal force to any woman or abets such act and; (ii) intends to disrobe or compel her to be naked. That being so, the act of the



accused, being the father of PW3, undressing her and lying naked over her would necessarily come within the expression “*does any other act with sexual intent involving physical contact without penetration*” as contemplated in the latter part of 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 PW3, the victim was a girl of approximately 10 years, assumes the nature of aggravated sexual assault within the meaning of Section 9(m) of the PoCSO Act. The accused being the biological father of PW3, makes the case squarely fall in the ambit of 9(n) of the PoCSO Act.

26. On a cumulative appreciation of the oral and documentary evidence, this Court finds no reason to disbelieve the testimony of PW3. The findings recorded by the trial court are based on proper appreciation of evidence and do not suffer from any perversity or illegality, warranting interference by this Court.



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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 29, 2026

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