



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

% ***Judgment Reserved on: 28.07.2026***
Judgment Pronounced on: 05.08.2026

CNR No. DLHC010819442024

+ **CRL.A. 1081/2024**

M NARSHIMA @ ROHAN

.....Appellant

Through: Ms. Supriya Juneja, Ms. Shreya
Lamba and Mr. Dhananjay Gautam,
Advocates.

versus

STATE (NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Utkarsh, APP for the State with
SI Pooja, PS Rani Bagh.
Ms. Sunita Arora for Ms. Gayatri
Nandwani, Advocate for victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Sections 415(2) read with 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the B.N.S.S.), accused No.1 (A1) in Sessions Case No. 53523/2016 on the file of the Additional Sessions Judge-01(POCSO), North West, Rohini District Courts, Delhi, assails the judgement dated 16.12.2022 and order on sentence dated 04.10.2023, 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), Sections 376(2)(n) and 506 of the Indian Penal Code, 1872 (the IPC).

2. The prosecution case is that on a few days before 10.07.2016 and in the night of 10.07.2016, at Ground Floor, WZ-3143A, Mahendra Park, Rani Bagh, Delhi, A1 at knife point raped/committed penetrative sexual assault of PW3 a minor girl, aged 16 years. He also criminally intimidated her. Hence, as per the chargesheet/final report, A1 along with the second accused (A2) are alleged to have committed the offences punishable under Section 6 of the PoCSO Act, Sections 376 IPC and 506 IPC.

3. On the basis of Ext.PW3/A FIS/FIR of PW3 given on 10.07.2016, Crime no. 254/2016, Rani Bagh Police Station, i.e., Ext. PW9/A FIR was registered by PW9, Head Constable. PW10, 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 A1 and A2 were 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 15.02.2018, framed a Charge under Sections 5(h) and (l) punishable under 6 of the PoCSO Act, 376(2) IPC and 506 IPC against A1/appellant herein, which was read over and explained to him to which he pleaded not guilty. *Vide* a separate order dated 15.02.2018, the trial court discharged A2.

5. On behalf of the prosecution, PWs 1 to 11 were examined and Ext. PW1/A, Ext. PW3/A-B, Ext. PW3/D1, Ext. PW4/A, Ext. PW5/A-D, Ext. PW7/A-B, Ext. PW9/A-B, Ext. PW10/A-G, Ext. PW10/D1-D2 and Ext. PW11/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. He submitted that though PW3 wanted to marry him, he was not interested in the alliance. Hence, PW3 and her family have falsely implicated him.

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 16.12.2022 held the accused guilty of the offences punishable under Sections 6 of the PoCSO Act, 376(2)(n) and 506 IPC. *Vide* order on sentence dated 04.10.2023, the trial court sentenced him to undergo rigorous imprisonment for a period of 12 years and to fine of ₹10,000/-, and in default of payment of fine, to simple imprisonment for a period of 3 months for the offence punishable under Section 6 of the PoCSO Act and to rigorous imprisonment of 5 years for the offence punishable under Section 506 IPC. In the light of Section 42 of the PoCSO Act, no separate sentence has been awarded for the offence punishable under Section 376(2)(n) IPC.



The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.

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, therefore, liable to be set aside. There is also significant delay in the registration of the FIR. It was further submitted that the brother of the minor victim was not examined. The learned counsel pointed out that there is no scientific evidence to support the prosecution case. The evidence regarding the age of PW3 is also not satisfactory.

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.

14. I will first briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext.PW3/A, the FIS/FIR of PW3, recorded in Hindi on 10.07.2016 translated reads thus: “...*I reside in a rented house with my parents. We are four siblings. My younger sister (PW6) and brother are twins. There is a Call Centre on the 3rd floor of our house, where a boy (the accused) used to frequently visit and keep snooping into our house. The boy (the accused) somehow got hold of my mobile number and started calling me frequently. He forced a friendship upon me and began calling me to meet him. He threatened that if I didn’t meet him, he would have me and my family killed. Then one day he took me to Mahendra Park, H. No. WZ-3143A, Ground Floor, where he forcibly established physical relations with me. He revealed his name as*



Rohan @ M. Narshima (the accused). On 9/7/16 Rohan started roaming around the Call Centre. When my mother enquired the matter, he said he was thirsty. So, my mother (PW2) gave him water to drink. Rohan (the accused) then called my younger sister Monika (PW6) to the Call Centre and threatened her that in case I did not meet him, he would kill my sister. At this time, when my younger brother Monu reached the Call Centre, the accused said that he would deal with my brother later and forbade my brother from interfering in the matter or else he would kill my brother. He also threatened that if my brother and sister did not pay heed to his request, he would bring 4-5 men and abduct me. Out of fear, I went to meet Rohan @ M. Nirshama (the accused). Rohan (the accused) again took me to the same house of his uncle at Mahendra Park, beat me, and forcibly established physical relations with me. On returning home, I switched off my mobile phone. The next morning, on 10/7/16 at around 8:00 AM, he came and questioned my act of



switching off the phone and threatened that he would have me and my family killed. Hearing this, my mother (PW2) called number 100. After the police questioned Rohan (the accused) and left, the latter returned and enquired as to the information given to the police. I told him that nothing had been stated to the police. In the meantime, he stabbed me on my leg with a knife and then fled. My mother (PW2) again called number 100. The police arrived, conducted an inquiry, and registered the case. At this time, I told my mother that Rohan (the accused) had forcibly established physical relations with me, and my mother reported all these facts to the police.”

14.1. PW3, in Ext. PW3/B 164 statement also recorded in Hindi on 11.07.2016 translated reads thus: “Rohan (the accused) somehow got hold of my phone number and started calling me repeatedly. He used to threaten me, saying that if I didn’t meet him, he would kill me and my family. 10–12 days ago, he asked me to meet him at Lok Vihar Park. He introduced



me to his sister at the Shiv Mandir Park. He wanted to marry me. Then he forcibly took me to a room and applied vermilion (sindoor) in the parting of my hair. He took my photos after threatening me with a gun and a knife. He forcibly established physical relation at knife point. He is still threatening me. Out of fear, I didn't tell anyone at home. Day before yesterday as well, he threatened to kill me and abduct my brother. Then he called me to Shiv Mandir day before yesterday and made me meet his sister again. His sister also threatened me. So, yesterday I informed my mother (PW2). Yesterday, he stabbed me on my leg with a knife.”

15. PW3, when examined before the trial court, deposed that, she resides in the first floor of a building and that there is a call centre functioning in the third floor of the said building. The accused while on his way to the call centre and back, used to keep watching her. He started harassing her by repeatedly calling on her mobile number. One day, he called her



and threatened her that if she did not join him, he would kill her and her family members. The accused took her to the house of his uncle at Mahindra Park. There he forcibly established sexual relations by threatening her with a knife. Thereafter, the accused dropped her home and forbade her from disclosing the incident to anyone. The accused directed her to always attend his calls, or else he would kill her and her family members. On 09.07.2016, the accused came to the call centre and kept going up and down the stairs. When her mother questioned the accused, he asked for water. Her mother (PW2) served him water. In the meantime, the accused told her sister (PW6) to reach the call centre. When her sister went there, the accused told the former (PW6) that she better tell her sister (PW3) to talk to him or else he would kill her. Thereafter, when her brother also reached the call centre, the accused forbade the former from interfering or else he would be killed. According to PW3, due to the threats of the accused, she went to meet him. The accused again took her to Mahindra Park



and beat her. Thereafter, he put vermilion on her forehead, clicked photos, and then removed the vermilion. The accused directed her to follow his instructions and thereafter, he again had physical relations with her. On returning home, she switched off her mobile phone. On 10.07.2016, the accused came to her house in the morning and started threatening her and told her mother (PW2) that he would take her (PW3) and that would – *“bring 10-12 persons and will get the open fire”* [sic]. When the accused left, her mother (PW2) called the police. The police came, made enquiries and left. Thereafter, the accused came again, hit her on her leg and ran away. Her mother (PW2) again called the police. PW3 further deposed that she then informed her mother (PW2) about the physical relations the accused had with her. She took the police to the house of the uncle of the accused where the accused sexually assaulted her.

15.1. PW3, in her cross examination deposed that she had only informed her uncle Nand Kishore that the accused used to



tease her. She admitted that she did not reveal the sexual assault by the accused to either her mother (PW2) or her uncle before the police was called. She admitted that the first PCR call was made on 10.07.2016 between 08:00 – 08:30 A.M. and the second call on the same day at around 09:00 P.M. She denied that a third PCR call had been made on the same day at 09:05 A.M. She did not reveal the sexual assault either to the PCR officials or the local police when they came to her residence. PW3 admitted that she only told them about the threats by the accused. According to PW3, it was about 1-1½ months before the registration of this case that the accused had offered friendship. She had not accepted this offer and never spoke to him. PW3 admitted that she had stated to the doctor that she and the accused had been friends for about one month and that the accused had proposed marriage, which she refused. According to her, she was then perplexed and scared. She admitted having stated to the police that due to fear, she had told the doctor that the accused was her friend. She had not disclosed to



her parents or her siblings except her sister about the accused's friendship offer or that he was harassing her. She never complained about the conduct of the accused at the office of the Call Centre.

15.2. The house in Mahindra Park where she had been taken to by the accused has two to three floors. She was taken to the ground floor. PW3 admitted that there are other houses as well as a market situated adjacent to the house where she was taken to and that the distance to the said house from her house is about 05 to 10 minutes ride on a motorbike. The accused had taken her to the said house on a scooty. PW3 admitted that she never complained to anyone about the first incident of sexual assault as the accused had threatened her. PW3 admitted that after the incident of 09.07.2016, neither she nor her mother had given any complaint to the police. Her brother and sister had informed their mother about the threat of the accused, but her siblings did not ask



their mother to give a complaint to the police. PW3 admitted that she used to converse with the accused on mobile phone.

16. PW2, the mother of PW3, when examined deposed that on 10.07.2016 while the accused came downstairs from the office of the Call Centre on the third floor, he kept staring towards her house and so she enquired what the matter was. The accused asked for a glass of water. When she went inside the house to take water, the accused entered her house on the pretext that it was very warm outside. When she questioned his entry into her house, the accused tried to drag her daughter (PW3) away. However, she managed to get her daughter released from the clutches of the accused and pushed the accused towards the door. The accused then called her younger daughter (PW6) and directed that her elder daughter (PW3) be brought; otherwise they would have to face dire consequences. At this time, when her son tried to intervene, the accused threatened him also with dire consequences. She then called the police. The accused left after threatening them.



The police came and assured them that the local police would take care of the situation. In the meantime, the accused armed with a knife came to her house at about 08:30 - 09:00 AM and inflicted an injury on the leg of her daughter (PW3) and ran away. She again informed the police. The police arrived and made enquiries with her daughter (PW3) who then revealed that the accused had raped her two to three times “*on the pretext of threatening her to kill her family.....*”

16.1. PW2 in her cross examination deposed that it was on 09.07.2016, the accused had asked for water and that the stabbing incident took place on 10.07.2016. PW2 admitted that her daughter had not disclosed to her the sexual assault before the three PCR calls were made to the police. According to PW2, her daughter disclosed to her about the sexual assault when the latter was being taken to the hospital after being given a blow with a knife by the accused. In fact, the disclosure was made only after



the injury sustained by the daughter (PW3) had been dressed in the hospital.

17. PW6, the sister of PW3, when examined, deposed that, at the time of the incident, she was residing with her family as a tenant on the first floor of a building and that the brother of the accused was the tenant of the third floor of the building, which was taken for starting a call centre, though no such call centre was ever opened. The accused and his brother used to visit the premises occasionally to inspect the same. On 09.07.2016, the accused after going to the third floor, repeatedly kept going up and down the stairs and peeping into their house. PW2, her mother objected to his conduct and questioned him as to why he was peeping into their house. The accused replied that he was thirsty and wanted a glass of water. Her mother (PW2) gave him water and thereafter was occupied with her work. The accused then went upstairs, called her by her name and directed her to reach the third floor. She went upstairs without informing her mother and asked the



accused what the matter was. The accused told her that he wanted to speak to her sister (PW3) and directed her to arrange such a meeting, failing which he would have her family killed. Meanwhile, her brother hearing her voice came upstairs. The accused directed her brother not to interfere in the matter and threatened to kill him as well. The accused reiterated his demand that they should send their elder sister (PW3) to him, failing which the consequences would not be good. Thereafter, the accused left the premises. Coming to know of this, her sister (PW3), left on the same day at about 04:00 PM or 05:00 PM without informing any of the family member(s) and also switched off her mobile phone. Her sister (PW3), however, returned home in the evening. PW6 further deposed that on 10.07.2016, at about 8:00 PM - 9:00 PM, the accused again came to the third floor and started moving around the premises. He again peeped into their house, whereupon her mother questioned him about his conduct. The accused replied that he loved her sister (PW3) quite a lot. Her mother questioned



the conduct of the accused and asked him how he would feel if someone made a similar statement regarding his own sister. In response, the accused stated that he would kill anyone who spoke about his sister in such a manner. Her mother then questioned the accused as to why he was pursuing her daughter (PW3), to which the accused replied that, if PW3 did not speak to him, he would bring four to five boys and have her kidnapped. Saying so, the accused left the place. Her mother informed the police who reached the place and made inquiries from her sister (PW3) and, before leaving, advised the family to contact them again if the accused returned. According to PW6, immediately after police left, the accused entered their house and questioned her sister (PW3) as to what she had disclosed to the police. Her sister (PW3) answered that she had not disclosed anything, the accused took out a knife from his pocket and stabbed her on the calf of her leg. Her mother immediately made another call to the police. The police arrived



and took the accused, following which the present case was registered.

17.1. PW6, in her cross examination, admitted that neither she nor her mother had lodged any police complaint against the accused after the incident on 09.07.2016.

18. PW5, Clerk, Man Singh High School, Johary Nagar, Haryana, deposed that as per school record, PW3 was admitted to the second standard on the basis of Ext. PW5/A admission form and Ext. PW5/B affidavit of her father, wherein the date of birth of PW3 has been recorded as 24.02.2002. PW5, in his cross examination, admitted that at the time of admission of PW3, no certificate issued by the Municipal Authority had been produced. PW5 also admitted that in the admission and withdrawal register, fluid corrections have been made to the name of the child; the father's name as well as the class to which admission was made.



19. In order to constitute an offence under the provisions of the PoCSO Act, the prosecution is required to establish that the victim was a child, that is, below the age of eighteen years, on the date of the occurrence. In the case on hand, the prosecution has relied on the entries in Ext. PW5/C, the Admission Register, to establish that PW3 was a minor at the relevant time. The date of birth of PW3 is seen recorded as 24.02.2002. As the incident is stated to have taken place on a few days in July 2016, going by Ext. PW5/C Admission Register, PW3 would have been approximately 14 years and 4 months old on the date of the incident. A reading of the testimony of PW5 reveals certain circumstances which cast doubt upon the reliability of the entries contained in Ext. PW5/C. PW5 admitted during his cross examination that, in the Admission Register, entries regarding the name of the student (PW3), the name of her father and the class to which admission was sought, had been corrected by using correction fluid (whitener) against Serial No. 6140. There are no



initials of the officer/authority who made the corrections. As to who made the corrections is also not spoken to by PW5. PW5 further admitted that no birth certificate issued by any Municipal Authority or any other contemporaneous document relating to the date of birth of PW3 had been produced before the school at the time of her admission. In the above circumstances, a reasonable doubt regarding the authenticity and reliability of the entries in Ext. PW5/C arises. The possibility of subsequent alteration or manipulation of the entries in the Admission Register cannot be completely ruled out, particularly when the corrections relate to material particulars and the recorded date of birth is not supported by any contemporaneous document furnished at the time of admission. Therefore, Ext. PW5/C cannot be accepted wholly as conclusive proof of the age of PW3, and the same cannot be wholly relied upon to determine whether PW3 was a child within the meaning of the PoCSO Act at the time of the alleged



occurrence. This is especially so in the light of the testimony of PW2, the mother of PW3.

19.1. According to PW2, her family consists of herself, her husband, two sons and two daughters. PW3 is her second born child. She got married in the year 1995 and her first child was born in the year 1998. Her other children were born at intervals of approximately two years. If the said version of PW2 is taken into consideration, PW3, being the second born child, must have been born about two years after the birth of the first child, namely, around the year 2000. The aforesaid version of PW2 is inconsistent with the date of birth of PW3, that is, 24.02.2002 recorded in Ext. PW5/C. In such circumstances, it can only be held that the evidence relating to the age of PW3 has not been established satisfactorily and hence, the provisions of the PoCSO Act cannot be invoked.

20. Coming to the offence punishable under Section 376 IPC. It needs to be seen whether the versions given by PW3,



PW2 and PW6 are consistent and reliable enough to bring home a charge under Section 376 IPC against the accused. A perusal of the testimony of the said witnesses shows multiple inconsistencies that go to the root of the prosecution case. I have already referred to the testimony in detail. Though it was argued that there are several contradictions in the testimony of the prosecution witnesses, no such contradictions have been proved by resort to Section 145 of the Evidence Act, 1872. However, the prosecution relies on Ext. PW3/A FIS/FIR and Ext. PW3/B Section 164 statement to corroborate the testimony of PW3. The question is, do the said statements corroborate the testimony of PW3? It is quite doubtful because different versions are seen. As noticed earlier, in the FIS/FIR, the allegation is that a few days before 09.07.2016, the accused under the threat of killing PW3's family members, raped her in the house of his uncle. This was followed by another instance of rape on 09.07.2016. In the FIS/FIR, PW3 has no case that the rape was at gun/knifepoint. However, in the 164 statement,



her version is that the rape was at knife/gunpoint and that her photographs had also been taken. According to PW3, before 09.07.2016 and on 09.07.2016, she was compelled to accompany the accused to his uncle's house situated about 5-10 minutes ride from her house as he threatened to kill her family members. PW2, the mother has an entirely different case. Going by her testimony, the incident seems to have happened on 10.07.2016. The accused came to her house and tried to kidnap her daughter, which she foiled/thwarted. There is no such case for either PW3 or PW6. PW6, the sister of PW3 on the other hand, deposed that on 09.07.2016, PW3, her elder sister left their residence without informing any of the family members and that the latter returned home the next morning. No element of kidnapping or coercion is seen in the version of PW6.

21. Further, PW3's case of being compelled/forced to join the company of the accused seems highly improbable. According to PW3, the accused forced a friendship on her. If she



was not interested in the friendship, what was the compelling reason to accept the offer of friendship? No reasons are given. Further, the accused seems to have taken her twice on a two-wheeler to his uncle's house situated nearby and thereafter, committed the rape/sexual assault. Why was it not possible for PW3 to raise an alarm when admittedly there are several houses and a market situated adjacent to the house where the incident took place? The case of PW3 that she was forced to join or accompany the accused to the nearby house sounds quite improbable and unbelievable. PW3 repeatedly joins the accused, goes to a residence nearby, followed by the physical relations. Despite PW3's case of it being under threat, she neither informs her parents nor the police about the incident, for which also, no cogent or plausible reasons or explanations are given.

22. The medical evidence also does not support the prosecution story. Going by Ext. PW3/A FIS/FIR and Ext. PW3/B 164 statement, the accused had stabbed on her leg with a knife.



However, PW3, when examined, has no such case. According to her, the accused, on the said day, hit her on her leg and ran away. He is also alleged to have threatened to open fire and abduct her by engaging 10 to 12 persons. There is no such case either in the FIS/FIR or in the 164 statement. PW1, the doctor, who examined PW3 on 10.07.2016, deposed thus:- “...on local examination, I found CLW over right leg with bandage on it and it was sutured...” Was the injury already bandaged before PW1 examined PW3? If so, which hospital or doctor examined her first? Why the said doctor was not examined? Therefore, the medical evidence is also not satisfactory.

23. In the aforesaid circumstances, I find that the prosecution has failed to prove the case beyond reasonable doubt, and so, the appellant/accused is entitled to the benefit of doubt. Therefore, the conviction and sentence of the appellant for the offences punishable under Section 6 of the PoCSO and Sections



376 and 506 IPC is found unsustainable and hence is liable to be set aside.

24. In the result, the appeal is allowed. The appellant is acquitted under Section 235(1) Cr.P.C. of the offences punishable under Section 6 of the PoCSO and Sections 376 and 506 IPC.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

AUGUST 05, 2026/rs/kd