



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

% *Judgment Reserved on: 05.08.2026*
Judgment pronounced on: 10 .08.2026

CNR No. DLHC010953452025

+ **CRL.A. 1636/2025**

MOHAN @ SUNNY

.....Appellant

Through: Ms. Rukhmini Bobde, Mr. Vinayak
Aren and Ms. Aishwarya Nigam,
Advocates (DHCLSC).

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Dilbag Singh, PS Kashmiri Gate.
Mr. Manoviraj Singh, Amicus Curiae
for victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 415(2) read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023, the sole accused in Sessions Case No. 91/2017 on the file of the Additional Sessions Judge, (FTSC) (PoCSO)-01, Central District, New Delhi, assails the judgment dated 02.08.2025 and the order on



sentence dated 21.08.2025, as per which, he has been convicted and sentenced for the offences punishable under Section 377 of the Indian Penal Code, 1860 (the IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 30.11.2016 at about 09:00 PM, at Chhata Rail, GPO Kashmere Gate, Delhi, the accused, committed carnal intercourse and sodomized the victim, a minor boy aged 10 years. Hence, as per the chargesheet/final report dated 01.12.2016, the accused was alleged to have committed the offences punishable under Section 377 IPC and Sections 6 and 8 of the PoCSO Act.

3. On the basis of Ext. PW1/A FIS/FIR of PW1 given on 01.12.2016, crime no. 419/2016, Kashmere Gate police station, i.e., Ext. PW3/A FIR dated 01.12.2016 alleging the commission of offences punishable under Section 377 IPC and Sections 6 and 8 of the PoCSO Act was registered by PW3, Assistant Sub-Inspector. PW14 conducted the investigation into the crime and on



completion of the same, submitted the chargesheet/final report dated 01.12.2016 before the Court, alleging the 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 of the Code of Criminal Procedure, 1973 (the Cr.P.C.). After hearing both sides, the trial court, *vide* order dated 30.03.2017, framed a Charge under Section 377 IPC and Sections 4 and 6 of the PoCSO Act, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 18 were examined and Exts. PW1/A-B, PW2/A, PW3/A-D, PW4/A-B, PW5/A-D, PW6/A-B, PW9/A-B, PW10/A, PW11/A-C, PW14/A-D, PW14/PX, and PW15/A-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 claimed that he had been falsely implicated. On the day of the incident, he had been released from jail and was passing through “*the Railways under bridge*”. Some police men and NGO officials present there suddenly apprehended him. They forcibly took him to the police station and falsely implicated him in this case. The victim raised false allegations against him at the instance of the police and the NGO officials.

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 on behalf of the defence.

9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, *vide* the impugned judgment dated 02.08.2025, held the accused guilty of the offences punishable under Section 377 IPC and Section 6 of the PoCSO Act. *Vide* order on sentence dated 21.08.2025, the accused has been sentenced to undergo rigorous imprisonment for a period of 20 years along with 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 6 of the PoCSO Act. No separate sentence has been awarded for the offence punishable under Section 377 IPC. Aggrieved, the accused has come up in appeal.



10. It was submitted by the learned counsel for the appellant/accused that the prosecution has not placed on record satisfactory evidence to prove that PW1 was below 12 years at the time of the incident, in order to invoke the provisions of Section 6 of the PoCSO Act. Ext. PW15/A copy of admission/withdrawal register is not enough to establish the age of PW1. In support of the argument, reliance was placed on the dictum in **State (GNCT of Delhi) vs. Mohd. Irfan** 2017: DHC: 3500 DB.

10.1. It was further pointed out that there are several inconsistencies in the testimony of PW1 regarding the incident as well as the dress he was wearing at the time of the alleged incident.

10.2. The testimony of PW4 and PW5, the NGO officials are not consistent with that of PW1 regarding the circumstances and manner in which they found PW1 and the accused at the scene of occurrence. It was also pointed out by the learned counsel that the FSL report is in favour of the accused. It was lastly submitted that PW1, being a poor rag-picker, at the behest of the NGO officials



and in exchange for money, had been tutored to falsely depose against the accused. The aforesaid aspects, according to the learned counsel, are more than sufficient to doubt the prosecution case and acquit the accused.

10.3. Regarding sentencing, it was submitted by the learned counsel that before the amendment of Section 6 of the PoCSO Act with effect from 16.08.2019, the offence was punishable with rigorous imprisonment for a term not less than 10 years but which could extend to imprisonment for life and fine. The incident is alleged to have taken place on 30.11.2016. Therefore, the trial court went wrong in sentencing the accused to 20 years of imprisonment. The accused has already undergone incarceration for a period of about 9 years and 8 months. Hence, it was submitted that the sentence imposed on the accused may be modified and reduced to the minimum sentence of 10 years of rigorous imprisonment.



11. *Per contra*, it was submitted by the learned Additional Public Prosecutor that there is no infirmity in the impugned judgment calling for an interference by this Court. The materials on record, according to the prosecutor, are sufficient to convict the accused. Further, it was pointed out that the judgment relied on by the appellant/accused to dispute Ext. PW15/A original admission/withdrawal register, is *per incuriam* in light of the dictum of the Apex Court in **State of Maharashtra vs. Sujay Mangesh Poyarekar(2008) 9 SCC 475**. Hence, no interference into the impugned judgment is called for.

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 impugned judgment warranting an interference by this Court.

14. I shall briefly refer to the evidence on record relied on by the prosecution in support of the case. Ext. PW1/A FIS/FIR given on 01.12.2016 by PW1 in Hindi, translated reads thus:-



“...On 30.11.2016, at 05:00 PM, I was at Shishganj Gurudwara, Old Delhi with my friend Sumit. We got separated as Sumit went somewhere. I went to Chatta Rail, GPO Kashmere Gate to sleep as it was night time. A man came there and asked me to join him and that he would give me food and clothing. He gave me kachori to eat and went to sleep in a while. After some time, at around 09:00 PM, he turned me around, removed my trousers from behind and began to forcibly insert his penis into my anus. He committed sexual act with me. When I tried to scream, he pressed my mouth with his hand. After freeing myself from his grip, when I was running away, I saw two men approaching me. They stopped me. Their names are Deepak Dass and Phuntsok Tserir as revealed by them to the police. I told them everything and showed them the man. The two men called the police and handed over the man who had sexually assaulted me to the police. His name is Mohan @ Sunny, S/o Prahlad Singh, R/o H. No. 3/5, Gali No. 3, Sector-15, Sonipat, Haryana.....”



15. PW1, in his 164 Statement marked as Ext. PW1/B again recorded in Hindi on 01.12.2016 translated reads thus:-
“...On 30.11.2015, at 05:00 P.M., I accompanied my friend Sumit to the Gurdwara near Red Fort for supper. I do not remember the name of the Gurdwara. I got separated from Sumit. Thereafter, I went to sleep under the railway bridge near the Hanuman Mandir. There, a man approached me and asked me to accompany him and promised to provide food and employment as a rag picker. It was about 10:00 P.M. when the aforesaid man tried to molest me. He took off my pants and underwear before proceeding to sodomize me. I experienced pain and tried to scream but he clamped my mouth. When I pried myself out of his grip and tried to flee, two men stopped me. I related the entire ordeal to them and showed them the man. The aforesaid two men caught the man who revealed his name to be Shammi. There were two other children also there who managed to flee. The two brothers informed the



police and handed the man to the police. The man seemed to be in an inebriated condition...”

15.1 PW1 when examined deposed that he is unaware of his date of birth. According to him, he was 15 years old at the time of his examination before the Court. PW1 deposed that he does not remember the date of the incident. But it was about five years back. He along with one Sumit had gone for rag picking. The time was about 05:00 PM. It was a Saturday during winter. On the said day, while he was sleeping under the railway bridge ahead of Hanuman Mandir, near the railway station, Sunny (the accused) came and removed his “*nicker and did batmaji with me by inserting penis in my anus*”. He tried to raise an alarm, but the accused gagged his mouth with his hand. Thereafter, when the police reached there, the accused along with two other boys ran away. When he was running away, the police caught him. One tall bhaiya along with 05 to 06 persons apprehended him and asked him why he was sleeping there. They took him to the police



station, where one 'Sirji' enquired the matter. He then disclosed the incident. The said 'Sirji' took him to the spot in a gypsy. He identified the accused Sunny, who was apprehended by the police. The two boys that were there along with the accused ran away on seeing the police. The police interrogated the accused and slapped the latter a few times. PW1 identified Exts. P3 and P4 (colly) as the dress worn by him at the time of the incident.

15.2 PW1 in his cross examination deposed that on the date of the incident, he went to sleep under the railway bridge by about 08:00 PM, at which time there were about 10-15 persons sleeping under the bridge. To a question whether it was the police or the *bhaiyas* who rescued him who reached the spot first, answered that it was the latter who reached first. The two *bhaiyas* caught him when he was trying to run away from the clutches of the accused. The accused was apprehended from under the bridge. The accused himself had revealed his name. According to PW1, he was wearing Ext. P1 sweater, a brown colour pant and a T-shirt. He was not



wearing any undergarment. But, he was not wearing the red colour nicker which had been earlier shown to him. The trial judge is then seen to have directed the MHC(M) to again produce the clothes of PW1. The red colour nicker exhibited as part of Ext. P4 colly was again shown to PW1. PW1 deposed that that the said nicker does not belong to him and that the same belongs to the accused. His clothes were seized by the police and the two *bhaiyas* who had helped in removing his clothes at the police station. According to PW1, it was the accused who was wearing the aforesaid red *nicker*. On the said day, he was wearing a short pant, i.e., till his calf and a shirt. He was also wearing underwear. PW1 admitted that he had shouted in pain when the accused sexually assaulted him. The other persons sleeping on the *patridid* wake up on hearing his cries. But they left the spot without apprehending the accused. There was no bleeding from his anus due to the assault, but he was in extreme pain (*khoonnahiniklathaa, par mujhe bahut dardhuathaa*).



16. PW2, CMO, Aruna Asaf Ali Hospital, Delhi, deposed that on 01.12.2016, a patient aged about 10 years (PW1), had been brought to the hospital by Constable Rajesh (PW6), with a history of sexual assault. On local examination, no external injury was found. After examining the boy, he referred the latter to Paediatrics, Surgery and Forensic Department for expert opinion. He also prepared Ext. PW2/A MLC.

17. PW4, Community Mobilizer, in the NGO named Centre for Equity Studies at Kashmere Gate, Delhi, deposed that on 30.11.2016, the NGO had organized a programme for providing free medical aid to homeless persons. On the said day, he along with his colleague Phunsok Tserir (PW5) were looking for homeless people in need of medical aid near the GPO, Kashmere Gate. He saw a man sitting with four minor boys under the bridge near GPO. When he approached them, three of them ran away, but one boy (PW1) looked quite frightened. The boy informed him that a man had done “*galatkaam*” with him. He then made a call to



100 number. The boy identified the accused as the man who had done “*galatkaam*” to him. PW4 identified the accused before the trial court. Shortly thereafter the police arrived. They went to the police station and the entire incident was disclosed to the police. Thereafter, they returned to the spot along with the police and apprehended the accused at the instance of the boy (PW1). PW4 was unable to recall the name of the boy who was rescued. The boy was medically examined.

17.1 PW4 in his cross examination deposed that on the date of the incident, he had made a call to 100 number and informed that a suspicious man along with four children were lying beneath the Chhata Rail Pul, near GPO, Kashmere Gate on the way towards Red Fort. PW4 denied having stated to the police that when he along with his colleague were crossing Chhata Rail Pul, they had seen a boy come running towards them or that they found boy looking perplexed or that the boy had told them that the person standing nearby had done “*galat kaam*” to him. PW4 denied



having stated to the police that he along with PW5 had overpowered the accused. He with his friend (PW5), the Investigating Officer (IO) and some other police officials did accompany the child (PW1) to the hospital for his medical examination.

18. PW5, associated with, on 30.11.2016 at about 09:00 PM, while he and PW4 were near the GPO bridge, Kashmere Gate, Delhi, they saw some street children running away. They also saw a man there. They managed to get hold of one child (PW1) aged about 10 years, who upon enquiry revealed that some wrong act had been done to him. They contacted the police. The child (PW1) identified the man who had sodomized him, whose name the police found to be Mohan. The police apprehended the accused. He had accompanied the child (PW1) to the hospital for medical examination. The clothes worn by the child (PW1) were seized by the police in his presence as per Exts. PW5/C and PW5/D seizure memos which bear his signature. Ext. P4 (Colly) parcel No. 7



containing one red coloured *nicker* with black stripes was identified by PW5 as belonging to the accused.

18.1. PW5 in his cross examination deposed that he is unaware whether the place of incident is called Chhatta Rail. On the said day they saw PW1 at about 09:00 PM. PW5 denied the suggestion that since the NGO in which he was working had a low profile, in order to attain popularity, his NGO in connivance with the police had falsely implicated the accused. He also denied the suggestion that the NGO used him and PW4, his friend as instruments in creating such a case so as to secure funds from the government.

19. PW15, Principal, MCD, Dilshad Garden, A-Block, Delhi, when examined deposed that Ext. PW15/A is the extract of the admission/withdrawal register containing the entry regarding the admission and withdrawal of the student (PW1) at serial no. 7753, which is at page no. 108 of the said register. As per Ext. PW15/A, the date of birth of PW1 is 12.10.2005.



20. PW16, father of PW1 when examined deposed that his second son 'V' (PW1) is also known as 'R' and that his son's name in the school register has been recorded as 'V'. In his cross examination PW16 admitted that it was his wife who had gone to the school for the admission of his son in school.

21. As noticed earlier, the appellant/accused has been convicted and sentenced for the offences punishable under Section 377 IPC and Section 6 of the PoCSO Act. The principal challenge raised by the learned counsel for the appellant/accused was that the prosecution has failed to prove that PW1 was below twelve years of age on the date of the incident, that is, 30.11.2016, so as to attract Section 6 of the PoCSO Act. The learned counsel for the appellant argued that Ext. PW15/A an extract of the school admission and withdrawal register, was by itself insufficient to establish PW1's age. In support of this contention, reliance was placed on the dictum in **Mohd. Irfan** (*supra*).



21.1. In **Mohd. Irfan** (*supra*), the school record was discarded because the foundational document itself was demonstrably unreliable. The date of birth entry rested upon an affidavit executed by the prosecutrix's mother, who passed away before swearing the affidavit; there were discrepancies regarding the identity of the deponent, and the school record was inconsistent with the prosecutrix's own assertion of her age. Therefore, it was found that the prosecution had failed to establish the authenticity of the very basis of the school entry.

22. The present case stands on an entirely different footing. PW15, Principal of MCD School, proved Ext. PW15/A admission register, recording PW1's date of birth as 12.10.2005, and no evidence was brought out to show that the entry was founded on fabricated or unreliable material. More importantly, PW15 was never cross-examined by the learned counsel for the appellant/accused before the trial court. Therefore, her testimony remains unchallenged and there is no reason to doubt the



genuineness of the school record. The testimony of PW15 finds corroboration in the testimony of PW16, PW1's father, who explained that PW1 is known by two names and that his school records reflected one of those names. Although PW16 admitted that PW1's mother had completed the admission formalities, no suggestion was put to either PW15 or PW16 that the date of birth entered in the register was fabricated or incorrectly recorded. The incident occurred in the year 2016, and PW1 was examined before the trial court in the year 2017. In his testimony, PW1 stated that he was about 15 years of age. PW1's date of birth was 12.10.2005 as per the school record, making him approximately 11 years and 1 month old on the date of the incident, i.e., 30.11.2016. and was, therefore, unquestionably a minor on the date of the occurrence. The inability of PW1 to state his exact age or date of birth cannot be viewed in isolation. The evidence on record reveals that PW1 was a homeless child living on the streets and earning his livelihood by rag-picking. In such circumstances, it would be



unrealistic to expect him to possess exact knowledge of his date of birth or to narrate every detail of the incident with mathematical accuracy. It is only natural that some variations may be present in his testimony with regard to peripheral aspects. The evidence led by the prosecution satisfactorily establishes that PW1 was a minor on the date of the incident. The prosecution has proved beyond reasonable doubt that PW1 was below 12 years of age on the date of the incident, satisfying the age requirements under Section 6 of the PoCSO Act.

23. A careful reading of Ext. PW1/A FIS/FIR, Ext. PW1/B 164 statement of PW1 and his testimony before the trial court reveals that the prosecution case remains consistent on all material particulars. In each of these versions, PW1 has consistently stated that while he was sleeping beneath the railway bridge near Chhatta Rail, Kashmere Gate, the accused approached him, lured him on the pretext of providing food and work, removed his clothes and forcibly committed anal intercourse. PW1 has further remained



consistent in stating that when he attempted to raise an alarm, the accused gagged his mouth, and that immediately after he managed to escape, he disclosed the incident to the persons who came to his rescue, leading to the arrest of the accused by the police. Thus, the identity of the accused, the place of occurrence, the nature of the sexual assault and the sequence of events immediately following the incident have remained substantially unchanged throughout his versions.

24. The discrepancies highlighted by the learned counsel for the appellant/accused pertain to matters such as the exact time of the occurrence, the description of the clothes worn by PW1, whether he was wearing an undergarment or a red-coloured *nicker*, the identity of the person to whom the red *nicker* belonged, the precise order in which the NGO workers and the police reached the spot, and certain minor variations regarding the manner in which the accused disclosed his name. These inconsistencies neither detract from the consistent allegation of forcible anal



intercourse nor cast any reasonable doubt on the identity of the accused. It is well settled that minor discrepancies, omissions or improvements, which do not go to the root of the prosecution case, are natural consequences of normal errors of observation and memory, particularly when a child witness recounts a traumatic incident after a lapse of time. It must also be borne in mind that PW1 was a homeless child surviving on the streets and engaged in rag-picking and cannot be expected to give precise particulars regarding dates, time or clothing with the same degree of accuracy as a witness living in a settled environment. Therefore, the discrepancies pointed out by the learned counsel for the appellant/accused are insufficient to discard an otherwise cogent and trustworthy testimony.

25. The testimony of PW1 also receives substantial corroboration from the evidence of PW4 and PW5, who are independent witnesses associated with the NGO and had no previous acquaintance either with PW1 or the accused. Their



presence at the place of occurrence has not been disputed. Both witnesses consistently deposed that while they were conducting an outreach programme for homeless persons near GPO, Kashmere Gate, they noticed a child in a frightened and disturbed condition beneath the bridge. Upon enquiry, the child immediately disclosed that a person had committed “*galat kaam*” with him and identified the accused as the perpetrator. Thereafter, the police were informed, and the accused was apprehended at the instance of PW1. Thus, the evidence of PW4 and PW5 provides corroboration to the version of PW1 that the disclosure of the occurrence was made at the earliest available opportunity and that the accused was identified immediately after the incident.

26. The cross-examination of PW4 and PW5 does not bring out any material capable of discrediting their testimony. Although certain omissions with reference to their statements recorded during investigation were brought on record, the same relate only to the precise manner in which they first noticed PW1 or whether



they themselves physically apprehended the accused. These variations are confined to the sequence of events leading to the arrival of the police and do not affect the material fact that PW1, immediately after the incident, disclosed the sexual assault and identified the accused before them. The submission made by the learned counsel for the appellant/accused that the NGO officials falsely implicated the appellant to gain publicity is also denied by them.

27. It is true that Ext. PW2/A MLC notes that on local examination, *“no external injury was found on the body of the victim”*. The absence of external injuries is not sufficient to discredit the otherwise consistent and trustworthy testimony of PW1. The medical evidence does not contradict the ocular version of PW1. As held in **Solanki Chimanbhai Ukabhai v. State of Gujarat, AIR 1983 SC 484**, ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use



which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence (See also **Rangnath Shamrao Dhas v. State of Maharashtra, (2009) 4 SCC 33: 2009 KHC 4471**).

28. Coming to the forensic evidence, it is seen from the impugned judgment that the trial court has placed reliance upon the Forensic Science Laboratory (FSL) report while recording the finding of guilt of the accused. During the course of arguments, the learned Additional Public Prosecutor fairly submitted that the FSL report had not been formally marked or proved during trial. Nevertheless, mere omission to mark the FSL report as an exhibit



is not, by itself, fatal to the prosecution case. The law is well settled that the FSL report is essentially corroborative in nature and is not substantive evidence. Where the prosecution case is otherwise established by cogent and reliable ocular evidence, the absence of formal proof of the FSL report or its non-marking as an exhibit would not, by itself, vitiate the conviction. In the case on hand, as already discussed, the testimony of PW1 is found to be natural, consistent and trustworthy and receives due corroboration from the evidence of PW4 and PW5. The conviction, therefore, does not rest solely upon the FSL report. Consequently, even if the FSL report is eschewed from consideration, the remaining evidence on record is sufficient to sustain the finding of guilt recorded against the appellant.

29. That being the position, I am of the considered opinion that the trial court has rightly convicted the accused for the offences punishable under Section 377 IPC and Section 6 read with Section 5(m) of the PoCSO Act.



30. The only question that remains for consideration of this court is on the quantum of sentence awarded by the trial court. The trial court has awarded a sentence of 20 years for the offence punishable under Section 6 of the PoCSO Act. The aggravated penetrative sexual assault in this case took place on the night of 30.11.2016. Section 6 of the PoCSO Act as it then stood reads thus:-

“6. Punishment for aggravated penetrative sexual assault— Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine”

31. In the light of the dictum in **Ravinder Singh v. The State Govt. of NCT of Delhi, (2024) 2 SCC 323**, the trial court could not have imposed a sentence of 20 years, though the High Court and the Apex Court are empowered to do so. Considering the nature and gravity of the offence and the facts of the present



case, the sentence is modified to a period of 10 years' rigorous imprisonment.

32. In the result, the appeal is partly allowed. The conviction of the accused for the offences punishable under Section 377 IPC and Section 6 of the PoCSO Act is confirmed. However, the substantive sentence of imprisonment imposed by the trial court for the offence punishable under Section 6 of the PoCSO Act is modified to 10 years.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

AUGUST 10, 2026
Kd/rs