



2026:DHC:6649



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

% *Judgment Reserved on: 10.08.2026*
Judgment pronounced on: 14.08.2026

CNR No. DLHC011021232025

+ **CRL.A. 1697/2025**

RAJESH KUMAR PANDEYAppellant

Through: Ms. Jahanvi Worah, Advocate.

versus

STATE (NCT OF DELHI)Respondent

Through: Mr. Utkarsh, APP for State with
IO/SI Manju, P.S. Sagarpur, Delhi.

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. 9643/2016 on the file of the Additional Sessions Judge, (PoCSO)-02, New Delhi District, Patiala House Court, Delhi, assails the judgment dated 31.10.2025 and the order on sentence dated 12.11.2025, as per which, he has been convicted and sentenced for the offences punishable under



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Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act) and Section 376(2)(i) of the India Penal Code, 1860 (the IPC).

2. The prosecution case is that on 07.11.2016, at about 06:00 P.M., in a factory at RZ-98/284, Gali no. 2, West Sagar Pur, Geetanjali Park, New Delhi, the accused committed penetrative sexual assault on PW1, a minor girl aged about 7 years. Hence, as per the chargesheet/ final report, the accused is alleged to have committed the offences punishable under Sections 6, 8 and 10 of the PoCSO Act.

3. On the basis of Ext. PW1/A FIS/FIR of PW1 given on 07.11.2016, crime no. 419/2016, Sagar Pur police station, i.e., Ext. P1 dated 08.11.2016 alleging the commission of offences punishable under Sections 8 and 10 of the PoCSO Act was registered by CW7 (Charge Witness), Head Constable (HC). PW8 conducted the investigation into the crime and on completion of the same, filed the chargesheet/final report alleging the



commission of the offences punishable under Sections 6, 8 and 10 of the PoCSO Act.

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 6 PoCSO Act and alternatively under Section 376(2)(i) IPC. This was later modified *vide* order dated 29.07.2019 to a Charge under Section 6 PoCSO Act and Section 376(2)(i) IPC, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 8 were examined and Exts. PW1/A-B, PW2/A-B, PW2/DA, PW4/A-C, PW6/A, PW7/A-B, PW8/A-C, and P1-13 were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the



incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. The accused submitted that PW1 used to take tuition classes from his daughter. The tuition fees for the past three years was pending. The accused was running a small food stall from where PW1 and her family used to buy food. An amount of ₹65,000/- was due from PW1 and her family. Instead of paying the amount, they quarrelled with him and 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 CrPC 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. v. State of Kerala**, 2009 SCC OnLine Ker 2888: 2009 (3) KHC



89). 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 31.10.2025, held the accused guilty of the offences punishable under Section 6 of the PoCSO Act and Section 376(2)(i) IPC. *Vide* order on sentence dated 12.11.2015, the accused has been sentenced to undergo rigorous imprisonment for a period of 14 years along with fine of ₹10,000/-, 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. In the light of Section 42 of the PoCSO Act, no separate sentence has been awarded for the offence punishable under Section 376(2)(i) IPC. Aggrieved, the accused has preferred this appeal.



10. The learned counsel appearing for the appellant/accused submitted that the prosecution version with regard to the overt acts attributed to the accused has not been proved beyond reasonable doubt as there are several improvements and contradictions in the statements given by PW1. It was contended that, at best, the evidence discloses an offence of aggravated sexual assault punishable under Section 10 of the POCSO Act as the materials do not establish the essential ingredient of penetration necessary to attract the offence punishable under Section 6 of the POCSO Act. The learned counsel for the accused further submitted that, in her earlier statements, PW1 had used expressions such as “*lagayi*” and “*laga diya*”, which, according to the defence, do not convey an allegation of penetrative sexual assault and materially differ from the specific allegation of penetration subsequently made during her testimony before the Court.

10.1. It was further contended that the doctor who had actually conducted the medical examination of PW1 was not



examined as a witness by the prosecution. Consequently, the defence was deprived of an opportunity to cross examine the examining doctor regarding the history furnished by PW1 at the time of her medical examination and to seek clarification regarding the findings recorded in the MLC including the injuries noted in the MLC. A major procedural infirmity was raised with regard to the handling and preservation of the forensic exhibits, particularly the blood samples and clothes of the victim.

10.2. The learned counsel for the appellant/accused further submitted that the prosecution failed to establish the chain of custody of the said exhibits in accordance with law. It was pointed out that the exhibits remained in the *malkhana* for approximately 16 days, yet the *malkhana* register was neither formally proved nor was the personnel concerned responsible for receiving and depositing the exhibits examined as witnesses. In the absence of such evidence, the prosecution failed to satisfactorily establish that the exhibits remained in safe custody and were not tampered with,



before being forwarded for forensic examination.

10.3. The learned counsel for the appellant/accused further pointed out that there is a material discrepancy between the testimony of PW1's mother and the physical exhibits seized by the police. According to the learned counsel, CW1, the mother of PW1, deposed that, at the relevant time, the child was wearing a pant, panty and shirt, whereas the Investigating Officer (I.O.) seized and forwarded for forensic examination only an underwear. According to the defence, this unexplained discrepancy assumes significance in assessing the reliability of the forensic evidence.

11. *Per contra*, the learned Additional Public Prosecutor submitted that the impugned judgment does not suffer from any infirmity warranting interference by this court as the trial court has duly considered each and every ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits. It was further contended by the learned APP that the defense has failed to bring on record any



contradiction of such a nature as would materially affect the prosecution case following the procedure contemplated under Section 145 of the Evidence Act. It was further submitted that PW1 has remained consistent with regard to the essential fact of penetration throughout her FIS/FIR, Section 164 statement and testimony before the trial court which is further corroborated by the findings recorded in the MLC prepared pursuant to her medical examination.

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 07.11.2016 by PW1 in Hindi, translated reads thus:- “...Today, at 6:00 PM, I went to my friend Kanishka Gupta’s place. My friend lives on the first floor of a factory. At the factory, I met uncle



Rajesh (the accused), who resides on the second floor. Uncle Rajesh (the accused) took me inside the factory where he unzipped his pants and took off my pants. He put his genitals (susu walicheez) behind me on my hips (meri toilet wali jagah). Then uncle peed on me. I put on my pants as my mother called out to me. I went to my house where I narrated the incident to my mother...”

14.1. PW1, in her 164 Statement marked as Ext. PW1/B again recorded in Hindi on 08.11.2016 translated reads thus:-“...I was going to my friend Kanishka Gupta when Rajesh uncle (the accused) stopped me and locked the gate of the factory. Thereafter, he unzipped his pants and took off my pants. He pressed his genitals (jahan se uncle toilet karte hain) against me from behind (the child is pointing towards her hips). Thereupon, my mother called out to me. Frightened, uncle peed in my pants. Then nothing happened, I went to my mother and narrated the incident as I have to you...”



14.2. PW1, when examined before the trial court, stood by her version given in Ext. PW1/A FIS/ FIR and Ext. PW1/B Section 164 Statement. PW1 deposed that she was not able to recollect the exact date or month, but stated that in the year 2016, at about 6:00 PM, she had gone to the first-floor residence of her friend K, whose house is situated near her own. There is a factory on the ground floor of the premises. According to PW1, the accused met her on the ground floor, where his factory is operating. The accused was residing on the second floor of the same premises. The accused took her inside the factory near the staircase and shut the door from inside. No other person was present in the factory. The accused unzipped his pant, removed her pant and inserted his penis into her anus. PW1 further deposed that the accused urinated on her. Thereafter, she put on her trousers. She returned home and disclosed the entire incident to her mother. To a leading question regarding the date of incident, PW1 answered that the incident had taken place on 07.11.2016.



14.3. PW1, in her cross examination, denied having been tutored by anyone prior to her testimony before the Court. She had never earlier gone to the factory to play, but had gone to the factory for the first time on the date of the incident. PW1 further deposed that she knew the accused prior to the incident as she used to attend tuition classes conducted by the latter's daughter. PW1 denied the suggestion that no assault had taken place or that there had been a dispute regarding payment of tuition fees to the daughter of the accused, or that her father had not paid the tuition fees, resulting in a dispute between her father and the accused. PW1 further denied the suggestion that her father had used her as a tool for falsely implicating the accused as he was demanding payment of the tuition fees from her father. PW1 was recalled pursuant to an application under Section 311 Cr.P.C. being allowed. PW1 was recalled for the specific purpose of ascertaining whether there had been any insertion or penetration. On being asked by the Court as to whether the accused had merely touched



his penis to her “*potty wali jagah*” or had inserted it, PW1 answered that he had put it inside.

15. The mother of PW1 was not arrayed as a witness in the chargesheet. Hence, she is seen examined as a Court witness as per order dated 15.02.2021. CW1, when examined, deposed that on 07.11.2016, she was present outside her house in the *gali* while PW1 was playing with other children. She told PW1 to continue playing as she was going to the market to purchase household articles. PW1, however, told her that she had to take a book from her friend. She proceeded to purchase the household articles and she returned within about ten minutes. As her daughter (PW1) was not seen in the *gali*, she called out to her daughter. But her daughter (PW1) did not respond. She then went to the first floor of her house and again called her daughter (PW1), whereupon the latter came running back to the house. She noticed that her daughter’s (PW1) pant was wet around the vaginal area. On being asked about the same, her daughter (PW1) told her that when the



latter had gone to her friend's house to take a book, the accused caught hold of her at the staircase leading to her friend's house and prevented her from going there. The accused removed her pant and inserted his penis from her back side. When her daughter (PW1) tried to shout, the accused prevented it by pressing her mouth twice and also slapped her. She further deposed that, upon learning about the incident, she immediately went to the house of the accused and confronted him as to why he had committed such an act on her daughter despite he being the father of three daughters. The accused and his family members started quarrelling with her and out of fear, she returned home. She then called her husband through the mobile phone of a neighbour and asked him to return home. On his arrival, she informed him about the incident. Her husband also went to the house of the accused and confronted the latter, whereupon the family members of the accused again quarrelled with them. Thereafter, the police was informed.

15.1. CW1, in her cross examination, admitted that her



daughter (PW1) used to attend the tuition classes held by the accused's daughter, namely, Bulbul. CW1 denied the suggestion that there was any dispute between the families regarding non-payment of tuition fees. CW1 further deposed that about an year before to the incident, the accused had been running a business of selling momos. CW1 denied the suggestion that she and her children used to visit the shop of the accused and have momos without paying money. CW1 further denied the suggestion that the accused had seen her daughter indulging in inappropriate behaviour/sexual act with another boy and so he had slapped her. CW1 further deposed that when she went to the house of the accused, she asked him why he had slapped her daughter. The accused told her that her daughter had been indulging in inappropriate behaviour with other children. She enquired from the other children whether there had been any such inappropriate behaviour. But the children told her that they had not gone to the factory. CW1 further deposed that her daughter (PW1) was



wearing a T- shirt, panty and pants.

16. PW2, the father of PW1, when examined, fully supported the version of CW1, his wife. PW2, in his cross examination, denied the suggestion that he had not paid the tuition fees to the accused's daughter, resulting in a dispute between him and the accused. PW2 also denied the suggestion that he had used PW1, his daughter as a tool, or that the accused had been falsely implicated as the latter was demanding payment of tuition fees.

17. PW6, Senior Resident, Department of Obstetrics and Gynaecology, DDU Hospital, New Delhi, deposed that she had been deputed to appear and depose on behalf of Dr. Pushpa who had left the services of the hospital and that the whereabouts of the latter was not known. PW6 identified the handwriting and signature of the aforesaid doctor who had examined PW1 and issued the certificate. The certificate has been marked as Ext. P5. PW6 further deposed that on 08.11.2016, PW1 had been referred by the CMO concerned to the Senior Resident, Gynaecology, for



further management. Dr. Pushpa thereafter conducted the gynaecological examination of PW1. On examination, Dr. Pushpa noticed “*induration on fourchette*”. PW6 further explained that the term “induration” is generally used to denote thickening following an injury or inflammation in an area. Dr. Pushpa also noticed that the hymen of the victim was freshly torn and that there was congestion on the hymen. PW6 deposed that the term “congestion” is generally used to denote redness in response to an injury. Dr. Pushpa further noticed tenderness in the vagina and cervix of the victim. Dr. Pushpa had collected forensic samples of PW1, including her lower undergarments, as recorded on the reverse side of the MLC. PW6, in her cross examination, admitted that Dr. Pushpa had not recorded any injury on the anal area of the victim in the MLC. PW6 admitted that in the brief history recorded in the MLC, no signs of injury or pain on any part of the PW1's body had been noticed.

18. PW7, then Junior Forensic Chemical Examiner, FSL,



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Rohini, deposed that on 24.11.2016, two sealed parcels were received at the laboratory for examination. On 16.02.2017 she had examined the exhibits contained in the parcels. The seals affixed on the parcels were found matching with the sample seal. Semen was detected on Ex. A1a, being the underwear of PW1. Both exhibits A1a and B1 (the blood sample of the accused), were subjected to DNA isolation, and DNA was isolated from the respective sources. Male DNA profile was obtained from both Ex. A1a and Ex. B1. The alleles obtained from Ex. B1, i.e. the blood sample of the accused, were accounted for in the alleles obtained from Ex. A1a, i.e. the underwear of the victim. The report dated 16.02.2017 of PW7 has been marked as Ext. PW7/A. PW7, in her cross examination, reiterated that the seals affixed on the parcels matched with the sample seal, though she was unable to recall the particulars of the seal. PW7 further deposed that the parcels had been received from the investigating agency in a sealed condition. PW7 denied the suggestion that the blood sample of the accused



had been manipulated, or that Ext. PW7/A and Ext. PW7/B allele sheet were fabricated by her. PW7 also denied the suggestion that she had prepared the said reports in connivance with the police or that she was deposing falsely.

19. PW8, Inspector, Sagar Pur police station, the Investigating Officer (I.O.), when examined, deposed regarding the various steps taken during the course of investigation. PW8 deposed that on 08.11.2016 the accused was arrested *vide* Ext. PW2/A arrest memo. After the medical examination of the accused, the police had received two sealed *pullandas* containing blood samples of the accused along with sample seal which he seized *vide* Ext. PW4/A. The same was sent to FSL for analysis.

20. The fact that PW1 was a minor at the time of the incident is not disputed. The only question that requires consideration is whether the aforesaid materials on record are sufficient to attract the ingredients of the offence of penetrative sexual assault as contemplated under Section 6 of the PoCSO Act and Section 376



(2)(i) IPC. Section 6 of the PoCSO Act prescribes punishment for aggravated penetrative sexual assault, as defined under Section 5 of the POCSO Act. The Section provides for rigorous imprisonment for the commission of penetrative sexual assault in any of the aggravated circumstances specified under Section 5 of the PoCSO Act. Section 3 of the PoCSO Act defines penetrative sexual assault thus:-

“A person is said to commit "penetrative sexual assault", if-

(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.

(Emphasis Supplied)

21. The entire prosecution case, insofar as the allegation of



penetrative sexual assault is concerned, rests substantially upon the testimony of PW1. To assail the reliability of her evidence, the learned counsel appearing for the accused contended that her version suffers from material contradictions regarding the overt acts attributed to the accused and therefore, cannot be safely relied upon. It was further submitted that the use of expressions such as “*lagayi*” and “*laga diya*”, at best, would only indicate a case of sexual assault and does not establish penetration so as to attract Section 6 of the PoCSO Act.

22. A careful perusal of Ext. PW1/AFIS/FIR, Ext. PW1/B Section 164 CrPC statement, and her testimony before the trial court shows that the material particulars, relating to the act of penetration and the subsequent ejaculation by the accused, have remained consistent throughout. In Ext. PW1/A FIS/FIR, PW1 has stated that “...*meri pant utar di aur apni susu wali jagah meri toilet karne wali jagah par (peeche) lagayi...*”. In Ext. PW1/B Section 164 Statement, she has stated that “...*phir jahan se uncle*



toilet karte hai vo mere peeche (the trial court has recorded that the child was pointing towards her hips) *laga liya tha...*” In her testimony, PW1 described the overt act of the accused as “*Accused Rajesh inserted his susu wali jagah (penis) into my anus. Accused urinated upon me. I put on my pant, my mother made a call to me I went to my house and I told all the fact to my mother.*” When PW1 was recalled on 18.11.2019 pursuant to the application under Section 311 Cr.P.C. being allowed, the court asked the following question:-

“Court Question: *Aapki potty wali jagah mein uncle ne apna susu wala daala tha ya chhua tha?*

Ans. Daala tha.

Court Question: *Andar daala tha?*

Ans. Haan.”

Therefore, it can be seen that PW1 was consistent about the act of penetration and ejaculation. But, there is certainly discrepancy regarding the place where the penetration took place, was it in the vagina or anus?

23. It is true that the findings recorded in Ext. P5 MLC do



not correspond with the specific allegation of anal penetration. Ext. P5 MLC records induration on the fourchette, a freshly torn hymen and congestion of the hymen. Significantly, the medical examination does not record any injury, tear, abrasion, congestion or other finding pertaining to the anal region. Thus, while the MLC records findings relating to the vaginal region, it contains no corresponding medical finding indicative of penetration of the anal region, which is the specific act alleged by PW1. This apparent difference between the specific nature of penetration alleged by PW1 and the findings recorded during her medical examination assumes significance and requires the evidence to be assessed with due caution. The act of penetration itself has been consistently spoken to by PW1 throughout in her FIS/FIR, Section 164 CrPC Statement and testimony before the trial court. Whether the penetration was vaginal or anal does not, in the facts of the present case, detract from the essential allegation of penetrative sexual assault. The definition of rape under Section 375 IPC and



penetrative sexual assault under Section 3 of the PoCSO Act encompasses penetration of the relevant sexual organs or body parts, including vaginal and anal penetration. Therefore, once the factum of penetration is consistently established through the testimony of PW1, the uncertainty regarding the precise anatomical part into which penetration occurred cannot, by itself, defeat the prosecution case. This aspect assumes greater significance having regard to the tender age of PW1, who was only seven years old at the time of the occurrence. It would be unrealistic to expect a child of such tender age to describe the anatomical details of the act with precision or to consistently distinguish between the particular body parts involved. The testimony of a child witness has to be appreciated in the context of her age, understanding and ability to comprehend the nature of the occurrence. In the present case, the consistent account of PW1 regarding the act of penetration is sufficient to establish the essential ingredient of penetrative sexual assault and, consequently,



to sustain the Charge under Section 6 of the PoCSO Act and Section 376(2) IPC.

24. It was further contended by the learned counsel appearing for the appellant/accused that Ext. P5 MLC cannot be safely relied upon, as the doctor who had actually examined PW1 was not examined before the trial court. It was also submitted that, in the absence of the examining doctor, the defence was deprived of a meaningful opportunity to cross examine her with regard to the history of the occurrence allegedly furnished by PW1 and the medical findings recorded in Ext. P5 MLC.

25. PW6 in her examination-in-chief deposed that the doctor who had examined and issued the certificate was no longer in the services of the hospital and that her present whereabouts are not known. This part of the testimony of the doctor has not been challenged, discredited or disproved. In this context, I refer to Section 32 of the Evidence Act which reads thus:-

“32. Cases in which statement of relevant fact by person



who is dead or cannot be found, etc., is relevant.

Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

Xxxxxxx

(2)Or is made in course of business - When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.”

(Emphasis supplied)

25.1. In **Prithi Chand v. State of Himachal Pradesh, AIR 1989 SC 702**, it has been held that Section 32 of the Evidence Act provides that when a statement written or verbal, is made by a person in the discharge of professional duty whose attendance cannot be procured without an amount of delay, the same is relevant and admissible in evidence.



25.2. In **Rambalak Singh v. State of Bihar, AIR 1964 Patna 62**, it has been held that if the doctor who had performed the autopsy was not available at the time of trial or he is abroad, the post-mortem certificate prepared by him would be admissible in evidence if the handwriting and signature of the autopsy surgeon on the post-mortem certificate are proved.

25.3. It is also apposite to refer to the dictum in **Kochu and Ors. v. State of Kerala, 1978 KHC 321: 1978 SCC OnLine Ker 79**. In the said case, an argument was advanced on behalf of the accused that the burden cast on the prosecution cannot be said to have been discharged by the mere examination of the medical officer who is familiar with the handwriting and signature of the doctor who issued the post mortem certificate; but the prosecution must prove the contents of the document and also elicit from the witness examined, his independent opinion as an expert on the conclusions reached by the doctor who held the autopsy. It was held that it was not always necessary and the law also does not



insist that in all such cases the witness should give his independent opinion on the findings in the post mortem certificate or speak to each and every statement made therein. Of course, if an expert witness, who has been examined to prove the post mortem certificate issued by a doctor who was dead or was not available for examination in court under the circumstances stated in S.32 (1) of the Evidence Act, also gives independent evidence as an expert on the conclusions arrived at in the post mortem certificate, it would constitute an additional piece of evidence of an expert. Under S.32, statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in cases falling under sub-s.1 to 8. A post mortem certificate is not substantive evidence. It is only the evidence given in court by the doctor who held the autopsy that



constitutes substantive evidence. A post mortem certificate, being a document containing the previous statement of a doctor who examined the dead body, can be used only to corroborate his statement under S.157 or to contradict his statement under S.145 or to refresh his memory under S.159 of the Evidence Act. But, S.32(2) is an exception to this. If the doctor who held the autopsy is dead or is not available for examination under the circumstances mentioned in S.32 of the Evidence Act, the certificate issued by him is relevant and admissible under S.32(2) of the Evidence Act. The weight to be attached to such a report or its probative value depends upon the facts and circumstances of each case. The court can come to its independent conclusion on the cause of death, if there is independent evidence on record in support of it. Then the question is whether the statements made in the post mortem certificate, containing what was observed by the doctor during autopsy and the conclusion arrived at by him therein have been properly proved in accordance with law. S.67 of the Evidence Act



speaks of the mode of proof of a document. Under S.67 if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. When in cases the prosecution is not able to procure the attendance of the doctor who held autopsy without unreasonable delay or expense, the statement coming under S.32(2) of the Evidence Act has to be proved by one of the various modes prescribed in S.47 of the Evidence Act.

26. As noticed earlier PW6 has clearly deposed that the whereabouts of the doctor, who had examined PW1 and issued the MLC, are not known. Hence, her presence could not have been secured without an amount of delay or expense. This part of the testimony of PW6 has never been challenged by the appellant/accused. Therefore, the prosecution has succeeded in establishing one of the circumstances contemplated under Section 32 of the Evidence Act, that is, the attendance of the doctor who



had examined the victim could not be procured without an amount of delay or expense. Ext. P5 MLC had been prepared by the doctor in discharge of her official duties. In such circumstances, the certificate becomes relevant under Section 32(2) of the Evidence Act. Section 47 of the Evidence Act which deals with situations when opinions as to handwriting are relevant, says that when the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact. Section 67 of the Evidence Act says that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

27. PW6 deposed that she is familiar with the handwriting and signature of the doctor who had examined and issued the



MLC. PW6 also identified the handwriting and signature in the MLC. Therefore, even in the absence of the doctor who had examined and issued the MLC of the victim, the prosecution has proved the MLC by resorting to the provisions of Section 32(2) read with Sections 47 and 67 of the Evidence Act, which is permissible. Therefore, the contention challenging the admissibility and evidentiary value of Ext. P5 MLC on the ground that the doctor who examined PW1 was not examined before the Court is devoid of merit. The mere non examination of the said doctor, in the facts and circumstances of the present case, does not render Ext. P5 inadmissible, particularly when its contents have not been materially challenged by the defence at the appropriate stage.

28. Insofar as an offence under the PoCSO Act is concerned, Section 29 raises a statutory presumption once the foundational facts necessary to attract the provision are established. In the present case, the defence sought to attribute it to a monetary



dispute allegedly arising between the parents of PW1 and the accused in connection with the tuition centre run by the accused's daughter. It was suggested that, owing to such dispute, the accused had been falsely implicated in the present case. However, the said defence remains a bald and unsubstantiated allegation. There is yet another defence seen taken by the accused during the trial. According to him, on the said day he saw PW1 indulging in “*inappropriate behaviour/ sexual act with another boy*” and so he had slapped her. There is absolutely no material(s) on record to even probabalize such a contention. Moreover, the age of PW1 must also have to be taken into consideration. She was just 7 years at the time of the incident. Hence, in such circumstances it appears highly improbable and unlikely for a girl of 7 years to be indulging in “*any sexual act with another boy*”. Consequently, the defence has failed to furnish any credible explanation sufficient to rebut the statutory presumption under Section 29 of the PoCSO Act.

29. It was further contended that the exhibits including blood



sample remained in the *malkhana* for approximately 16 days, yet the *malkhana* register was neither formally proved nor was the personnel concerned responsible for receiving and depositing the exhibits examined as witnesses. In the absence of such evidence, the prosecution failed to satisfactorily establish the chain of custody or remained in safe custody and were not tampered with, before being forwarded for forensic examination. But, unless some specific material is produced to indicate tampering with the exhibits or a breach in the chain of custody, mere non-production of every link witness is insufficient to discard the forensic evidence. The defence has also not shown any actual prejudice or circumstance suggesting that the exhibits were tampered with. When PW7, the forensic expert and PW8, the IO was in the witness box, no question was put to them with regard to any possibility of fabrication, contamination or deterioration of the sample on account of the passage of time. In the absence of any such challenge during cross examination, it would not be



appropriate for the defence to raise such a contention at this stage.

30. It was further contended that the articles allegedly worn by PW1 at the time of the occurrence, namely, her pant, panty and T shirt, as deposed by CW1, the mother of PW1, were not seized by PW8, the IO, and that only the underwear of PW1 had been seized and sent for forensic examination. The said contention, however, is of no merit. There is no absolute requirement that every article worn by the victim at the time of the occurrence must necessarily be seized, particularly where the non-seizure of such articles has not caused any prejudice to the accused. In the present case, the defence has not demonstrated any prejudice arising from the non-seizure of the pant or T shirt of PW1. On the contrary, the prosecution has been able to establish the presence of the accused's DNA profile on the underwear of PW1 seized during the investigation. The said finding is recorded in Ext. PW7/AFSL report, and the report has been duly proved through PW7, the forensic expert, who conducted the examination. The forensic



evidence thus independently lends support to the prosecution case regarding the ejaculation, subsequent to the penetrative assault, by the accused. Consequently, the mere non seizure of the other articles of dress allegedly worn by PW1 does not, in the facts of the present case, undermine the prosecution case or create any reasonable doubt regarding the material forensic evidence.

31. In the light of the aforesaid discussion, I do not find any infirmity in the impugned judgment calling for an interference by this Court.

32. In the result the appeal *sans* merit is dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

AUGUST 14, 2026/kd/mj