



2026:DHC:6645



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

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

CNR No. DLHC010297992020

+ **CRL.A. 535/2020**

SALEEM@SANJAY

.....Appellant

Through: Ms. Inderjeet Sidhu, Advocate
(DHCLSC)

Versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for the State with
W/PSI D. Eloziia, P.S. H.N.DIN.
Ms. Tara Narula & Mr. Harshvardhan
Jain, Advocates for Victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal under Section 374(2) read with Section 383 of the Code of Criminal Procedure, 1973 (the Cr.P.C), the appellant, the sole accused in Sessions Case No. 214/2013 on the file of the Additional Sessions Judge-07/Special Judge (PoCSO Act), South-East District, Saket Courts, New Delhi, assails the



2026:DHC:6645



judgment dated 29.02.2020 and order on sentence dated 04.09.2020 as per which he has been convicted and sentenced for the offences punishable under Sections 471 and 376(2)(l) of the Indian Penal Code, 1870 (IPC).

2. The prosecution case is that on 12.09.2013 at about 08:30 p.m., in front of Chila Sharif Dargah near Humayun Tomb, the accused committed penetrative sexual assault on PW1, a minor girl aged 12 years, taking advantage of her physical disability of being visually challenged in a Omni Van bearing registration No. DL-8CR-0422. The accused was found in possession of a driving licence, which he knew to be forged and with the intention of fraudulently or dishonestly using it as genuine. As per the chargesheet/final report, the accused is alleged to have committed the offences punishable under Sections 376, 506 IPC, and Sections 4 and 5 of the PoCSO Act.

3. On the basis of Ext. PW5/A FIS/FIR of PW5, given on 13.09.2013, Crime no. 292/2013, Hazarat Nizamuddin Police



Station, i.e., Ext. PW14/B was registered by PW14, Head Constable. PW16, Women Sub-Inspector (WSI) conducted investigation into the crime and on completion of the same, filed the chargesheet/final report alleging commission of the offences punishable under the aforementioned Sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him, as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court, *vide* order dated 31.07.2014, framed a Charge under Section 474 IPC and Section 6 of the PoCSO Act, which was read over and explained to the accused, to which he pleaded not guilty. An additional Charge was framed *vide* order dated 24.02.2020 under Section 376(2)(l) and (i) IPC.

5. On behalf of the prosecution, PWs 1 to 20 were examined and Exts. PW2/B, PW2/C, PW2/D, PW3/A, PW5/A, PW5/B, PW6/A, PW6/B, PW6/C, PW6/E, PW6/F, PW7/A, PW9/A,



PW10/A, PW12/A, PW14/A, PW14/B, PW16/B, PW17/A and PW17/B were marked.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.PC. 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 PW1 and her family were known to him. He used to park his taxi near the shop of PW5, the mother of PW1. PW5 would regularly abuse and quarrel with him over the issue of parking, as she objected to his parking the taxi near her shop. According to the accused, PW1 and PW5 might be lying. They have falsely implicated him in the present case on account of the aforesaid dispute relating to parking. PW1, who is his friend, before the incident had accompanied him to India Gate in his taxi. PW1, her brother and his nephews used to come and sit in his car. All of them used to sit together and talk, and they were on quite friendly terms.



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 adduced on behalf of the appellant/accused.

9. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment, convicted the accused of the offences punishable under Sections 376(2)(1) and 471 IPC. The appellant/accused has been sentenced to undergo rigorous imprisonment for a period of 20



2026:DHC:6645



years along with fine of ₹30,000/-, and in default of payment of the fine, to simple imprisonment for a period of 06 months for the offence punishable under Section 376(2)(l) IPC and to rigorous imprisonment for 1 year for the offence punishable under Section 471 IPC. The sentences have been directed to run concurrently. Aggrieved, the accused has come up in appeal.

10. It was submitted by the learned counsel for the appellant/accused that the prosecution case that the accused was unknown or a stranger to PW1 is incorrect. Infact, the accused was on friendly terms with PW1 and was known to her prior to the incident. There was a dispute between the accused and the mother of PW1 (PW5) regarding the parking of the former's cab in front of her stall. According to the learned counsel, due to the said dispute, the accused has been falsely implicated in the present case. On the question of sentence, the learned counsel prayed that a lenient and compassionate view be taken in favour of the appellant/accused.



2026:DHC:6645



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.

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 judgment calling for an interference by this Court.

14. I will first refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW5/A FIS/FIR of PW5, the mother of PW1, recorded on 13.09.2013 in Hindi, translated reads thus: - *“My husband passed away about 07 years ago. I have three children, two daughters and one son. My elder daughter is married. My younger daughter (PW1) is 12 years old. When my younger daughter (PW1) was 3 years old, she (PW1) lost her vision due to fever, and she has been blind ever*



2026:DHC:6645



since. Today, on 12.09.2013 at around 08:30 p.m., my younger son (PW2), who is 8 years old, took his sister (PW1) to the betel shop. My daughter (PW1) needed to use the washroom, so my son (PW2) took his sister (PW1) to the toilet situated by the roadside. A taxi driver approached them and asked my son (PW2) if they wanted a ride, which my son (PW2) refused. The taxi driver then offered to drop them home, so both my children boarded the vehicle. Thereafter, he seated two other children as well in the car. When I asked my son (PW2) about the taxi driver and the other children, he told me that the driver's name is Salim (the accused). My son (PW2) also told me that while he does not know the names of the other two children, they are the children of Salim's (the accused) Khala. My son further told me that after travelling some distance, the driver (the accused) gagged his mouth. When the others tried to shout, the driver abused them and tied everyone's mouth. After that, my son (PW2) said that the driver (the accused) removed my daughter's (PW1) pyjama and warned all three of them not to open



the taxi door, threatening to beat them if they did. Thereafter, he committed wrong act (ganda kaam) on my daughter. Thereafter, he dropped all of them near Humayun's Tomb and gave ₹100/- to my daughter (PW1) and ₹20/- to my son (PW2). The children walked back home. I have immediately come to the police station along with my son (PW2) and daughter (PW1) to report the matter. My son (PW2) clearly knows and recognises the taxi driver named Salim (the accused), as the latter has committed a wrong act against my daughter (PW1). Strict legal action should be taken against the taxi driver."

15. Ext. PW2/A Section 164 statement of PW2, the brother of PW1, recorded in Hindi on 17.09.2013, translated reads:- *"I, along with my sister (PW1) and two boys were buying some items from a paan shop, when we met a taxi driver named Salim (the accused). He asked us to accompany him, but we refused. He then offered to drop us home in the taxi. He (the accused) made all of us board the car and gagged our mouths. He (the accused) then*



2026:DHC:6645



undressed my sister (PW1) and also removed his own clothes. Salim (the accused) committed wrong act (gandi harkat) against my sister. Salim (the accused) inserted his private part into my sister's (PW1) private part (सलीम ने अपना शुशु मेरी बहन की शुशु मे डाल दिया). He threatened us that he would stab us with a knife if we screamed. He laid down my sister (PW1) on the seat. Later, he dropped us near the park. He gave ₹100/- to my sister, ₹20/- to me and ₹5/- each to other two boys. He warned that he would stab us with a knife if we told anything to our mother.”

16. PW1 when examined before the trial court, deposed that she does not know the date of the incident. Her mother (PW5) had sent her and her brother (PW2) to the pan shop. She wanted to attend the call of nature, so her brother (PW2) took her to a toilet. While they were returning from the toilet, a taxi driver named Saleem (the accused) met them and offered to take them for a drive, promising to drop them off at home (*chalo tumhe ghumane*



2026:DHC:6645



le chalta hoon aur tumhari ammi ke paas ghar chhod dunga). She, along with her brother, and two other children, boarded the taxi. Saleem (the accused) gagged all of them, after which he tore her kurta and put his penis in her vagina (*mere shushu me apna shushu daal diya aur gand kaam kiya*). The accused threatened them that he would kill them if they disclosed the incident to anyone. The accused gave ₹20/- to her mother [sic brother] (PW2) and ₹100/- to her. After which, the accused dropped them at Humayun's Tomb. They went back home and narrated the incident to their mother (PW5). Thereafter, her mother (PW5) informed the police. She was taken to the hospital for medical examination. At the police station, she heard some people addressing the accused as Saleem, while some others addressed him as Naseem.

16.1. PW1, in her cross-examination, admitted that she was acquainted with the accused even before the incident. She admitted that she had stated the name of the accused as Naseem in her



2026:DHC:6645



Section 164 statement. She had heard the name of the accused for the first time at the police station.

17. PW2, the brother of PW1, deposed that he, along with his sister (PW1), had gone to the paan shop. They met Saleem (the accused), who offered to drop them home in his taxi. They refused his offer. But the accused insisted and made them sit in his taxi and threatened that if they made any noise, he would stab them. The accused gagged them. There was nobody else in the taxi. The accused had removed his sister's (PW1) clothes and his own clothes and did '*ganda kaam*' with his sister (PW1). The accused inserted his penis into the vagina of his sister (PW1) (*jisse shushu karte he wo usne meri behan ke shushu me daal diya*). Thereafter, the accused dropped them near Humayun's tomb. The accused threatened that he would kill them if they disclosed the incident to anyone. The accused had given ₹100/- to his sister (PW1) and ₹10/- to him. He and his sister (PW1) returned home weeping and narrated the entire incident to their mother (PW5). They had gone



2026:DHC:6645



to the police station. His sister was taken to the hospital. Saleem was arrested by the police on his identification *vide* Ext. PW2/B arrest memo. PW2 identified the accused before the trial court. PW2 also deposed that many offenders after being released from jail came to their residence and threatened them and directed them to get the accused released in this case, failing which they would be killed by the accused as and when he is released from jail.

17.1. The prosecutor is seen to have sought permission of the trial court to put leading questions to PW2. The request was allowed by the trial court. On further examination, PW2 deposed that at the time of the incident, two other children, namely, the children of *Khala* of the accused, were also present in the car.

17.2. PW2, in his cross-examination, deposed that he was 8 years old at the time of the incident. He had told his mother that Saleem (the accused) had a knife in his hand. He had not told the police about the knife. PW2 admitted that his mother (PW5) sells chappals from a stall near the Majar in the Nizamuddin area. The



accused had never parked his taxi near his mother's stall. He had no acquaintance with Saleem (the accused) prior to the incident. He came to know that the name of the accused when he heard his friends addressing the latter as Saleem. He and his mother have never travelled in Saleem's taxi. He denied the suggestion that there was a dispute between the accused and his mother (PW5) as the former used to park his taxi near his mother's stall and hence the false implication.

18. PW5, the mother of the victim, deposed that her second daughter (PW1) was 12 years old at the time of the incident. Her daughter (PW1) had lost her eyesight due to fever when she was about three years old. PW5 was unable to recall the date, time, or month of the incident. According to her, the incident took place about three years prior to her examination before the court. On the said day, her son (PW2) and daughter (PW1) had gone to a paan shop and returned after about half an hour. Both were crying when they returned home. Her son (PW2) told her that he had taken



2026:DHC:6645



PW1 to a toilet when a taxi wala approached them and offered to drop them home in his taxi, which offer her children refused. As the taxi driver insisted, her children boarded the taxi. Two other children were also present in the taxi. Her son (PW2) told her that the name of the taxi driver was Saleem. The taxi driver gagged their mouths, and when her daughter tried to raise an alarm, the former abused her. The taxi driver removed her daughter's (PW1) pyjama and his own pants. The accused threatened the children that he would beat them if they opened the doors of the car. Thereafter, he committed a wrongful act on her daughter (PW1). The accused subsequently dropped them at Humayun's Tomb and gave ₹100/- to her daughter (PW1) and ₹10/- to her son (PW2). On the morning of the next day of the incident, she saw the taxi driver at the police station. Her son identified the taxi driver as the person who had assaulted her daughter.

18.1. PW5 was never cross-examined despite opportunity being given.



19. During the trial, an application under Section 178 Cr.P.C. was filed by the Investigating Officer seeking an ossification test to determine the age of PW1. The same was allowed by the trial court *vide* order dated 26.04.2014. As per Ext. PW17/A ossification report, PW1 was aged between 17 to 19 years as on 16.05.2014. Relying on the dictum in **Shweta Gulati and Anr. v. The State Govt. of NCT of Delhi, AIR OnLine 2018 DEL 1385**, the trial court held that the prosecutrix was more than 18 years and so the provisions of the PoCSO Act could not be invoked.

20. The trial court has convicted and sentenced the appellant for the offence punishable under Section 376(2)(l) IPC primarily on the basis of the testimony of PW1, read with the testimony of PW2, her younger brother, and PW5, their mother. PW1 has quite cogently described the overt acts of the accused. The testimony of PW2, her brother, is also material. He has also given a consistent version regarding the incident. It is true that in the Section 164 statement, PW2 has a case that the accused threatened to stab them



2026:DHC:6645



with a knife in case they revealed the incident to his mother. However, in the box, PW2 did not mention the knife, but only said that the accused had threatened them. That alone is no ground to disbelieve the prosecution case.

21. The conduct of PW5, the mother of PW1 and PW2, after the children returned home also assumes significance. On being informed of the incident, PW5 without any delay immediately reported the matter to the police. Her testimony substantially corresponds with the version given by PW1 and PW2. Further, PW5 was never subjected to any cross-examination, though opportunity was given. Hence, her testimony on these aspects, remains unchallenged.

22. Further, PW3, Senior Resident, Department of Obstetrics and Gynecology, AIIMS, New Delhi, deposed that on 13.09.2013 at about 12:54 a.m., PW1 had been brought to the casualty of the AIIMS Hospital by the police (PW7). She examined PW1 and prepared Ext. PW3/A MLC. On examination, she found “*fresh*



abrasion at fourchette and fresh tear at hymen”. The medical record therefore corroborates the prosecution case.

23. PW15, Junior Forensic/Chemical Examiner (Biology), FSL Rohini, Delhi, deposed that she had conducted DNA profiling and necessary examination of Exts. A to J, which were received by her on 10.10.2013. She prepared Ext. PW15/A report stating that the DNA profile analysis performed was sufficient to conclude that the male DNA profile generated from the source of Ext. E (blood in gauze of the accused) matched with the DNA profile generated from the source of Ext. A and Ext. D, that is, vaginal smear and brown stain on salwar of PW1. The testimony of PW1, PW2 and PW5 finds corroboration from the medical and scientific evidence.

24. The learned counsel for the appellant/accused sought to discredit the testimony of PW1 principally on the ground that she was acquainted with the appellant/accused even prior to the incident and that, therefore, her statement that she did not know him is false. PW1, in her cross-examination, stated that the taxi



driver who had sexually assaulted her was not known to her prior to the incident and that she came to know the name of the accused only at the police station. PW2, on the other hand, deposed that he came to know the name of the taxi driver through his friends. There is some inconsistency in the testimony of PW1 and PW2 concerning the precise manner in which they came to know the name of the appellant. However, the aforesaid inconsistency does not go to the root of the prosecution case. My attention was not drawn to any other material(s) which would indicate that PW1 and family were acquainted with the accused. Even assuming that the appellant and PW1 were acquainted with each other, the same does not justify the act of the accused. Nobody has a case that it was a consensual relationship.

25. It was submitted by the learned counsel for the appellant that there was a dispute between the appellant and PW5 concerning parking of the former's taxi near the latter's stall. The appellant, in his Section 313 statement, submitted that PW5 used



to abuse and quarrel with him and due to this dispute, PW1 and PW2 had falsely implicated him at the instance of their mother. However, apart from such a statement made by the accused when questioned under Section 313(1)(b) Cr.P.C., there are no materials to show that any such dispute existed. PW2 expressly denied the suggestion put to him that the appellant used to park his taxi near their mother's stall resulting in dispute. PW5 was never cross-examined by the accused on this aspect. The appellant did not even try to bring out the existence of such a dispute when PW4, the owner of the taxi, was examined. Therefore, there are no materials on record to even suggest prior acquaintance or false implication or that the relationship was consensual.

26. Coming to the Charge under Section 376(2)(1) IPC, the prosecution is required to establish, beyond reasonable doubt, that the appellant committed rape on a woman who was suffering from a physical disability. In the case on hand, PW1 is visually challenged. This aspect is not in dispute. The testimony of PW1



that the appellant removed her clothes and committed penetrative sexual assault is corroborated by PW2. The medical examination conducted shortly thereafter also records fresh genital injuries consistent with recent penetration. Thus, the evidence establishes not only the factum of sexual intercourse/penetration but also the physical disability of PW1. The ingredients necessary to attract Section 376(2)(l) IPC are, therefore, satisfied.

27. The offence under Section 471 IPC concerns the fraudulent or dishonest use as genuine of a document which the accused knows or has reason to believe to be forged. The use of the document as contemplated by Section 471 must be a voluntary one. For sustaining conviction under Section 471, it is necessary for the prosecution to prove that the accused knew or had reason to believe that the document was a forged one.

28. In this regard, PW4 and PW12 have been examined by the prosecution. PW4, the owner of Maruti Omni bearing No. DL8CR-0422, proved the fact that the accused was the driver of



the said taxi on the date of the incident. According to PW4, the police had seized the driving license of his driver along with the keys of the car *vide* Ext. PW2/D seizure memo.

29. PW12, Principal Clerk, Office of Secretary, Regional Transport Authority, Ambala, Haryana, produced the record of driving license (Form No. 10 rule 33 (1)) maintained at Regional Transport Authority, Ambala for the period from 14.02.2012 till 14.03.2012. As per the record, Ext. PW6/D license no. S. 33930 dated 13.03.2012 had not been issued by the transport authority to the accused. PW12 further deposed that as per the records, driving licenses in the series no. HR 3720000020687 were being issued by the authority from 13.03.2012. The testimony of PW12, therefore, establishes that the licence in the name of the appellant was not a genuine one as contended by the prosecution.

30. The first requirement of Section 471 IPC, namely, that the document relied upon by the prosecution was a forged document, thus stands established. The fact that the licence was



seized from PW4 is not seen challenged. No arguments were addressed by the learned counsel for the appellant/accused regarding the conviction and sentencing of the appellant/accused for the offence punishable under Section 471 IPC. Therefore, I find no infirmity in the conclusion of the trial court calling for an interference by this Court.

31. On the question of sentence, the learned counsel for the appellant/accused has sought a lenient and compassionate view. It was submitted that the appellant has already undergone a substantial period of incarceration and so the sentence imposed be reduced. In the case on hand, the circumstances surrounding the commission of the offence are grave. PW1 was between 17 to 19 years of age at the relevant time and had lost her eyesight during childhood. The appellant/accused taking advantage of her vulnerability, took her in his vehicle, restrained and threatened the children accompanying her and raped her. The manner in which the offence was committed is also an aggravating circumstance.



PW1 was not an adult capable of independently protecting herself from the situation in which she was placed. No substantial mitigating circumstance has been brought on record which would justify interference with the sentence imposed by the trial court. However, 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. The minimum sentence liable to be imposed for an offence under Section 376(2)(1) is 10 years. The same can extend to imprisonment for life which would mean imprisonment for the remainder of a person's life. Therefore, the trial court could have imposed either the minimum sentence of 10 years or life sentence or if a term sentence was to be imposed, it could not have exceeded 14 years. Hence, considering the nature and gravity of the offence and the facts of the case on hand, the sentence is modified to a period of 14 years' rigorous imprisonment.



32. In the result, the appeal is partly allowed. The conviction of the accused for the offences punishable under Sections 471 and 376(2)(l) IPC is confirmed. However, the substantive sentence of imprisonment imposed by the trial court for the offence punishable under Section 376(2)(l) IPC is modified to 14 years.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

AUGUST 14, 2026
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