



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

% **Judgment Reserved on: 11.08.2026**
Judgment Pronounced on: 17.08.2026

CNR No. DLHC010296582025

+ **CRL.A. 662/2025**

SHANKAR SINGH

.....Appellant

Through: Mr. Adit S. Pujari, Mr. Bhavesh Seth,
Mr. Siddharth Kaushal and Mr.
Vibhav Rawat, Advocates.

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Chetan, PS Paschim Vihar, West.
Mr. Abhinav Aggarwal, Amicus
Curiae for victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the B.N.S.S.), the sole accused in Sessions Case No. 155/2017 on the file of the Additional Sessions Judge-07(PoCSO), West District, Tis Hazari Courts, New Delhi, assails the judgment dated 12.08.2024 and order on sentence dated



30.08.2024, as per which he has been convicted and sentenced for the offence punishable under Sections 342, 376(2)(i) and (l) of the Indian Penal Code, 1872 (IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 27.06.2017, at about 04:00 p.m. and on several earlier occasions, the accused wrongfully confined PW1, a minor girl aged 11 years, at Jhuggi No. B-248, Bhim Nagar, Camp No. 1, Nangloi, behind Sabzi Mandi, Delhi and committed aggravated penetrative sexual assault on her. Hence, as per the chargesheet/final report, the accused is alleged to have committed the offences punishable under Sections 342 IPC, 376(2) IPC and Section 6 of the PoCSO Act.

3. On the basis of Ext. PW2/A FIS/FIR of PW2, given on 27.06.2017, Crime no. 296/2017, Mianwali Nagar Police Station, i.e., Ext. PA-3 FIR was registered by Rajesh, Assistant Sub Inspector. PW9, Sub Inspector, conducted investigation into the



crime and on completion of the same, filed the chargesheet/final report alleging commission of the offences punishable under the aforementioned Sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him, as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court, *vide* order dated 10.04.2018, framed a Charge under Sections 342, 376(2) IPC and Section 6 of the PoCSO Act against the accused. The Charge was read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 11 and CW1 were examined and Ext. PA-1 to 9, Ext. PW1/A, Ext. PW2/A-C, Ext. PW3/A, Ext. PW/5A, Ext. PW6/A-B, Ext. PW8/A-B, Ext. PW9/A-D, Ext. PW10/A, Ext. PW11/A and Ext. CW1/A were marked in support of the case.



6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. He submitted that he has been falsely implicated in the present case due to a dispute with the family of PW1 regarding the payment of rent. PW1 and family were residing in a jhuggi owned by him on a rental basis. The family of PW1 failed to pay the rent for approximately 04 to 05 months. When he asked them to vacate the premises on account of non-payment of rent, they implicated him in the present case.

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. On behalf of the accused, DW1 were examined. No documentary evidence was adduced by the accused.

9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, *vide* the impugned judgment dated 12.08.2024, held the accused guilty of the offences punishable under Sections 342 IPC, 376(2)(i) and (l) IPC and Section 6 of the PoCSO Act. By order on sentence dated 30.08.2024, the accused has been sentenced to undergo rigorous imprisonment for a period of 12 years as well as fine of ₹12,000/- and in default of payment of fine, to simple imprisonment for a period of 01 month for the offence punishable under Section 6 of



the PoCSO Act and to rigorous imprisonment for a period of 06 months as well as fine of ₹500/-and in default of payment of fine, to simple imprisonment for 15 days for the offence punishable under Section 342 IPC. The sentences have been directed to run concurrently. In view of Section 42 of the PoCSO Act, no separate sentence has been awarded under Section 376(2)(i) and (l) IPC. Aggrieved, the accused has come up in appeal.

10. The learned counsel for the appellant/accused submitted that the impugned judgment is contrary to the facts and circumstances of the case, is bad in law as the trial court has failed to appreciate the materials on record, and is, therefore, liable to be set aside. It was submitted that Ext. PW10/A MLC does not corroborate the version given by PW1 as it does not show any fresh hymen tear or external injuries. Further, PW2, the mother of PW1, actively assisted PW1 in making her Section 164 statement, rendering it unreliable and unbelievable.



10.1. It was further submitted that CW1, the Clinical Psychologist, was incompetent to assess PW1 as the former is neither a special educator nor a person familiar with PW1 nor an expert in view of Sections 19(4); 26(3) of the POCSO Act; Rule 5 of the POCSO Rules, 2020, and Section 164(5A) of Cr.P.C. Moreover, PW1 was not personally assessed by CW1 but by her trainee, making Ext. CW1/A IQ/SQ Report unreliable. The psychological evaluation was also inappropriate as it was not conducted in Maithili language and lacked consideration of the lifestyle, background, and life context of PW1.

10.2. Additionally, PW3, the brother of PW1, does not corroborate the prosecution case regarding penetrative sexual assault, as he only stated that the accused did “*ganda kaam*” with PW1. PW2’s testimony does not constitute *res gestae* and is merely hearsay, as she only heard about the incident through PW3. No independent witnesses were examined by the prosecution.



10.3. The learned counsel for the appellant/accused also submitted that, at best, the alleged act would amount to aggravated sexual assault as defined under Section 9 of the POCSO Act rather than penetrative sexual assault punishable under Section 6 of the PoCSO Act. Thus, the conviction under Section 6 is liable to be set aside and the sentence ought to be reduced to 7 years in light of the pre-amended provisions of the PoCSO Act. Reliance was placed on the dictum in **State Of Rajasthan vs Darshan Singh @ Darshan Lal 2012 (2) SCC (CRI) 916**.

11. *Per Contra*, it was submitted by the learned Additional Public Prosecutor that there is no infirmity in the judgment of the trial court calling for an interference by this Court. He submitted that PW1 has consistently deposed about the alleged act which included gestures also. There is a high possibility that the sexual assault was not completed, hence the absence of any fresh injuries or semen. The old hymen tear mentioned in Ext. PW10/A MLC



corroborates the prosecution case of repeated penetrative assault by the accused. CW1 personally assessed PW1 and hence was competent to conduct the assessment, and she was also conversant in the Maithili language.

12. The learned counsel for the prosecutrix/PW1 submitted that Section 26(3) of the POCSO Act is merely a discretionary provision, and non-compliance does not constitute a ground for acquittal. He further submitted that PW2 was present in court specifically to ensure a child-friendly environment in adherence to Section 33(4) of the POCSO Act.

13. Heard both sides and perused the materials on record.

14. 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.

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



PW2/AFIS/FIR of PW2, the mother of PW1, recorded on 27.06.2017 in Hindi, translated reads thus:- *“My husband works as a manual labourer (Beldar) in the area, while I also earn our livelihood through hard labour. I reside in a rented accommodation, owned by Shankar Singh (the accused). My daughter (PW1), aged 11 years, who is intellectually challenged, stays alone with her younger brothers when I and my husband leave for work. Today, in the evening of 27.06.2017, when I returned home after work, my younger son (PW3), aged 9 years, told me that Shankar Singh (the accused) had committed wrong act on my daughter (PW1) in his jhuggi (B248). I asked my daughter (PW1), who in turn told me that Shankar Singh (the accused) had called her to his house, forcibly removed her clothes, and committed wrong act on her while covering her mouth. My daughter (PW1) also told me that Shankar Singh (the accused) had been committing wrong acts on her for the last few days and had*



threatened her not to disclose it to anyone. My daughter (PW1) explained everything to me through gestures. Shankar Singh (the accused), in whose jhuggi we reside as tenants, had established physical relations with my daughter by taking undue advantage of her innocence. Strict action may be initiated against Shankar Singh.”

16. Ext. PW1/A Section 164 statement of PW1, the prosecutrix, recorded on 07.02.2019, reads thus:

“The witness is not able to speak properly but says गप्पू के पापा ने गंदी हरकत करी थी। She puts her hand on her mouth and says ऐसा बंद किया था। I asked if the accused had put his hands on her mouth to which the victim says हाँ। Thereupon, the witness lifts her top and says कपड़ा खोला, अपना खोला, मेरा खोला। Then the victim points at her lower private part and says अपना जूज (the mother explains it means male private part in Bihari) घुकाड़ा था (the mother explains it means insertion in Bihari). Through her actions, the victim has tried to show that the accused had inserted his private part into her lower private parts.”



17. Ext. PW3/A, 164 statement of PW3, the brother of PW1, recorded in Hindi translated reads: “*Shankar removed his pants and committed wrong act on my sister (PW1). The accused was lying on top of my sister (PW1). The accused had removed my sister’s clothes as well.*”

18. PW1 when examined before the trial court deposed that Shankar Singh (the accused) residing near her house took her to his house. While in the house, Shankar Singh (the accused) removed her salwar and committed wrong acts (*ganda kaam*) on her. Shankar Singh (the accused) removed his clothes also. (The trial court noted thus-“*Now the victim has made to-and-fro (aage-peeche) movements to indicate what Shankar Singh did*”). On being asked if Shankar Singh (the accused) inserted his private part into her private part, she answered in the affirmative. Shankar Singh (the accused) had done wrong things to her before the



incident also. When the accused was shown to PW1 on the TV screen, the trial court recorded the demeanour of the witness, thus:-

“...The victim has got fidgety, restless and anxious. Upon seeing him and on being asked if she knew him, the victim has stated ‘Nahi’ ‘Nahi’.....

Since the victim appears to be anxious, she has been counselled that the person shown to her on TV screen is in Jail and that she is safe. Thereafter, following direct questions have been put to her.”

Thereafter, PW1 identified the accused as the person who had committed wrong acts on her. The trial court has further noted thus:- *“It is observed that the victim is continuously looking down at this stage and she has been counselled so that she stays comfortable.”* PW1 identified Ext. P1 as the clothes that she was wearing at the time of the incident.

18.1. PW1, in her cross-examination, admitted that there are other houses situated near her house. She denied the presence of the wife of the accused when the latter had taken her to his room.



2026:DHC:6705



She admitted that there was a window in the room where the incident took place. During the incident, the said window remained closed.

19. PW2, the mother of PW1, deposed that she leaves for work by about 09:00 a.m. Her elder daughter (PW1), who is intellectually challenged, and her son (PW3), aged about 10-11 years, remain at home. On the said day when she returned home from work, her son (PW3) told her that the accused had raped her daughter. When she confronted the accused, the latter abused her and her son (PW3). Thereafter, she informed the police. Her daughter (PW1) was taken to SGM Hospital for medical examination. Her daughter (PW1) was not studying in any school on the date of the incident. On being asked, her daughter (PW1) told her that the accused had been sexually assaulting her for the past 3 to 4 days.



19.1. PW2 in her cross-examination admitted that the accused was the landlord of the premises where she and her family were residing as tenants. She admitted that the place of incident is situated in a residential and thickly populated area. Her son (PW3) narrated the incident to her when she returned home from work at around 05:00 p.m. Her son (PW3) had not disclosed the incident to anyone else except her. She had not told her husband about the incident as he was on duty at that time. PW2 admitted that her daughter (PW1) is incapable of recalling things/incidents properly as she is intellectually impaired. She denied the suggestion that, prior to the incident, the accused had asked her to increase the rent. She denied the suggestion that the accused had asked her to vacate the premises due to her refusal to increase the rent. She denied the suggestion that she had falsely implicated the accused due to disputes regarding the rent. She denied the suggestion that she had tutored her minor daughter (PW1) or that she was deposing falsely.



20. PW3, the brother of PW1, deposed that PW1 his elder sister, mostly remained at home and performed household chores. She (PW1) also used to go to the *Aanganwadi* and the *Baaraat Ghar* for studying. She used to leave the house by about 09:00 a.m. and return by about 01:00 p.m. On the date of the incident at about 03:00-03:30 p.m., he and his brother were playing with the children of Shankar Singh (the accused) near his house. His sister (PW1) was inside the house alone. Shankar Singh came to their house and, in his presence, asked PW1 to accompany him saying that he would give her roasted corn (*aaja, Bhutta doonga*). His sister (PW1) accompanied the accused, who took her to his room situated on the ground floor. The room of the accused is approximately ten steps away from their room/jhuggi. When his sister (PW1) did not return for some time, he went to the room of Shankar Singh (the accused). He climbed onto a drum and, through a gap above the door, peeped inside the room. He saw the accused



committing *galat kaam* on his sister (PW1). Shankar Singh (the accused) was wearing only his underwear and *baniyaan*. PW1 was lying on the bed and was wearing only her lower undergarment (*kachhi*) and no other clothes. Shankar Singh was lying on top of his sister (PW1) and touching her all over her body. The accused had covered PW1's mouth with his hand. On seeing this, he gave a push to the door, which opened, but he did not enter the room. After some time, his sister (PW1) and Shankar Singh (the accused) came out of the room. He noticed that his sister (PW1) was wearing her pants, inside out. He told the accused that he would complain about the incident to his mother. Thereupon, the accused abused and threatened him that if he disclosed the incident to anyone, the former would hit him and throw him into the drain. His mother returned home from work at about 05:00 p.m. His mother and the wife of the accused work (*joote silne ka kaam*) at the same place. He informed his mother about the incident. His



2026:DHC:6705



mother informed the police. The police arrived at their house, but the accused had fled to the shoe factory. Before the incident, he had never seen the accused committing any such act on his sister (PW1).

20.1. PW3 in his cross-examination deposed that on the date of the incident, he and his brother were playing with three other boys, namely, the children of Shankar Singh (the accused). He denied the suggestion that the family members of the accused were present in the house/room of the accused at the time of the incident. No neighbours were present around the place at that time. However, a crowd had gathered after he informed his mother about the incident. He admitted that there are many jhuggis in the area. PW3 admitted that the main door of the house of the accused had not been bolted from inside. He had not noticed any window in the room of the accused. However, the light and the cooler in the room had been switched on. He is unaware whether, prior to the



incident, the accused had asked his mother (PW2) to increase the rent of the *jhuggi*. He denied the suggestion that prior to the incident, his mother (PW2) had quarrelled with the accused over an increase in the rent of the *jhuggi*.

21. CW1, Clinical Psychologist, IBHAS, Dilshad Garden, New Delhi, deposed that she had examined 'A' (PW1). As per Ext. CW1/A Intelligence Quotient (IQ) and Social Quotient (SQ) Report, the mental age of 'A' (PW1) is 05 years and 01 month with the corresponding I.Q. of 57, whereas her chronological age was 11 years.

21.1. CW1, in her cross-examination, on being asked whether the assessment of the prosecutrix was done by her or by her trainee, answered that the trainee had collected the details and history, but the assessment was done by her along with the trainee.



22. Now, coming to the defence evidence. DW1, the wife of the accused, deposed that PW1 and family had been residing as tenants in their *jhuggi* since the year 2015. Due to default in timely payment of rent, there used to be frequent quarrels between PW2 and her husband (the accused). PW2 used to threaten her husband (the accused) that she would implicate them in false cases. She and her husband never took such threats seriously and, hence, did not file any complaint against PW2. On 26.06.2017, there was a quarrel between her and PW2 regarding the non-payment of rent.

23. DW1 in her cross-examination admitted that no legal notice had been issued to PW1's family for vacating the tenanted premises. There was no written rent agreement.

24. During the course of the trial, an application was moved 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 20.10.2023. As per Ext. PW17/A ossification



report, PW1 was more than 17 years and less than 20 years as on 26.10.2023. Relying on the dictum in **Court on its own motion Vs. State of NCT of Delhi, 2024 SCC Online Del 4484**, the trial court held that the prosecutrix was about 15 years and 8 months on the date of the incident, that is, on 28.11.2017, and hence a child attracting the provisions of the PoCSO Act.

25. The accused has been convicted of the offences punishable under Sections 342, 376(2)(i) and (l) IPC and Section 6 of the PoCSO Act. The prosecution case primarily rests on the testimony of PW1, the prosecutrix; PW2, her mother and PW3, her brother, as well as Exts. PW1/A and PW3/A 164 statements. The learned counsel for the appellant/accused challenged the reliability of Section 164 Cr.P.C. statement of PW1, on the ground that PW2, her mother, had actively participated while the former's statement was being recorded. PW2 in fact acted as the interpreter and translated the meaning of the words spoken by PW1 in Maithili.



PW2 is a highly interested witness and hence she ought not to have been permitted to act as the interpreter/translator as there was every possibility of the child having been tutored due to the prior enmity existing between PW2 and the accused. Reference was also made to the first proviso to Section 164(5A) Cr.P.C. which says that if a person making a statement is temporarily or permanently mentally or physically disabled, the magistrate shall take the assistance of an interpreter or a special educator in recording the statement. PW2 the mother, according to the learned counsel, does not fall within the definition of an interpreter or a special educator as contemplated under the aforesaid proviso and therefore, the 164 statement cannot be relied on. Reliance was placed on the dictum in **Darshan Singh** (*supra*) to contend that where an interested person, particularly a parent, interprets the communication of the victim, such statement becomes inherently susceptible to influence



and cannot safely form the basis of conviction without independent corroboration.

26. Firstly, the statement under Section 164 Cr.P.C. is not a piece of substantive evidence and the same can only be used to corroborate or contradict the testimony of the maker of the said statement. Secondly, the facts in **Darshan Singh** (*supra*) are clearly distinguishable from the facts in the case on hand. In **Darshan Singh** (*supra*), the sole eyewitness, the wife of the person alleged to have been murdered by the accused therein, was a speech and hearing impaired person. Her testimony before the trial court was recorded in sign language with the assistance of her father, who was found to be an interested witness. Neither the witness nor the interpreter had been administered oath. The Apex Court noticed that the sole eyewitness was capable of reading and writing. Hence, her testimony ought to have been recorded by giving her questions in writing and seeking answers in writing. It



was further found that the use of an interested person as an interpreter created a possibility of misinterpretation of the signs and hence the benefit of doubt was given to the accused therein.

27. The case on hand stands on a different footing. PW2 never acted as the interpreter of her daughter. I have already extracted Ext. PW1/A 164 statement of PW1. However, at the risk of repetition, I once again refer to the relevant portions where the intervention of PW2, the mother, was there.

“.....Thereupon, the witness lifts her top and says कपड़ा खोला, अपना खोला, मेरा खोला। Then the victim points at her lower private part and says अपना जूज (the mother explains it means male private parts in Bihari) घुकाड़ा था (the mother explains it means insertion in Bihari)....”.

28. It is just two words spoken by PW1 in Maithili dialect during the course of recording her statement under Section 164 Cr.P.C. that was translated by her mother (PW2). It was not any sign language or gestures of PW1 that had been translated or



interpreted by the mother. The appellant/accused has no case that the interpretation or translation given by the mother of the said two words is wrong or that they are capable of any other meaning or interpretation. That being so, there was no possibility or scope of the mother misleading the Court by giving a wrong or incorrect translation or interpretation of the words. Further, the conviction by the trial court was not based on the said two words alone. The remaining part of the 164 statement of PW1 also specifies the overt acts of the accused.

29. It is true that Sub-section (5) of Section 164 Cr.P.C. empowers the magistrate to administer oath to a person giving a statement under Section 164 Cr.P.C.. It is also true that no oath was administered either to PW1 or to her mother before the 164 statement was recorded. However, in the light of Section 7 of the Oaths Act 1969, an omission to administer an oath, even to an adult, goes only to the credibility of the witness and not to his/her



competency. The question of competency is dealt with in Section 118 of the Indian Evidence Act, 1872. Every witness is competent unless the Court considers that he is prevented from understanding the questions put to him, or from giving rational answers by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same. The testimony of a witness to whom oath was not administered is as good as that of a witness to whom oath had been administered. The Oaths Act does not deal with competency. Its main object is to render persons who give false evidence liable to prosecution. (See **Rameswar v. State of Rajasthan, AIR 1952 SC 54: 1951 SCC OnLine SC 83**). Therefore, merely because oath was not administered to PW1 or the interpreter would not automatically result in the rejection of the statements.

30. As far as their credibility is concerned, the same is considered hereunder.



31. Further, this is not a case in which PW1 is completely unable to speak. The trial court has only recorded that “*PW1 was not able to speak properly*”. A reading of the 164 statement shows that PW1 did answer the questions put to her. In addition to giving oral answers, she also made gestures that have been recorded in her testimony. When PW1 was examined before the trial court, Ms. Kamini Sharma, Vulnerable Witness Deposition Centre (VWDC) panel as support person; Miss Suman Singh, Counsel for Delhi Commission for Women (DCW); the mother of the prosecutrix; Dr. Jagdish Sadiza, Clinical Expert from IHBAS; and Shri Manoj Jha, Employee Code No. 11044, Orderly in District Court, West district, as translator of Maithili were present. The trial court, before starting the examination of PW1, has recorded thus:- “*I have made preliminary enquiries from the Victim with the help of Translator Shri Manoj Kumar Jha, Employee Code No. 11044, Orderly in District Courts, West District and it appears*



that she is well oriented and is capable of giving rational answers to questions. The Victim appears to be giving her evidence voluntarily and without any threat, pressure, fear or influence or coercion”. Voir dire of PW1 was conducted. Thereafter, the trial court has recorded thus:- “At this stage Dr. Jagdish Sadiza submits that Dr. Manish Jha who has assessed the victim and has interacted with her knows Maithili well and would be most suited to put questions to the victim in view of the fact that the mental age of the victim is 05 years. The recording of the testimony of the victim is, therefore, deferred”.

32. On the next hearing date, Clinical Psychologist Dr. Manisha Jha was present. The trial court has recorded thus:- “Clinical Psychologist Dr. Manisha Jha has been summoned to assist this Court in recording the testimony of the victim whose mental age has been assessed to be 5 years. Even though her chronological age is about 11 years. The Clinical Psychologist is



also well-versed in Maithili dialect which the victim understands.
The Clinical Psychologist submits that the victim suffers from 50% intellectual disability. I have made preliminary inquiries from the Victim with the help of Clinical Psychologist Dr. Manisha Jha and it appears that she is well oriented and is capable of giving rational answers to questions. The Victim appears to be giving her evidence voluntarily and without any threat, pressure, fear, influence or coercion.”

33. Again, *voir dire* was conducted. The trial court from the answers given by PW1 found her to be a competent witness, who was able to comprehend the questions put to her and give rational answers. However, as the mental age of PW1 was assessed to be 05 years old, her testimony was recorded without administering oath. After recording that PW1 can be examined without oath, the trial court has recorded thus:- “...Ms. Kamini Sharma, Ld. counsel for VWDC Panel is also present as support person for the victim.



Dr. Manisha Jha, Clinical Psychologist/Expert who is also well-versed in Maithili dialect from IHBAS is present to assist the court. Ms. Suman Singh, Ld. Legal Counsel for DCW is also present. Mother of the victim is also present.” It was in the presence of the aforesaid persons the examination of PW1 was conducted. The Court has also recorded that the answers given by PW1 in Maithili dialect has been translated into Hindi and the same recorded.

34. Sub-section (4) of Section 33 of the PoCSO Act says that the Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or relative in whom the child has trust or confidence to be present in the Court. Therefore, it can be seen that the trial court in compliance with the provisions of the PoCSO Act had allowed the mother to be present inside the courtroom while the prosecutrix was being examined. To ensure that the answers given by PW1 in Maithili were properly translated, CW1, Dr. Manisha Jha was also present, who



acted as the translator/interpreter. The appellant/accused has no case that the said person who was engaged by the trial court to be an interpreter was not competent to translate the answers given by the witness in Maithili into Hindi. Therefore, all necessary steps to make the witness comfortable is seen taken and there has been no violation of the provisions of the PoCSO Act as has been attempted to be made out by the learned counsel for the appellant/accused.

35. PW1 in her testimony has clearly referred to the overt acts of the accused. The relevant portion reads thus:-

“...Question: *Shankar Singh ne aap ko apne ghar le jaa kar kya kiya?*

Answer: (The victim at his stage pointed to her Salwaar). Khol diya.

Question: *Shankar Singh ne aap ki Salwaar khol kar kya kiya?*

Answer: Ganda Kaam kiya.

Question: *Shankar Singh ne phir kya kiya?*



Answer: Apne kapde khol diye. (Now the victim has made to and fro (aage-peeche) movements to indicate what Shankar Singh did.)

Question: Kya Shankar Singh ne apni su-su wali jagah aap ki su-su wali jagah mein daali?

Answer: Haan Ussne lagayi thhi.

(The question has been again got clarified from the victim.)

Question: Kya Shankar Singh ne apni su-su wali jagah aap ki su-su wali jagah ke andar daal di thhi? (Objected to by Ld. LAC for accused on the ground that leading questions can not be put to the victim.)

Answer: Haan. Daal di thhi

.....

Question: *Kya aap ko Judge Auntie ke paas laaye thhe?*

Answer: Nahi.

(At this stage, the duly sealed envelope bearing the seal RAA has been taken out of the case file. It has been opened and is found to contain original proceedings including statement of the prosecutrix/victim u/s 164 Cr.P.C as well as application of the IO for recording of the statement U/s 164 Cr.P.C. The proceedings u/s164 Cr.P.C. have been shown to the witness and the statement has been read out to the witness by the Clinical Expert by translating it into Maithili).

Question: *Kya aap ne aise bataya thha?*

Ans: Haan.



Question: *Kya issi tarah se Shankar Singh ne ganda kaam kiya thha?*

Ans: *Haan. Salwaar khol diya. Aise kiya. (The victim has made to and fro rocking movements.)*

The statement U/s 164 Cr.P.C. of the victim is exhibited as Ex. PW 1/A.) It bears the right thumb impression of the victim at point 'A'.

Question: *Kya Gappu ke Papa ka naam Shankar Singh hai?*

Answer: *Haan.*

Question: *Baad mein aap ko kapde kis ne peknaaye?*

Answer: *Apne aap se peken liye.*

Question: *Shankar Singh ne jo ganda kaam kiya thha uss ke bare mein kya aapne apni mummy ko bataya thha?*

Answer: *Bataya thha.*

Question: *Kisi aur ko bhi bataya thha?*

Answer: *Nahi.*

Question: *Kya Shankar Singh ne pehle bhi kabhi aap ke saath aisa ganda kaam kiya thha ?*

Answer: *Kiya thha.”*

(Emphasis Supplied)

36. It was submitted that leading questions were asked to PW1 and hence, the answers to the same cannot be taken into consideration. It is true that the questions could have been framed



in a better manner. However, all the questions put to PW1 during her examination-in-chief were not leading questions. The questions that have been underlined hereinabove are certainly leading questions. But the earlier questions are not leading ones. The answers to the said question show that the accused had taken PW1 to his house, undressed her, thereafter he also undressed. What the accused did thereafter is indicated by PW1 by her gesture which has been recorded by the trial court. Further, the 164 statement also stands proved. It is true that 164 statement is not a substantive piece of evidence, but it can only corroborate or contradict the maker. Here, the 164 statement fully corroborates the testimony of PW1. The answers given to the leading questions need to be considered along with the 164 statement, her remaining testimony and the gesture of PW1 indicating the overt act of the accused after she was undressed. Therefore, this is not a case of conviction based on the answer given by PW1 to two leading questions alone.



On the other hand, there are other ample materials to indicate the overt acts of the accused. The testimony of PW1 has to be read as a whole along with the gestures that she made, which has been recorded by the trial court in her testimony. That would clearly establish or prove the act committed by the accused on PW1.

37. It was further argued that if PW1 could write her name, then her statement ought to have been recorded by giving questions to her and getting her answers in writing. The materials on record do not show that PW1 could read or write. PW1 has not written her name or affixed her signature in either 164 statement or in her testimony. On the other hand, it is her right thumb impression that is seen taken in both the documents. That being the position, the dictum relied on by the learned counsel for the appellant in **Darshan Singh (supra)** is no way applicable to the facts of the present case.



38. PW2, the mother of PW1, provides corroboration to the limited extent that PW3, her son told her about the incident as soon as she reached home from work. PW2, without any delay, immediately reported the matter to the police.

39. The learned counsel for the appellant/accused submitted that the testimony of PW3, the brother does not corroborate the version of PW1 regarding penetrative sexual assault. On the other hand, he only deposed that he had seen the accused doing *ganda kaam* on his sister. Therefore, at best this is a case that would fall within the ambit of aggravated sexual assault punishable under Section 10 of the PoCSO Act, and not penetrative sexual assault punishable under Section 6 thereof.

40. The expression “*ganda kaam*” used by PW3 cannot be read in isolation. PW3, a child witness, was describing an occurrence of a sexual nature, and the expression used by him has to be understood in the context of the entirety of his testimony and



the circumstances which he actually witnessed. PW3 clearly deposed that he saw both the accused and his sister half dressed at which time the accused was found lying on top of his sister. The act of penetration is spoken to by PW1. Therefore, the testimony of PW3 does corroborate the testimony of PW1.

41. It was further submitted by the learned counsel for the appellant that the medical evidence does not corroborate the prosecution case, as Ext. PW10 MLC of PW1 does not disclose any fresh hymen tear or external injury. It was submitted that absence of any external injuries create a serious doubt regarding the alleged penetrative sexual assault by the appellant/accused. Merely because no fresh injury was seen is no ground to disbelieve the case. The MLC shows that the hymen was torn and the tear was an old one. The prosecution case is that the accused repeatedly committed penetrative sexual assault, which was on 27.06.2017 and on several other earlier occasions. The trial court disbelieved



the prosecution case of repeated sexual assault on the ground that there are no materials on record to establish the same. Paragraph 64 of the impugned judgment reads thus:-

“64. So far as the allegation of the Complainant/Mother of the victim leveled in her complaint regarding repeated penetrative sexual assault with her minor daughter/victim 'A' is concerned, nothing has come up on record in the testimony of the victim which could establish that accused had committed the offence of penetrative sexual assault with her repeatedly except in the testimony of mother of the victim that she had been told by the victim that she was being raped for 3-4 days by the accused. Pertinently, Mother of the victim had not witnessed the said act been committed by the accused upon her daughter and it is a 'hearsay' evidence and also PW-3/Brother of the victim deposed that prior to the incident in question, he had never seen accused do such an act with his sister 'A'. Therefore, the prosecution has failed to establish that the accused committed aggravated penetrative sexual assault upon the minor victim.”

(Emphasis supplied)



42. This conclusion is apparently incorrect. PW1 was infact asked about the same and she answered that the accused had committed similar acts on earlier occasions also. It is true that neither the mother nor the brother had seen the earlier acts of sexual assault by the accused. PW3 the brother only deposed that he had not witnessed the earlier incidents. He never deposed that no such incidents had taken place. The testimony of PW1 to the effect that there was repeated sexual assaults by the accused is not seen discredited. The testimony of PW3 the brother shows that when he saw the accused lying on top of his sister, he had pushed the door, which opened. PW3 also deposed that when the accused and his sister came out, he told the accused that he would inform his mother about the incident. Probably on the date of the incident, before the entire act could be completed or when the accused was in the midst of the act, the door opened resulting in the assault stopping midway. This explains the reason as why the tear of the



hymen was not fresh. But penetration to any extent is sufficient and it is not necessary that the penetration should be complete. This is established by the testimony of PW1, whom I find no reason(s) to disbelieve.

43. Further, the evidentiary value of medical examination in a case of sexual assault is corroborative and not determinative of the occurrence. 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**).

44. The learned counsel for the appellant/accused further submitted that the statutory safeguards under Sections 19(4) and 26(3) of the POCSO Act read with Rule 5 of the POCSO Rules were not duly complied with. It was submitted that, in the case of a child having intellectual impairment, the person assisting in communication ought to be a special educator, a person familiar with the child's mode of communication, or a designated expert. CW1 was neither a special educator nor previously familiar with the victim, having interacted with her only on one occasion during the assessment alleged to have been done by her. It was further pointed out that the initial assessment and collection of history had



been undertaken by a M.Phil trainee and not directly by CW1. Accordingly, CW1 could not be treated as a competent interpreter of the victim's gestures in court, argued the learned counsel.

45. Section 26(3) of the PoCSO Act says that, in case of a child having mental or physical disability, the Magistrate or police officer may seek the assistance of a special educator, or any person familiar with the manner of communication of the child, or an expert in that field, having the prescribed qualifications and experience. Thus, the statutory provision itself recognises more than one permissible category of assistance and does not make the assistance of "special educator" an indispensable requirement in every case.

46. CW1, the Clinical Psychologist from IBHAS, deposed that she had interacted with PW1 and had conducted an assessment of the child. In her cross-examination, CW1 clarified that the M.Phil. trainee had only collected the details and history of the



victim, whereas the assessment of PW1 was done by her. She further deposed that she had signed the report in her capacity as clinical supervisor and that the assessment was conducted by her along with the trainee. The mere fact that a M.Phil. trainee assisted CW1 in collecting the history and particulars of the child does not, by itself, establish that the psychological assessment was conducted by an incompetent or unauthorised person. Section 19(4) states that a translator or interpreter shall be provided where the contents of the report are recorded in a language not understood by the child or where such assistance is otherwise necessary. The safeguards under the POCSO Act and the 2012 Rules are intended to protect and facilitate the child and cannot be converted into a technical ground for discarding otherwise reliable substantive evidence in the absence of demonstrated prejudice. There is no reason why CW1 should depose falsely before the Court.



47. Moreover, this is not a case in which PW1 was completely unable to communicate. A reading of her testimony shows that questions were infact put to her to which she gave cogent answers. The trial court was satisfied that PW1 is a competent witness. I do not find any infirmity in the said conclusion of the trial court. Accordingly, the challenge based upon alleged non-compliance with Sections 19(4) and 26(3) of the POCSO Act read with the POCSO Rules, does not create any infirmity in the prosecution case or make the testimony of PW1 incapable of reliance.

48. Another argument advanced was regarding the non-examination of independent witnesses. No materials have come on record to show that any other person, other than PW3 had witnessed the incident. Moreover, mere non-examination of every witness to the incident cannot result in an adverse inference when the evidence actually adduced is cogent, credible and sufficient to



establish guilt beyond reasonable doubt. Evidence has to be weighed and not counted.

49. The defence plea of false implication on account of a rent dispute is not established from the materials on record. The testimony of DW1 does not materially advance the defence case. DW1 only deposed that there had been quarrels with PW2 regarding non-payment of rent and that PW2 had threatened to implicate the accused falsely. However, she admitted that there was no written rent agreement or legal notice that had been issued for vacation of the premises. It is true that it is always not necessary or possible to prove the defence by producing documentary evidence. Nevertheless, if the accused and DW1 are to be believed, there were frequent quarrels related to non payment of rent. It has come on record that there were also other tenants of the accused in and around the tenanted premises of PW1's family. If that be so, they might have heard the frequent quarrels that are



alleged to have taken place between the accused and the family of PW1. But none were examined. Therefore, the plea of false implication arising out of a rent dispute remains unsubstantiated and does not create a doubt in the prosecution case.

50. The prosecution has successfully established that the accused wrongfully confined PW1 in his room and committed penetrative sexual assault on her. Thus, the offences punishable under Section 342, 376(2)(i),(l) IPC and Section 6 of the PoCSO Act stand fully established. I find no infirmity in the impugned judgement calling for an interference by this Court.

51. Before I conclude, I refer (though no arguments were addressed on the point by the appellant) to an incorrect procedure adopted by the trial judge. Towards the end of the examination of PW1, the following suggestions were put to her on behalf of the accused. They read:

“Following suggestions have been sought to be put to the witness by Ld. Legal Aid Counsel for the accused.



Q1. I put it to you that you did not shout at the time of alleged incident as no such incident ever took place. What do you have to say?

Q2. I put it to you that you did not inform anybody about any prior alleged incident as such incident never took place. What do you have to say?

Q3. I put it to you that prior to lodging of the instant FIR, there was a quarrel between your mother and the accused regarding non-payment of rent. What do you have to say?

Q4. I put it to you that the alleged incidents never took place. What do you have to say?

Court's Order - Keeping in view the tender age of the victim and that her mental age has been assessed to be five years because of which she is not capable of understanding the nature and import of the suggestions put to her, the suggestions are disallowed.”

52. The trial court went wrong in disallowing the aforesaid questions. Here, it would be apposite to refer to Section 33 of the PoCSO Act which reads thus:-

“(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or



upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) x x x x x x x x x
(8) x x x x x x x x x
(9) x x x x x x x x x”

(Emphasis supplied)

53. Therefore, the Act has clearly provided for provisions to protect the child from aggressive questioning or character



assassination and to see that the dignity of the child is maintained at all times during the trial. This does not mean that the defence cannot or need not put questions to the child witness. The procedure contemplated under Sub-section (2) of Section 33 ought to have been adopted by the trial court and not prevented the defence from putting the suggestions to the witness.

54. In the result, the appeal *sans* merit is dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

AUGUST 17, 2026
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