



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

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Judgment Reserved on: 04.08.2026

Judgment Pronounced on: 07.08.2026

CNR No. DLHC010348712019

+ **CRL.A. 971/2019**

WAHID KHAN

.....Appellant

Through: Mr. Kanhaiya Singhal, Mr. Prasanna,
Mr. Ajay Kumar, Ms. Avantika
Shankar and Ms. Shatakshi Singh,
Advocates.

Versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for State with SI
Ekta Chauhan, P.S. Mayur Vihar.
Ms. Tara Narula and Mr.
Harshvardhan Jain, Advocates for
R-2/victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374(2) of the Criminal Procedure Code, 1973 (the Cr.P.C.) has been filed by the sole accused, in Sessions Case No. 1711/2016 on the file of the Special Judge, PoCSO Act, East District, Karkardooma Courts, Delhi, assailing the judgment dated 04.05.2019 and order on sentence



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dated 08.05.2019 as per which he has been convicted for the offences punishable under Section 5(l) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that approximately 07 to 08 months immediately preceding 20.11.2015 at Jhuggi E-37/22A, Sanjay Camp, Trilok Puri, Delhi, the accused repeatedly committed aggravated penetrative sexual assault on PW1, a minor girl aged about 14 years. Hence, as per the charge-sheet/final report, the accused is alleged to have committed the offences punishable under Sections 376, 342, 354C and 506 of the Indian Penal Code, 1860 (IPC) and Section 4 of the PoCSO Act.

3. On the basis of Ext. PW1/A FIS/FIR of PW1, given on 20.11.2015, Crime No. 735/2015, Mayur Vihar police station i.e. Ext. PW6/A FIR was registered by PW6, Constable. PW12, Woman Sub-Inspector, conducted investigation into the crime and on completion of the same, filed the chargesheet/final report



against the accused alleging the commission of the offences punishable under abovementioned 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 CrPC. After hearing both sides, the trial court, *vide* order dated 12.07.2016, framed a Charge under Section 5(l) read with 6 of the PoCSO Act. 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 13 were examined and Exts. PW1/A-B, PW 2/A-B, PW3/A, PW5/A-C, PW6/A-C, PW7/A-D, PW9/A, PW11/A-E, PW12/A-I, Mark PW12/B-D and P-4 were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) CrPC 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 he had not



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committed any offence and has been falsely implicated in the present case. Infact, the father of PW1 had borrowed a sum of ₹2,00,000/- from him on interest. Some others also, namely, Bony, Mirchi and Dilshad, had also borrowed some money from him. As they did not want to return his money, they conspired with the father of PW1 to falsely implicate 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 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 by the accused.

9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court *vide* impugned judgment dated 04.05.2019 held the accused guilty of the offence punishable under Section 5(1) read with Section 6 of the PoCSO Act. Accordingly, *vide* order on sentence dated 08.05.2019, the accused has been sentenced to rigorous imprisonment for a period of 12 years as well as fine ₹10,000/- and in default of payment of fine, to simple imprisonment for two months. Aggrieved, the accused has come up in appeal.

10. It was submitted by the learned counsel for the appellant/accused that the impugned judgment is contrary to the facts and circumstances of the case and is bad in law, as the trial court failed to properly appreciate the evidence on record. The prosecution failed to prove that PW1 was a minor at the time of the incident. The school admission records relied upon by the



prosecution were not a reliable proof of age, as it was based only on Ext. PW7/C affidavit submitted by PW2, the mother, and not on any authentic birth record issued by a competent municipal authority or gram panchayat. It was further pointed out that the admission record was from the second school attended by PW1, whereas the records of her first school were never produced. PW2, the mother of PW1, had herself admitted that the birth of PW1 had never been registered with any government authority and that only *janam patri* had been prepared, which was also not produced before the Court.

10.1. It was submitted that the prosecution failed to establish the place of occurrence, as no investigation was conducted to prove that the house in which the alleged offence had been committed was occupied by the appellant/accused. There is also no independent evidence to show that the appellant/accused had ever visited the house of PW1. Further, there was an unexplained delay of seven months in lodging the FIR.



10.2. The learned counsel submitted that photographs contained in the mobile phone were never shown to or identified by PW1 or PW2, her mother, during their examination, and merely exhibiting the photographs through the Investigating Officer (PW12) would not establish that the person depicted in the photographs is PW1. It was further submitted that the recovery of the mobile phone was doubtful and that there were material inconsistencies between the testimony of PW12, the IO and PW5, the seizure witness. While PW12 claimed that she had examined the mobile phone at the spot and seen the photographs before seizing it, PW5 stated that the phone was never opened or examined by PW12 in his presence before it was sealed. Further, chain of custody has not been proved properly as the *malkhana* register was not produced before the court.

10.3. Regarding sentencing, it was submitted by the learned counsel that the minimum prescribed sentence under Section 6 of the PoCSO Act at the time of the incident and before 20.11.2015



was 10 years. It was prayed that the sentence be modified to the statutory minimum of 10 years.

11. *Per contra*, it was submitted by the learned Additional Public Prosecutor and the learned counsel for the prosecutrix 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. It was submitted that while the defence attempted to dispute Ext. PW7/C affidavit, they failed to ask a single question during cross-examination. At no point during the entire trial, including during 313 statement of the accused, the identity of the person in the photograph was disputed. The testimony of PW12, the IO, who directly observed the photographs on the phone at the time of seizure, constitutes substantive direct evidence under Section 60 of the Indian Evidence Act. Further, forcing a victim to view explicit images in the court for identification is legally unnecessary and morally improper, especially when the identity is independently



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established by the officer and the FSL expert. Therefore, the conviction and sentence awarded by the trial court ought to be upheld.

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 20.11.2015 by PW1 in Hindi, translated reads thus: - *“I have 3 siblings, and I am the eldest of the four children. We live on rent. I am studying in the 9th standard at the Government School, Block 27, Trilok Puri. My friend Zeenat, R/o Block 15, Trilok Puri, is my classmate. She got married to a boy named Siraj and shifted to her in-laws’ place at Jhuggi No. E-37/22 A, Sanjay Camp, Trilok Puri. I visit her in-laws’ place sometimes. Zeenat’s father-in-law Wahid Khan, aged 60 years, used to live with them. About 7-8*



months ago, I was sitting outside my house when Wahid Khan passed through and told me that Zeenat was calling me. I told him that I would meet her. Thereafter, he went on his way. 15-20 minutes later, at around 2 PM, I reached Zeenat's house to meet her. When I peeped inside her room, I found it empty. Suddenly, Zeenat's father-in-law, Wahid Khan came from behind, latched the room and locked it. I was taken aback. I questioned his act and asked him to let me go home and where Zeenat was. Wahid Khan grabbed me by my hand and pushed me onto the bed. When I cried and protested, he asked me to keep my mouth shut and to do as he said. He pulled off my pajamas. When I began to scream, he clamped my mouth with his hand. He climbed on to me, unzipped his pants and proceeded to rape me. As I was being raped, I experienced pain in my private part. I tried to fend him off with all my might, but I failed. After raping me, he took my nude picture on his mobile phone. I began to bleed from my private part. Wahid Khan threatened me that if I disclosed the incident to others, he



would show my nude photo to everybody and also kill my siblings. I was unable to speak due to fear. Thereafter, Wahid Khan unlocked the door and I came back home and did not disclose the incident. After few days, Wahid Khan came to my house in the afternoon and asked me to send my siblings outside. My siblings refused to go outside. He left after threatening me. I did not disclose all these things to my parents. My siblings were wondering, as to why that uncle had scolded me. Thereafter, he again called me to his home and told me that if I did not go to him, he would post my photo on the internet. I was afraid and hence went to his house. When Wahid Khan tried to force himself on me, I started crying. Then, he agreed that he would not assault me on the said day, but I would have to allow him to click my photos. He clicked my photos after partially undressing me and thereafter sent me home. On 13th October at about 02:00 pm, on the day of Bhai Dooj, Wahid Khan came to my house when my parents had gone to the market. Wahid Khan questioned me as to why I had not gone to



him for a long time. I was unable to answer due to fear. Wahid Khan showed a knife and threatened to kill my siblings. Meanwhile, my younger brother Abhishek went outside and said that he would inform my parents. Thereafter, Wahid Khan left after threatening us with dire consequences in case I failed to heed to his demands. Thereafter, in the evening when my parents returned home, my brother told them that an uncle had come to the house and threatened us with a knife. I disclosed the entire incident to my mother. My parents were initially at a loss as to what they should do. Thereafter, my mother took me to the police station. Legal action should be taken.”

15. PW1, in the 164 statement marked as Ext. PW1/B recorded on 21.11.2015, has stated thus: Wahid Khan (the accused), the father-in-law of Zeenat, her friend, came to her house and told her that Zeenat was calling her. Believing him, she went to Zeenat's house. On reaching there, she found the door of the house closed. She entered the house but found that no one was



present inside. Suddenly, Wahid Khan (the accused) came from behind, latched the door, locked it, and kept the key with himself. He told her to remain quiet and do exactly as he said. When she attempted to leave the house, Wahid Khan (the accused) caught hold of her hand, grabbed her, and pushed her onto the bed. She started screaming, but the accused covered her mouth to stop her. He then pulled down her pyjama, unzipped his pants, and committed wrong act (गन्दी हरकत) with her. She tried to scream, but he did not allow her to scream or cry. During the incident, he recorded a video of her and took photographs. He threatened her that if she disclosed the incident to anyone, he would upload the video on the internet. After the incident, she returned home. On a later occasion, Wahid Khan (the accused) entered her house when no one else was present. He threatened her and showed her the photographs and video that he had taken. At that time, her younger brothers were at home watching television. Wahid Khan (the accused) also threatened her younger brothers, although they were



too young to understand what was happening. Wahid hit her on her cheek with a slipper and took out a *ustara* to frighten them. When the accused committed the wrong act on her, she started bleeding from her private part and suffered severe abdominal pain. On the day of *Bhaiya Dooj*, her brother went around the neighbourhood and spoke up about the incident. The accused had come to threaten them on that day. Her youngest brother informed their mother. Wahid Khan had been committing wrong acts (*galat kaam*) with her for the past seven months. She could not recall the exact dates or the number of times these acts had been committed on her. Whenever she used to stop going to his house, the accused would come to her house and threaten her. He repeatedly threatened to upload her photographs and videos on the internet. On the 13th, when her mother (PW2) questioned her, she disclosed the entire incident to her. The accused had been assaulting her for the past seven months. Whenever the accused came across her, the former



would threaten and intimidate her, take her to his house, and assault her there.

16. PW1 when examined before the trial court more or less stood by her earlier statements in the FIS/FIR and the 164 statement.

16.1. PW1 in her cross-examination deposed that the house where the incident took place was in the occupation of the accused and his son, and that her friend Zeenat lived in a separate house. Her parents were employed in a factory at Noida, Uttar Pradesh, where they did tailoring work. They normally leave for work by about 09:00 a.m. and return home by around 09:00 p.m. Her father had Sundays off, whereas her mother did not have any weekly holiday. On the day of the first incident, as usual, both her parents had left for work. PW1 admitted that the accused is a moneylender. However, PW1 denied borrowal of any money by her parents or any of her family members from the accused. PW1 denied the suggestion that the accused has been falsely implicated because



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her parents had borrowed money from him on interest and, upon his demanding repayment, falsely implicated him in the present case.

17. PW2, the mother of PW1, deposed that PW1 is her eldest daughter. During the time of the incident, PW1 was studying in the 9th standard in a government school situated near their house and was 14 years old. Zeenat was her daughter's (PW1) friend and used to study with her daughter. Zeenat, after her marriage, started residing in her matrimonial home situated at Sanjay Camp, Trilok Puri. Her father-in-law, namely, Wahid Khan (the accused), was also residing in the said matrimonial home. In 2015, on the occasion of Bhai Duj, she, along with her husband, had gone to the market to purchase some goods. When they returned home, she noticed that her children looked frightened. On enquiry, her youngest son, Abhishek (PW8), told her that an uncle had come to the house and threatened to kill his sister (PW1). Abhishek (PW8) told her that the uncle had taken out a knife and threatened PW1



that he would kill her brothers. Abhishek (PW8) also stated that the uncle had bolted the house from inside before threatening them. Thereafter, Abhishek (PW8) unbolted the house and came outside, stating that he would inform his parents, upon which Wahid Khan (the accused) ran away from the spot. She asked her daughter (PW1) about the incident and the reason for the same. Her daughter then disclosed that the accused had been committing wrongful acts on her for the past seven months and that the accused had taken the former's photographs on his mobile phone while she was in a nude or semi-nude condition. Her daughter also told her that Wahid Khan (the accused) had threatened to kill her brothers, due to which she was too scared to disclose the incident to her earlier. Her daughter told her that she had remained silent out of fear that Wahid Khan (the accused) would publish the photographs taken by him. Her daughter informed her that Wahid Khan (the accused) had raped her. Initially, she was unable to decide the course of action to be taken. She then discussed the



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matter with her husband, and after prolonged deliberation, decided to report the matter to the police. The police arrested the accused *vide* arrest memo Ext. PW2/A and the mobile phone of the accused, which contained photographs of PW1 in a nude condition, was seized by PW12 *vide* Ext. PW2/3 seizure memo.

17.1. PW2 in her cross-examination deposed that her marriage took place when she was just 12 years old, and that she was 32 years old at the time of her examination before the court. Although married at age 12, her *vidai* took place 5 years later, and that PW1 was born one and a half years after the *vidai* ceremony. The birth of her daughter took place at their residence on 04.02.2001. PW1's birth was not registered in any government office, but a *janam patri* had been prepared. When PW1 was 05 years old, she was admitted in a government school located in Trilok Puri, Delhi (known as Mandi wala school). PW2 denied the suggestion that her family had taken a loan of ₹1,00,000/- from the accused and falsely implicated him in this case when he



demanded his money back. She denied the suggestion that the age of the victim (PW1) was more than 19 years at the time of the incident.

18. PW8, the brother of PW1, deposed that when he was about 07 years old, he had seen the accused at his house on the day of Bhai Duj. All his siblings were present in the house. The accused showed a knife at his eldest sister (PW1) and also threatened all of them not to disclose the incident or telephone the police, or else, he would kill all of them. At that time, his parents had gone to the market. The accused left the house before his parents returned home. Thereafter, he informed his mother (PW2) about the incident.

18.1. PW8 in his cross-examination deposed that no one had tutored him regarding what to say before the Court. He admitted that he did not know the accused prior to the incident. He denied the suggestion that he had not seen the accused or that he was identifying the accused at the instance of his mother.



19. PW9, Senior Resident, LBS Hospital, New Delhi, was examined to prove Ext. PW9/A MLC of PW1. He deposed that Dr. Deepika, the doctor who had examined PW1, had left the hospital and that the latter's whereabouts were not known to the hospital. PW9 identified the signature and handwriting of Dr. Deepika. PW9 in her cross-examination deposed that she had no personal knowledge regarding the contents of the MLC, as it had not been prepared in her presence. She had affixed her signature in the MLC after Dr. Deepika had prepared it.

20. The accused has been convicted and sentenced for the offence punishable under Section 5(l) read with Section 6 of the PoCSO Act. The learned counsel for the appellant/accused has disputed the age of PW1 before this Court. To determine the age of PW1, PW7, Principal of EDMC, 1st shift School, Trilok Puri-block 28, Delhi-91, was examined. PW7 produced Ext. PW7/A a copy of the relevant extract of the student admission and withdrawal register reflecting the admission of PW1 at serial no. 3988; Ext.



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PW7/B photocopy of the admission form; Ext. PW7/C photocopy of the affidavit given by PW2, mother of PW1, and Ext. PW7/D a certificate regarding the date of birth of PW1 issued by her predecessor-in-office on the basis of the aforesaid school records. As per the record, PW1 was admitted to the school on 27.07.2006 in the first standard, and her date of birth is 04.02.2001.

20.1. PW7 in her cross-examination admitted that she does not have any personal knowledge of the records in respect of PW1 and that she has deposed solely on the basis of official school records.

21. Ext. PW7/D is described as a certificate given by the then Principal of PW1's school. This is a statement given in writing by a witness during the course of investigation to the police and hence a statement under Section 161 Cr.P.C., which is clearly inadmissible in evidence (See **Sasi v. State of Kerala 2019 KHC 465: 2019 (3) KLT 561**), **Kali Ram v. State of H.P., 1973 KHC 634:1973 (2) SCC 808**; **Kanu AmbuVish v. State of**



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Maharashtra, 1971 KHC 469: 1971 (1) SCC 503; Datar Singh v. State of Punjab, 1975 KHC 789 : (1975) 4 SCC 272 and C. Chenga Reddy v. State of A.P., 1996 KHC 1264 : 1996 (10) SCC 193). However, Ex.PW7/A is the extract of the Admission Register and the same is admissible in evidence. When PW7 was in the box, it was never put to her by the defence that the entries made in the register are false or that wrong/false information had been given by the parents relating to the date of birth of PW1. There is nothing on record to doubt the entry made in the register. As per Ext. PW7/A, the date of birth of PW1 is 04.02.2001. The incident took place on 20.11.2015. If that be so, the age of PW2 was only 14 years. Therefore, the fact that PW1 was a minor at the time of the incident stands proved.

22. The version narrated by PW1 in Ext. PW1/A FIS/FIR, Ext. PW1/B her 164 statement, and her testimony before the trial court is consistent and clear with regard to the manner in which the appellant induced her to visit the house, committed sexual assault



upon her, took her nude photographs, and repeatedly threatened her with the publication of those photographs. Her testimony is materially corroborated by PW2, her mother, who deposed that upon returning home on the day of *Bhai Dooj*, PW1 disclosed that the appellant had been repeatedly sexually assaulting her for several months and had taken her nude photographs on his mobile phone while threatening to publish them. The testimony of PW2 also finds further corroboration from PW8, the younger brother of PW1, who deposed that he saw the appellant come to their house on the day of *Bhai Dooj*, threaten PW1 and his siblings with a knife, and leave before their parents returned. PW8 immediately informed PW2 about the incident, whereupon PW1 disclosed the entire occurrence to her mother.

23. Ext. PW9/A MLC corroborates the prosecution case of rape/penetrative sexual assault. Ext. PW9/A MLC of PW1 notes the hymen to be '*torn*'.



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24. It was submitted by the learned counsel for the appellant/accused that as per the prosecution, the appellant lured PW1 to the house of her friend by stating that her friend had called her, and that when she reached the said house, the accused confined and raped her. However, in her cross-examination, PW1 categorically admitted that her friend (Z), along with her husband, were residing separately and not in the house of the appellant, who is her father-in-law, while the latter himself resided in a separate one-room accommodation. This admission according to the learned counsel makes the prosecution story improbable, as there was no plausible reason for PW1 to visit the appellant's house to meet her friend.

25. A perusal of the testimony of PW1 shows that she has consistently stated in Ext. PW1/A FIS/FIR; Ext. PW1/B her 164 statement, and in her testimony that the appellant came to her house and told her that Z, her friend, was calling her. Believing the representation made by the appellant, she proceeded to the house



where she expected to meet her friend. It is pertinent to note that the prosecution case is not that the appellant specifically told PW1 to go to his own house. The evidence only indicates that the appellant informed her that Z had called her. Since the appellant was Z's father-in-law, it cannot be said to be unnatural or improbable for PW1 to believe that Z might be present at the appellant's residence. The evidence does not disclose that PW1 was aware of the exact residential arrangement of Z and the appellant on the date of the occurrence. More importantly, the defence did not confront PW1 with any suggestion that she knew Z was residing elsewhere or that she deliberately went to the appellant's house despite such knowledge. On the contrary, the consistent version of PW1 is that she acted upon the representation made by the appellant that Z had called her. In these circumstances, the contention that there was no reason for PW1 to visit the appellant's house does not create any doubt in the prosecution case.



26. The learned counsel for the appellant/accused submitted that the photographs in the mobile phone of the accused were never shown to or identified by PW1 or PW2, her mother, during their examination, and therefore, it has not been proved that the person depicted in the photographs is infact PW1. The evidence of PW12, the IO, is not enough to prove that the said photographs depicted PW1, goes the argument.

27. It is apposite to refer to the testimony of PW12, the IO and PW5, Constable, on this point. PW12, Woman Sub-Inspector, Mayur Vihar police station, deposed regarding the various steps taken during the course of the investigation. She deposed that she had prepared Ext. PW12/B site plan at the instance of PW1. She had arrested the accused vide arrest memo Ex. PW2/A, and got his personal search conducted through PW5 *vide* Ex. PW5/A memo. At the time of arrest, she had seized a Nokia mobile phone from the possession of the accused, as PW1 alleged the same contained her nude photographs. Prior to seizure, she checked the mobile



phone and found that it contained nude photograph of PW1. There was no SIM card in the said phone. *Vide* Ext. PW2/B seizure memo, the phone was seized. She later deposited the sealed case property in the *malkhana*. During the course of investigation, on 20.12.2015, she had also seized a photograph of the victim *vide* Ext. PW12/D memo for the purpose of comparison with the images found in the seized mobile phone by the FSL. The case property was deposited in the FSL on 31.12.2015 and 05.01.2016. She identified Ext. P1 phone as seized from the possession of the accused. She also identified Ext. P2 the passport-size photograph and Ext. P3 post-card-size photograph of PW1 which had been seized during the course of investigation, which were sent to the FSL. PW12 confirmed that the photographs contained in Ext. P4 CD are the same images seen on the accused's mobile phone at the time of seizure.

28. PW5, then Constable, Mayur Vihar police station, deposed that on 21.11.2015, as identified by PW1, the accused was



apprehended and thereafter arrested. After arrest, the accused was taken to the police station and thereafter to LBS Hospital for medical examination.

28.1. PW5 in his cross-examination deposed that a mobile phone had been recovered during the personal search of the accused. According to PW5, the mobile phone was neither opened nor its content checked in his presence. PW12 had not demanded any ownership documents of the mobile phone from the accused in his presence. PW5 denied the suggestions that he had never joined the investigation or that the accused had not been arrested in his presence or that no mobile phone had been recovered from the possession of the accused.

29. The argument of the learned counsel for the appellant/accused, by referring to the testimony of PW5, is that PW12 never checked the image in the phone and therefore she is also not competent to say whether the image of the girl seen in the



mobile phone, alleged to have been seized from the accused, is in fact that of the prosecutrix.

30. I am unable to agree to the argument advanced. PW5 has only deposed that PW12 had not checked the contents of the mobile phone in his presence. That does not mean that PW12 never checked the contents of the phone, especially in the light of the unchallenged testimony of PW12. PW12 deposed that before seizing the mobile phone recovered from the possession of the accused, she had examined its contents and found nude photographs of PW1 stored therein. By the time PW12 seized the mobile phone, she had the occasion to personally see the prosecutrix. Therefore, her testimony to the effect that the image seen in the phone is infact that of the prosecutrix is direct evidence of a fact perceived through her own senses and hence admissible under Section 60 of the Evidence Act, which requires oral evidence to be direct. Thereafter, during the course of investigation, PW12 seized Exts. P2 and P3 photographs of PW1



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and forwarded the same, along with the seized mobile phone, to the FSL for scientific examination. Ext. PW12/I the FSL report corroborates the testimony of PW12. It has been opined that the image of the female marked “Q1” (the image extracted from the mobile phone) and the image of the female marked “S1” (the photograph of PW1) are of the same female. The report further records that no indication of image reproduction or manipulation was observed in the relevant image files. Thus, the identity of the person appearing in the photographs is not based merely upon the oral testimony of PW12 but also stands independently established by scientific examination. In these circumstances, merely because the photographs were not shown to PW1 or PW2 during the course of their examination does not affect the evidentiary value of the photographs or the FSL report, especially when the accused never had a case that the images are of two different girls.

31. It was also submitted that the recovery of the mobile phone from the possession of the accused is doubtful. PW12



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deposed that the mobile phone was recovered from the possession of the accused at the time of his arrest and was seized *vide* Ext. PW2/B seizure memo. Her evidence is materially corroborated by PW5, who also deposed that a mobile phone was recovered during the personal search of the accused. Both PW5 and PW12 denied the defence suggestions that no mobile phone had been recovered from the accused or that the accused had been falsely implicated. Nothing has been brought out to discredit their testimony on this aspect. Therefore, the factum of recovery of the mobile phone from the possession of the accused stands duly established.

32. The submission regarding the absence of ownership documents of the mobile phone and the non-production of the *malkhana* register is also without merit. The seizure of the mobile phone has been established through the testimony of PW5 and PW12. Further, PW12 deposed that after seizure of the Nokia mobile phone from the possession of the accused, she sealed it *vide* Ext. PW2/B seizure memo and deposited the sealed case property



in the *malkhana*. She further deposed that on 20.12.2015, she seized the photographs of PW1 *vide* Ext. PW12/D seizure memo for comparison with the photographs stored in the mobile phone and that the case property was thereafter forwarded to the FSL on 31.12.2015 and 05.01.2016. She also identified Ext. P1 mobile phone, Exts. P2 and P3 photographs, and confirmed that Ext. P4 photographs were the same photographs which she had seen in the mobile phone at the time of seizure.

32.1. PW11, the then Moharrir Head Constable (*Malkhana*), deposed that on 21.11.2015, PW12 had deposited one mobile phone and an envelope containing photographs of the prosecutrix in the *malkhana*. As per PW11, he dispatched the sealed parcels to the FSL *vide* RC No.144/21/15 on 31.12.2015 through PW10. The material objects were deposited by PW10, who handed him Ext. PW11/C acknowledgement receipt from the FSL. PW11 produced Register Nos. 19 and 21 and proved the relevant entries as Exts. PW11/A to PW11/E. On 05.01.2016, he handed over the sealed



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parcel containing the mobile phone and photographs to PW12 to be sent to the FSL through RC No.147/21/15. PW12 deposited the sealed parcel and handed over Ext. PW11/E acknowledgement of deposit. PW11 in his cross-examination denied the suggestion that no such case property had been given to PW12 for depositing in the FSL on 05.01.2016 or that the entries have been manipulated.

32.2. The evidence of PW11 is further corroborated by PW10, then Constable, who deposed that as per the instructions of PW12, on 31.12.2015 at about 08:30 a.m., he collected the sealed parcels and sample seals from the MHC(M) *vide* RC No.144/21/15. He deposited the same at the FSL and returned the acknowledgement receipt issued by the FSL to PW11, the MHC(M). He deposed that the sealed parcels remained intact and were not tampered with so long as they remained in his custody.

32.3. The FSL report also records that the seals on the parcels were intact and tallied with the specimen seal at the time of the examination. Thus, the prosecution has established an unbroken



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chain of custody through the consistent testimony of PW10, PW11 and PW12, duly supported by the *malkhana* entries and the FSL report. No material suggesting tampering or substitution of the case property has been brought on record.

33. On going through the FIS/FIR; the 164 statement as well as the testimony of PW1, I find no reason(s) to disbelieve her. She has clearly deposed that the accused had committed penetrative sexual assault on her repeatedly for a period of around 07 months. It is true that there is some delay in reporting the matter to the police. But that has been explained by PW1 herself. She deposed that she did not reveal the assault/rape to her parents as the accused had threatened to upload her nude photos that he had taken in his mobile phone in case she revealed it to others. The apprehension or fear of the prosecutrix stands justified in the light of the discovery of her nude photographs in the mobile phone seized from the accused. Therefore, the essential ingredients contemplated under Section 5(1) of the PoCSO Act stand



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established. The conviction of the accused under Section 6 of the PoCSO Act is therefore confirmed.

34. Now coming to the sentence. The learned counsel for the appellant/accused submitted that the incident had occurred in the year 2015, which is before the amendment of Section 6 of the PoCSO Act. Prior to the amendment, which came into effect from 16.08.2019, the offence was punishable with rigorous imprisonment for a term not less than 10 years, but which could extend to imprisonment for life and fine. The accused has already undergone incarceration for more than 05 years. The learned counsel also submitted that the appellant is of advanced age and is suffering from age-related ailments. It was, therefore, prayed that the sentence imposed by the trial court be modified and reduced to the statutory minimum sentence of ten years' rigorous imprisonment.

35. It is true that the incident in the present case occurred much prior to the amendment of Section 6 of the PoCSO Act



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brought into force with effect from 16.08.2019. On the date of the incident, Section 6 of the PoCSO Act prescribed a minimum sentence of ten years' rigorous imprisonment, which could extend to imprisonment for life, and fine. The trial court imposed a sentence of twelve years' rigorous imprisonment.

36. As per the nominal roll dated 29.11.2025, the appellant has undergone incarceration for 05 years and 06 months. It is seen from the record that the appellant had been granted interim bail by this Court *vide* order dated 07.06.2021, which was subsequently modified on 04.08.2021 for a period of four weeks from 05.08.2021 to 01.09.2021. However, he never surrendered on expiry of the period of interim bail. This fact was brought to the notice of the Court only on 12.09.2025, on which date bailable warrant was issued. But they could not be executed, and hence on 08.12.2025, non-bailable warrant was issued. Thereafter, he could be arrested only on 09.12.2025, pursuant to which he continues to be in jail. Hence, it can be seen that for four years he absconded



and evaded the process of law for a considerable period. The mitigating circumstances urged by the learned counsel, namely, the appellant's advanced age and age-related ailments, have also been considered. However, in view of the gravity and nature of the offence, coupled with the appellant's conduct, this Court does not find any exceptional circumstance warranting interference with the sentence imposed by the trial court.

37. The appeal *sans* merit is dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

AUGUST 07, 2026

p'ma/mj