



2026:DHC:7629



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

% *Judgment reserved on: 31.08.2026*
Judgment pronounced on: 09.09.2026

CNR No. DLHC014960862017

+ **CRL.A. 83/2018**

DEEPU @ DEEPAK

.....Appellant

Through: Mr. Azhar Qayum, Mr. Narender
Kumar, Mr. Shahrudin and Mr.
Zubair, Advocates

Versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for State
Ms. Ananya Pandey, Advocate
(*Amicus Curiae*) for Victim

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal under Section 374 read with Section 482 of the Code of Criminal Procedure, 1973 (the Cr.P.C), the sole accused in Sessions Case No. 128/2014 on the file of the Additional Sessions Judge-01, East, Karkardooma Courts, Delhi



assails the judgment dated 26.08.2017 and order on sentence dated 26.08.2017 as per which he has been convicted and sentenced for the offences punishable under Sections 342, 363, 377 and Part I of Section 506 of the Indian Penal Code, 1860 (the IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 26.07.2014 at about 02:00 p.m., the accused kidnapped PW3, a minor boy aged 10 years, from the street near his house, wrongfully confined him at *Jhuggi* No. 14/139, Kalyanpuri, Delhi and committed carnal intercourse against the order of nature. The accused criminally intimidated PW3 by threatening to beat him if he disclosed the incident to anyone. As per the chargesheet/ final report, the accused is alleged to have committed the offences punishable under Sections 342, 363, 367, 377 and 506 IPC and Section 6 of the PoCSO Act.



3. On the basis of Ext. PW3/A FIS/FIR of PW3 given on 01.08.2014, Crime No. 682/2014, Kalyanpuri Police Station, that is, Ext. PW1/A was registered by PW1, Head Constable. PW11, Sub-Inspector, conducted the 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 31.10.2014, framed a Charge under Sections 342, 363, 377, Part I of Section 506 IPC and Section 4 of the PoCSO Act, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 12 were examined and Exts. PW1/A, PW1/B, PW1/C, PW2/A, PW3/A,



PW3/B, PW4/A, PW4/B, PW4/C, PW4/D, PW4/E, PW5/D1, PW6/4, PW7/A, PW7/B, PW8/A, PW9/A, PW10/A, PW10/B, PW10/C PW11/A and PW11/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 claimed that he had been falsely implicated in the present case because he had intervened in a quarrel that took place between one Lambu and PW3's mother. He denied having committed any wrong act on PW3.

7. After questioning the accused under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings,



unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him.

8. No oral or documentary evidence was adduced by the accused.

9. Upon consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 26.08.2017, held the accused guilty of the offences punishable under Sections 342, 363, 377 and Part I of Section 506 IPC and Section 6 of the PoCSO Act. *Vide* order on sentence dated 26.08.2017, the accused has been sentenced to rigorous imprisonment for a period of 10 years along with fine of ₹10,000/- and in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 377



IPC; to rigorous imprisonment for a period of 10 years along with fine of ₹10,000/- and in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 6 of the PoCSO Act; to rigorous imprisonment for 5 years along with fine of ₹1,000/- and in default of payment of the fine, to simple imprisonment for a period of 1 month for the offence punishable under Section 363 IPC; to rigorous imprisonment for 1 year for the offence punishable under Section 342 IPC; and to rigorous imprisonment for 1 year for the offence punishable under Part I of Section 506 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 age of PW3 has not been conclusively established by the prosecution. The date of birth of PW3 recorded in Ext. PW4/A admission register is based solely on Ext. PW4/B



affidavit furnished by his parents at the time of his admission in the school. No birth certificate or any other document issued by any Government authority or the Municipal Corporation was produced to substantiate or corroborate the date of birth. The school record, being founded only upon the affidavit of the parents, cannot be treated as conclusive proof of the age of PW3.

10.1. It was submitted by the learned counsel for the appellant that the medical evidence does not corroborate the prosecution case. Ext. PW9/A MLC of PW3 and Ext. PW12/A treatment record shows that there was no history of bleeding or difficulty in defecation and no bruise or any sign of injury on or around the anus of PW3. It was also pointed out that the MLC records the anal tone as normal and notes absence of tenderness on rectal examination. Therefore, no injury was found on the medical examination of PW3 and so the medical record does not disclose any finding corroborating the offence. It was further submitted by



the learned counsel for the appellant that the anal swabs of PW3 were taken and handed over to PW12, the Investigation Officer (IO). However, no FSL report in respect of the swab has been placed on record.

10.2. The learned counsel for the appellant/accused submitted that the matter was reported on 01.08.2014 when PW3 is alleged to have experienced pain in his anus, which is after about seven days of the alleged incident, that is, on 26.07.2014. If the incident had infact occurred in the manner stated by PW3, pain would have manifested immediately or proximate to the date of the incident. There is an unexplained delay of around six days in lodging the FIR. Further, the explanation that the accused had threatened to kill PW3 if he disclosed the incident to anyone also seems implausible. PW3 deposed that he disclosed the incident to his mother as soon as he experienced pain. If the threat was serious



to deter PW3 from disclosing the incident, it is unclear why he would disclose it immediately upon experiencing pain.

10.3. It was also submitted that there are material discrepancies and inconsistencies in the testimony of PW3, PW7 and PW11 regarding the arrest of the appellant. PW3 deposed that the appellant was brought to the police station from a tea shop on 01.08.2014, whereas PW7 and PW11 stated that he was arrested from Village Bhangal, Noida, on 03.08.2014. Further, the testimony of PW2 and PW5 is only hearsay evidence.

10.4. It was also submitted by the learned counsel for the appellant/accused that the present case arose out of a quarrel between the mother of PW3 and one Lambu, a neighbour. The accused intervened in the quarrel and supported Lambu. Hence, he has been falsely implicated in the present case as he had not supported PW3's family in the quarrel. The prosecution has failed to prove the guilt of the appellant beyond reasonable doubt. It was



accordingly prayed that the impugned judgment of conviction and order on sentence be set aside and the appellant be acquitted. Reliance has been placed on the dictum in **Navin Dhaniram Baraiye vs. The State of Maharashtra 2018 SCC OnLine Bom 1281**, in support of the arguments.

11. *Per contra*, the learned Additional Public Prosecutor submitted that there is no infirmity in the impugned judgment calling for an interference by this Court. Ext. PW4/A and Ext. PW4/B, the school admission records, are admissible in evidence and that the age of PW3 stands proved during the trial. As regards the absence of external injuries, it was submitted that PW3 was medically examined about six days after the incident and, therefore, the absence of external injuries in the MLC is not unusual. With regard to the discrepancy concerning the arrest of the accused, it was submitted that the testimony of PW7 who effected the arrest of the accused, was never challenged as PW7



was never cross-examined. Despite the accused being given an opportunity to recall PW7 if found necessary, the witness was never recalled and cross-examined. Therefore, the fact of the arrest remains unchallenged. Further, the quarrel between the mother of PW3 and Lambu was a separate incident and had no connection with the sexual assault on PW3 by the accused. Therefore, it was submitted that the prosecution case stands proved beyond reasonable doubt and that the appeal is liable to be dismissed.

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

13. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellant/accused by the trial court are sustainable or not.

14. I shall briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext PW3/A FIS/FIR given on 01.08.2014 by PW3 in Hindi, translated reads thus:-*"I reside with my parents and study in 7th standard. On*



26.07.2014 at around 02:00 p.m., I was going to fetch wood from the market near my jhuggi. My parents were not at home. Deepu, son of Ram Prakash, who works at Lala's tea shop and lives in a neighbouring jhuggi on rent, took me to his jhuggi and asked me to come inside. When I entered his jhuggi, Deepu (the accused) closed the door from inside, pulled down my pants and started committing wrong act on me from behind (मेरी निक्कर उतार कर पीछे से गलत काम करने लगा). When I started crying in pain, Deepu (the accused) put his hand on my mouth. After committing the wrong act, he threatened me not to disclose the incident to anyone, or he would beat me. Thereafter, I returned to my jhuggi. I did not share it with anyone in fear. Today, when I felt pain in my anus, I revealed it to my parents, who took me to the police station."

15. Ext. PW3/B 164 Statement of PW3 recorded in Hindi on 02.08.2014, translated reads thus:- "On 26.07.2014, a boy



named Deepu (the accused) called me over. He (the accused) covered my mouth and latched the door. He (the accused) then started misbehaving with me. He (the accused) committed carnal intercourse on me (वो मेरी गांड मार रहा था). I experienced severe pain. He (the accused) threatened me that he (the accused) would beat me up severely if I disclosed the incident to anyone. Out of fear, I did not disclose it. Yesterday, I told about the incident to my family members”

16. PW3 when examined deposed that the accused was his neighbour. The incident occurred on the 26th at 02:00 p.m., which was a Saturday. PW3 was unable to recall the year in which the incident took place. When he was going to the market, the accused called him inside the *jhuggi*. As soon as he entered, the accused tied a cloth on his face and bolted the door from inside. The accused committed carnal intercourse with him. Thereafter, the



accused threatened to kill him if he disclosed the incident to anyone. Due to fear, he did not disclose the incident to his family. After a week, he felt pain in his anus and hence told his mother. He, along with his parents, went to the police station and gave Ext. PW3/A statement. He was taken to the hospital for medical examination.

16.1. PW3 in his cross-examination admitted that his parents had a quarrel with Lambu, their neighbour. On the date of the incident, Lambu had entered their house, and when his father (PW2) arrived, Lambu ran away from their *jhuggi*. His parents had a quarrel with Mohd. Ali (PW5), the owner of the *jhuggi*, in which Lambu was staying. His mother had asked PW5 to evict Lambu from the *jhuggi*, in connection with which his parents quarrelled with Mohd. Ali (PW5) on the date of the incident. PW3 admitted that the accused had supported Mohd. Ali (PW5) in the quarrel and that the accused had also abused his parents. PW3 admitted that



they went to the police station after the quarrel. When PW3 was asked by the trial court as to when the quarrel had taken place, he answered that it was on the day after the date of the incident. They had gone to the police station at about 03:00 p.m. and stayed there for about 02 to 03 hours. The police had recorded his and his father's (PW2) statements. The police had let off the accused on that day. When PW3 was asked by the Court as to how the accused had reached the police station on the said day, answered that the accused had been brought by the police from his place of work. The accused was living in the same *jhuggi* where Lambu was residing. The carnal intercourse was committed while he was on the floor and the assault went on for about half an hour. Throughout the incident, he remained on the floor. There was no bleeding from his anus on the date of the incident. PW3 denied the suggestion that he had been tutored by his parents to make a false



statement against the accused, as the latter had quarrelled with his parents and abused his mother.

17. PW2, the father of PW3, deposed that in the evening of 26.07.2014, when he returned home from work, his wife told him that their son (PW3), aged about 13 years, was experiencing pain in his anal area. He asked his son (PW3) as to what had happened, whereupon his son (PW3) told him that Deepu (the accused), who was working at a nearby tea shop, had called his son while he was going to the market to collect wood. Deepu (the accused) took his son (PW3) to a neighbour's *jhuggi* and shut the door. The accused removed his son's nicker, pressed his mouth, and committed carnal intercourse on him. His son (PW3) also told him that Deepak (the accused) had threatened him that if the former disclosed the incident to anyone, he would be beaten. All these facts were disclosed to him by his wife about a week after the incident, after which he, alongwith his son (PW3), went to the



police station and lodged the complaint. The police took his son (PW3) to the hospital for medical examination. His son (PW3) had not disclosed the incident for about a week as he had been threatened not to do so.

17.1. PW2 in his cross-examination admitted that, during the period from 26.07.2014 to 02.08.2014, his son (PW3) had never complained of any pain. He knows Lambu, a rickshaw puller, who was a tenant in a nearby *jhuggi*. He admitted that the owner of the *jhuggi* evicted Lambu from the *jhuggi* on 01.08.2014. He also admitted that he had suspected Lambu of committing theft in his *jhuggi* and that he complained to the owner of the *jhuggi*, who in turn asked Lambu to vacate the *jhuggi*. He admitted that the accused and Lambu were friends. He admitted that, on 01.08.2014, he had a quarrel with the owner of the *jhuggi* because he had asked the owner to get Lambu evicted from the *jhuggi*, failing which he would complain to the police. He admitted that during the said



quarrel, the accused had supported the *jhuggi* owner and had also abused his wife. He denied the suggestion that the present complaint had been lodged against the accused because the latter had supported the *jhuggi* owner during the quarrel with him and his wife. PW2 deposed that he and his wife were present at the police station when the police recorded his son's (PW3) statement and also on the following day, when his son's statement was recorded by the Judge.

18. PW5, the owner of the *jhuggis*, deposed that there are two rooms in his *jhuggi*, one of which was occupied by him and the other had been rented out to a rickshaw puller. The accused used to frequently visit his *jhuggi* to meet the said rickshaw puller for cigarettes, etc. During the relevant time, he had gone to his village along with his family. When he returned, he came to know from the neighbours that the accused had sexually assaulted PW3.



By that time, the rickshaw puller, who was his tenant, had already vacated the *jhuggi*.

18.1. PW5, in his cross-examination, admitted that he did not have any document relating to ownership of the *jhuggi*. However, he has a ration card and Ext. PW5/D1 voter ID card mentioning the address of the said *jhuggi*.

19. On the question of age of PW3, the prosecution relies upon the testimony of PW4, the Principal of EDMC Primary Model School, Khuchirpur, Second Shift, Delhi, who produced Ext. PW4/A admission and withdrawal register of PW3 along with Ext. PW4/B affidavit of the parents of PW3 regarding his age submitted at the time of admission; Ext. PW4/C photocopy of admission form; Ext. PW4/D school leaving certificate; and Ext. PW4/E certificate issued to PW3 by the then Principal, Jagat Singh Tebatia. PW4 identified the signature of the then Principal, Jagat Singh Tebatia, having served contemporaneously with him. The



said testimony and record reveal the date of birth of PW3 as 11.02.2003. As per the record, PW3 had taken admission in Class I on 29.08.2008 and left the school after Class VI on 25.08.2013.

19.1. PW4, in her cross-examination, deposed that no document other than Ext. PW4/B the affidavit had been submitted by the parents at the time of admission. She denied the suggestion that the record produced by her was not based on any document issued or submitted to any Government authority, or that the date of birth of the child had been wrongly recorded in the school records without any basis.

20. No materials have been brought on record to show that Ext. PW4/B affidavit is a fabricated one or that the date of birth mentioned therein is incorrect. Further, neither PW4 nor PW2 were cross-examined with regard to the genuineness or correctness of the affidavit or the date of birth recorded. Thus, the evidence regarding the date of birth remained substantially unchallenged.



The records were maintained in the ordinary course of official business, and there is nothing on record to suggest that they were fabricated or incorrectly prepared. Accordingly, there is no reason to disbelieve the authenticity or correctness of the said records. Moreover, on 10.07.2017, the prosecution moved an application under Section 216 Cr.P.C. seeking amendment of the court Charge to include Section 6 of the PoCSO Act. On 02.08.2017, the learned counsel appearing for the accused stated that he had no objection to the application, pursuant to which the Charge was amended. Although this circumstance by itself cannot be treated as proof of the age of PW3, it shows that the amended charge was not objected to by the accused before the trial court. The school records consistently record the date of birth of PW3 as 11.02.2003. On the date of the incident, i.e., 26.07.2014, PW3 was approximately 11 years and 5 months old. In the absence of any evidence creating a reasonable doubt regarding the correctness of



the recorded date of birth, I find that the prosecution has established that PW3 was below 12 years of age on the date of the incident.

21. The primary question that arises for consideration is whether the version of PW3 regarding the commission of the offences by the accused has remained substantially consistent throughout and is free from material contradictions or improvements so as to inspire confidence. In Ext. PW3/A FIS/FIR, the case is that he did not reveal the incident to anybody as he was threatened by the accused with dire consequences if he revealed the same. But on 01.08.2014 when he felt pain in his anus, he disclosed the incident to his parents (आज जब मुझे टट्टी करने वाले रास्ते पर दर्द होने लगा तो मैंने अपनी मम्मी और पापा को यह बात बतलाई). In the 164 statement, PW3 has no such case. On the other hand, his version is that during the course of assault, he had



experienced severe pain (मुझे बहुत दर्द हुआ). The accused threatened him that the former would beat him up severely if he disclosed the incident. He was frightened and hence did not disclose the incident to anyone (मैंने डर के मारे किसी को नहीं बताया था). Thereafter, yesterday I told my parents (फिर कल मैंने अपने घर वाले को बताया). Therefore, there is no case of pain in his anus, which led to the disclosure.

22. In the box, the case is that after a week of the incident, he felt pain in his anus and hence disclosed the incident to his mother. According to PW3, the carnal intercourse was committed while he was on the floor and the assault went on for about half an hour. According to him, throughout the incident, he remained on the floor. Immediately after the disclosure, on 01.08.2014, he was taken to the police station where his Ext. PW3/A statement was recorded and the FIR registered on the same at 21:35 hours. On



the same date at 10:45 p.m., he was medically examined. Ext. PW9/A MLC of PW3 records no visible external injury. Ext. PW12/A treatment note records “*no history of bleeding per rectal, no history of difficult defecation, no bruise or injury or sign of external injury at or around the anus, normal anal tone and no tenderness or swelling on rectal examination*”. It is true that mere absence of any external injury cannot be a ground to disbelieve the testimony of a child. However, in the case on hand, the case in the FIS/FIR is that on 01.08.2014, when PW3 felt pain in the anus/anal canal (टट्टी करने के रास्ते), he disclosed the incident to his mother. The incident took place on 26.07.2014. The disclosure is made on 01.08.2014, which is about a week after the incident. If pain was persisting on the said day also, some corresponding finding such as tenderness, redness or soreness would ordinarily be expected on medical examination. But the medical evidence does not in any



way support the case of carnal intercourse. On the other hand, it raises doubts as to whether any anal penetration had taken place as alleged by the prosecution. It is true that it was about a week after the incident, PW3 was subjected to medical examination. But, if PW3 is to be believed, the sexual assault carried out on the floor of the *jhuggi* continued for about half an hour. He had experienced severe pain during the course of the assault. He had pain on 01.08.2014 also. If that be so, there would certainly have been some tenderness/soreness or discolouration in or around the anal area. But there was no such injury seen.

23. Further, the incident is alleged to have taken place on 26.07.2014 and PW3 disclosed the incident to his mother on 01.08.2014 when he experienced pain in his anus. However, if PW2, his father, is to be believed, on 26.07.2014, when he returned home from work, his wife told him that their son was experiencing pain in his anal area. When he enquired with his son,



the latter disclosed the incident to him. PW2 thereafter deposed that the incident was disclosed to him by his wife about a week after the incident, after which he and PW3 went to the police station and lodged the complaint. These two versions cannot go together. There has been no re-examination of PW2 on the point that he was informed of the incident on 26.07.2014 when he returned home from work. No clarification was ever sought. If PW2 came to know of the incident on 26.07.2014 itself, why was it not reported immediately? Why did they have to wait till 01.08.2014? No answers are forthcoming from the materials on record.

24. Further, PW3 admitted that on the date of the incident, a quarrel had taken place between his mother and one of his neighbours in which quarrel, the accused had intervened. The relevant portion of her testimony reads thus:-

“...Once my parents had a quarrel with Lambu. Vol. Lambu had



entered inside our house same day when this incident happened with me, when my father came he run away from there after leaving his jhuggi. My parents also had a quarrel with Mohd. Ali. Vol. My mother had asked Mohd. Ali to evict Lambu from the jhuggi and due to this my parents had quarreled with Mohd. Ali same day when this incident took place. It is correct that accused Deepu had supported Mohd. Ali in quarrel with my parents and had abused my parents. It is correct that after this quarrel we had gone to PS.

Court Question : When this quarrel had taken place?

Ans. Next day to this incident...”

(Emphasis supplied)

25. The possibility of Ext. PW3/A FIS being lodged in the backdrop of the quarrel cannot be completely ruled out. This is especially so in the absence of any medical evidence supporting the prosecution case, making the case doubtful.

26. It was submitted by the learned counsel for the appellant that although the rectal swab of PW3 was taken, it was never sent to the FSL and no FSL report was produced. PW11, the Investigating Officer, when examined before the trial court, was



silent on this aspect. There is no material on record to show that the said sample had been sent to the FSL or examined. The prosecution has also not offered any explanation for the non-production of the FSL report.

27. There is yet another aspect which raises further doubts regarding the prosecution case. PW3, in his examination-in-chief, deposed that on 01.08.2014, the accused had also been brought to the police station. But the police had “*let off*” the accused on the said day. On being questioned by the trial court as to how the accused had come to the police station, PW3 answered that the former had been brought from the place of his work to the station by the police. This version is materially different from the testimony of PW7, who deposed that, in the intervening night of 02.08.2014 and 03.08.2014, he, along with PW11, the IO, went to Village Bhangal, Sector-42, Noida on receiving secret information and had arrested the accused from Bhangal Village. PW7 was



never cross-examined by the accused. Therefore, the version of PW7, a loyal prosecution witness, regarding arrest stands unchallenged. No clarification or re-examination of PW3 was done regarding his testimony that the police had let off the accused on 01.08.2014. Neither PW3 nor his family has a case that the police deliberately did it to help the accused. It is true that illegalities committed during the course of investigation will not always enure the benefit of the accused. But, in the case on hand, this one more factor in addition to the earlier aspects hereinabove referred to doubt the case.

28. In view of the unsatisfactory materials on record, doubts arise in the mind of the Court as to whether the accused had infact committed the offences charged against him. Hence, I find that the prosecution has failed to establish that the appellant/accused has committed the offences with which he has been charged beyond reasonable doubt, and so the benefit of such



doubt must necessarily enure to the accused. Hence, the conviction and sentencing of the appellant for the offences punishable under Sections 342, 363, 377 and Part I of Section 506 IPC and Section 6 of the PoCSO Act is found unsustainable and so liable to be interfered with.

29. In the result, the appeal is allowed. The appellant is acquitted under Section 235(1) Cr.P.C. of the offences punishable under Sections 342, 363, 377, Part I of Section 506 IPC and Section 6 of the PoCSO Act. The appellant shall be set at liberty and his bail bond shall stand cancelled.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

SEPTEMBER 09, 2026

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