



2026:DHC:8506



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 15.09.2026

Date of Decision: 30.09.2026

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CNR No. DLHC010045962026

+ CRL.A. 143/2026 & CRL.M.(BAIL) 278/2026

SURAJ KUMAR

.....Appellant

Through: Ms. Swati Verma, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR.Respondents

Through: Mr. Hemant Mehla, APP

Mr. Amarlal and Ms. Gauri Kumar,
Advs. for Victim.

W/SI Athine, P.S. Burari.

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal has been filed under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023, read with Section 528 thereof (corresponding to Sections 374 and 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "*Cr.P.C.*") assailing the judgment dated 19.11.2025 and the order on sentence dated 16.12.2025 passed by the learned ASJ (FTSC) (POCSO)-01, Central, Tis Hazari District Courts, Delhi, in **FIR No. 290/2022**, registered at P.S. Burari under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as "*IPC*") and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter



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referred to as “POCSO Act”) whereby the appellant was convicted and sentenced for the offences for which he was charged.

The brief facts of the case, as emerging from the impugned order, are as follows:

2. In brief, the case of the prosecution is that on 20.03.2022, the victim/complainant, Ms. ‘S’ (whose complete name and other particulars have been withheld to protect her identity), made a complaint alleging that the accused, Suraj Kumar, who was her neighbour, used to call and seduce her to meet him. It is alleged that on 12.03.2022, at about 1:00 a.m., when the victim had gone downstairs to attend to nature’s call, the accused allegedly came there, stifled her, took her to his room and committed aggravated penetrative sexual assault upon her. Owing to fear, she did not disclose the incident to anyone. It is further alleged that on the following day, the accused again committed rape upon her and, on the night of 19.03.2022, again took the victim with him and slept with her. When the victim’s mother woke up and found her missing, she searched for her, whereafter the accused allegedly pushed the victim out. The victim was thereafter medically examined at Aruna Asaf Ali Government Hospital, and the present case was registered.

3. On the basis of the victim’s complaint, **FIR No. 290/2022** was registered at P.S. Burari for offences punishable under Sections 376 and 363 of the IPC and Section 6 of the POCSO Act. The accused was arrested and investigation was carried out. During investigation, the victim was medically examined at Aruna Asaf Ali Government Hospital and her statement under Section 164 Cr.P.C. was recorded before the learned



Metropolitan Magistrate.

4. The investigating agency also collected documents from the concerned school to ascertain the age of the victim. Upon completion of investigation, the chargesheet was filed before the Court.

5. On 14.10.2022, a formal charge for the commission of offences u/s 451/342/363 IPC, 376-A-B IPC r/w 376(2)(n) IPC and Section 6 of the POCSO Act was framed against accused Suraj Kumar by learned trial court.

6. To prove its case against the accused and discharge its burden, the prosecution examined six witnesses before the learned Trial Court, whose testimonies have been discussed in the impugned judgment as under:

“6. PW-1 is victim Ms. ‘S’ herself. Her testimony is being reproduced as under:-

“Q. Aapke saath kya hua tha?

Ans. March, 2022 (tareekh mujhe theek se yaad nahi hai) raat ko mere pet (stomach) mein dard hua tha, toh main fresh hone ke liye ghar se neeche gayi thi, jahan bathroom baney hue hai. Hum log 1st floor par rehte hai. Jab main washroom use karke upar apne ghar jaane lagi toh accused Suraj ne pichhe se aa kar apne hath se mera mooh band kar diya tha. Uske baad accused Suraj mujhe apne kamre mein le gaya aur fir usne mujhe apne bistar par leta diya tha. Fir accused Suraj ne mere kapde utaar diye aur mere sath galat kaam kiya tha.**

Q. ‘Galat Kaam’ se aapka kya matlab hai?

Ans. Accused Suraj ne apne susu karne wali jagah ko mere susu karne wali jagah mein daal diya tha.

Q. Fir kya hua?

Ans. Meri mummy chilla rahi thi aur mujhe dhoondh rahi thi.”

Thereafter, the victim stated:



“Toh meri Mummy ki awaz sun kar accused Suraj ne mujhe chaur (leave kar) diya aur mujhe kapde pehna kar bola ki jaao apne ghar jaao.

Fir main apne ghar gayi, meri Mummy ne mujhe pucha toh main bahot ghabrayi hui thi. Meri mummy ne mujhse pyaar se pucha toh mainey unhe saari baate bata di. Fir Mummy ne police ke paas phone kar diya tha. Fir raat ko police aayi thi, fir thaane mein gaye the.

Q. Kya aapne Police mein shikayat di thi?

Ans. Ji haan. PW1 proved her complaint as Ex. PW1/A.

Q. Kya police aapko medical karane ke liye hospital le kar gayi thi?

Ans. Ji haan. PW1 proved her MLC dated 20.03.2022 as Ex. P6 and MLC dated 23.03.2022 as Ex. P8.

Q. Kya police aapko judge saheb ke saamne bayaan likhwane ke liye le kar gayi thi?

Ans. Ji haan. PW1 proved her statement recorded u/s 164 Cr.PC as Ex. PW1/B.

Q. Kya aapne police ko wo jagah dikha di thi, jahan par accused Suraj ne aapke sath galat kaam kiya tha?

Ans. Ji haan and proved the site plan as Mark A.

Q. Kya aap accused Suraj ko pehchan sakte ho?

Ans. Ji haan. PW1 correctly identified the accused present in the Court.”

Ld. Addl. PP for the State was allowed to cross-examine the victim as she was unable to disclose complete facts wherein PW1 stated as under:-

“Q. Kya ye baat theek hai ki accused Suraj aapke ghar ke saamne jo rubber ki factory hai usme rehta hai?

Ans. Ji haan.



Q. Kya ye baat theek hai ki 12 March, 2022 ko jab raat mein 1 baje, aap washroom use karne ke liye apne kamre se niche gaye toh accused Suraj kundi khol kar andar aa gaya tha aur aapka mooh band karke aapko apne kamre mein le gaya, jahan accused Suraj ne aapke sath jabardasti sharirik sambandh banaye the?

Ans. Ji haan ye baat sahi hai.

Q. Kya ye baat theek hai ki aapne dar aur ghabrahat ki wajah se ye baat kisi ko bhi nahi bataya tha?

Ans. Ji haan.

Q. Kya ye baat theek hai ki agle din, 13.03.2022 ko accused Suraj ne firse aapke sath “esa hi kiya” tha?

Ans. Ji haan.

Q. Kya ye baat theek hai ki 19-20.03.2022 ki raat ko firse accused Suraj aapko jabardasti apne kamre mein le gaya tha aur aapse chipak kar so gaya tha?

Ans. Ji haan. (Vol. Jab mummy ne shor kiya tha, toh usne mujhe chaur (leave kar) diya tha).

Q. Kya ye baat theek hai ki jab accused Suraj aapko pehli baar apne kamre mein le kar gaya tha toh wahan andhera tha aur wo aapko aapke kapde utaar kar aapko chumne (kiss) laga tha?

Ans. Ji haa.

Q. Kya ye baat theek hai ki accused Suraj ne aapko daraya dhamkaya tha?

Ans. Ji nahi.

Q. Kya ye baat theek hai ki jyada time hone ki wajah se aap ye saari baate nahi bata paaye the?

Ans. Ji haan.”**

PW1 was duly cross-examined by Ld. Defence Counsel, which is being reproduced as under:-



“Q. Aapke ghar ke ground floor par kitne kamre hai?”

Ans. 3 kamre (rooms) hai.

Q. Aapki family 1 floor par kitne kamre (room) mein rehte ho?

Ans. 1 kamre mein, baaki 2 kamro mein dusre kirayedaar rehte hai.

Q. Baaki dono kamre mein kaun rehte hai?

Ans. Wo log apne parivar ke saath rehte the.

Q. Kya ye baat theek hai ki jahan par aapka ghar hai 1 floor par, wahan par blu alag se kitchen aur toilet-bathroom hai?

Ans. Ji haan.

Q. Aapki family mein kitne baje so jaate ho?

Ans. 10:00-11:00 baje tak so jaate hai.

Q. Kya ye baat theek hai ki ground floor par gate laga hua hai?

Ans. Ji haan.

Q. Ground floor wala gate kitne baje band ho jata hai?

Ans. 10:00-11:00 baje band ho jata hai.

Q. Ground floor ke gate ki chaabi (key) kiske paas rehti hai?

Ans. Hamare paas mein jo kirayedaar rehte hain unke paas rehti hai.

Q. Ground floor ki deewar kitni unchi (height) hai?

Ans. Chhoti diwar hai gate ki unchayi jitni hai.

Q. Kya gate ki unchayi bata sakte ho kitni hai?

Ans. 7Ft ke aas paas hai.

Q. Kya gate ki unchayi ghar ke andar se aur gate ke bahar se dekhne par same hai?”

Ans. Ji haan.

“Ye kehna galat hai ki gate ki unchayi bahar se dekhne par 9-10 ft hat.”



Q. Kya 1st floor par aapke ghar ke saath wale kamre mein Manki Devi aur Shatrughan ki family rehte hai?

Ans. Ji haan.

Q. Kya 1st floor par aapke ghar ke paas mein Sagar ki family bhi rehti hai?

Ans. Ji haan.

Q. Kya aapke ghar ke charo taraf aur bhi makan baney hue hai?

Ans. Ji haan.

Q. Police maukey par kitne baje aa gayi thi?

Ans. Raat ke 1 baje.

Q. Police ke aane se pehle aapke ghar par kaun kaun tha?

Ans. Main, mummy, nana, naanu, 2 mama, 1 mami bhi thi aur mera chhota bhai bhi tha.

Q. Kya police ke aane se pehle aapke mama aur mummine aapko bataya tha ki aapko police ko kya bolna hai?

Ans. Ji haan.

Q. Kya ye baat theek hai ki aapke mama ne accused Suraj ke papa se Rs. 2 Lakh रुपये udhaar liye hai?

Ans. Yes ma'am. Again said: nahi ma'am. Mere mama ne koi paise nahi liye.

Ye kehna galat hai ki kyonki first floor par washroom bana hua hai issliye main nicche wala washroom use karne nahi jaati. Vol. 1st floor par nahane ka washroom bana hua hai aur toilet karne ke liye nicche ground floor par bana hua hai. Ye kehna galat hai ki accused Suraj mujhe apne kamre mein jabardasti nahi le kar gaya. Ye kehna bhi galat hai ki accused Suraj ne apne hath se mera mooh band nahi kiya tha aur ye kehna bhi galat hai ki accused Suraj ne mujhe apne bistar par nahi letaya tha. Ye kehna bhi galat hai ki accused Suraj ne mere



sath koi galat kaam nahi kiya tha aur na hi apni susu karne wali jagah ko mere susu karne wali jagah mein daala tha. Ye kehna bhi galat hai ki jo bayan mainey police ko aur Judge Sahab ko diye wo mainey apne mummy aur mama ke kehne par diye the.”

“ke kehne par diye. Ye kehna bhi galat hai ki accused Suraj ne 12.03.2022 aur 13.03.2022 ko mere sath jabardasti sharirik sambandh nahi banaye the aur na hi mujhe kiss kiya tha. Ye kehna bhi galat hai ki accused Suraj 19-20.03.2022 ki raat ko mujhe jabardasti apne kamre mein le kar nahi gaya tha aur na hi wo uss din mujh se chipak kar soya tha. Ye kehna galat hai ki kyonki esi koi ghatna nahi hui thi, isliye mainey ye baat apne ghar mein kisi ko nahi batayi thi. Ye kehna bhi galat hai ki apne mummy aur mama ke kehne mein aa kar main aaj jhoothi gawahi de rahi hoon.”

7. PW-2 is mother of the victim Mrs. ‘S’. She deposed that she is domestic helper and in the year 2022, in the month of Holi Festival, she came to her house after doing domestic help work at 05:30PM. PW2 further deposed that on Saturday night at around 12:30 at night when they were sleeping, then her daughter Ms. ‘S’ told her that her stomach was paining and went to washroom down-stairs, then she thought that her daughter Ms. ‘S’ will come back after using washroom and she took a nap but when she again woke up she found that victim Ms. ‘S’ had not come back to sleep and was also not in her room, then she came down stairs and started looking for the victim Ms. ‘S’, there she saw that washroom gate was open but victim Ms. ‘S’ was not present, then she shouted/called out for the name of the victim Ms. ‘S’, then all her brothers came there,



she again said that her brother Mr. 'A' came there, she had called him, then she and Mr. 'A' started searching for victim Ms. 'S' but they could not find her, then her daughter Ms. 'S' was found in the room of accused Suraj, who used to reside in a house in front of her house on rent. PW2 further deposed that when she was shouting while searching for her daughter Ms. 'S', then accused Suraj brought victim Ms. 'S' out of his room and kicked and pushed her outside the gate of his house. PW2 further deposed that victim Ms. 'S' told her that accused Suraj lured her to do wrongful act for money. PW2 further deposed that the victim told her that accused Suraj caught hold of her hand and did wrongful act with her and when she tried to rescue herself from there, then accused gagged her mouth. PW2 correctly identified the accused present in the Court.

Ld. APP for the State was allowed to cross-examine the witness as she was unable to disclose the complete facts of the case, wherein she stated that police had made enquiries from her regarding the present case. PW2 further stated she does not remember whether she gave any statement to the police and stated that the same must be in the knowledge of her brother. PW2 further stated that when she and her brother Mr. 'A' were searching for her daughter/victim Ms. 'S' then victim Ms. 'S' was found at the main gate of her house. PW2 further stated that her brother Mr. 'A' found victim Ms. 'S' in the room of accused Suraj. PW2 further again stated that victim Ms. 'S' was found at her house gate however, accused Suraj pushed victim Ms. 'S' out of his room, PW2 was confronted with her statement recorded U/s 161 Cr.P.C. Mark PW2/A and read-over to her where it was mentioned



that she found victim Ms. 'S' at the main gate of her house. PW2 further stated that she made enquiries from her daughter who told her that on 12.03.2022, accused Suraj took victim Ms. 'S' to her room and raped her. PW2 further stated that victim Ms. 'S' told her that on 13.03.2022, also accused Suraj took victim Ms. 'S' to her room and again raped her, confronted with her statement marked as Mark PW2/1. PW2 further stated that victim Ms. 'S' told her that due to fear she had not told about the incidents to her. PW2 further stated that victim Ms. 'S' told her that on the day of incident accused Suraj took victim Ms. 'S' to his room and removed clothes and 'chipakkar' slept with her and when she made hue and cry, then accused Suraj made victim Ms. 'S' wear clothes and pushed victim Ms. 'S' out of his room. PW2 further stated that when she found victim Ms. 'S', then she took victim Ms. 'S' to Ramphool Sharma's house where accused Suraj was hiding in a room near the main gate of that house, then her brother Mr. 'A' caught hold of accused and called police and when police came there, accused was handed over to police. PW2 further stated that the police took her along with victim Ms. 'S' to hospital for medical examination of victim Ms. 'S'. PW2 also proved the MLC of victim as Ex. P6.

PW2 further stated that a scuffle took place between accused Suraj and her brother Mr. 'A' when Mr. 'A' apprehended accused Suraj. PW2 further stated that her husband is being called as Mr. 'J' and Mr. 'S'. PW2 further stated that the accused was arrested by the police in her presence vide arrest memo Ex. PW2/A.



PW2 was duly cross-examined by Ld. Defence Counsel.

8. PW-3 is Mama/uncle of victim Mr. 'A'. He deposed that on 22.03.2022 at around 12:30AM (mid night), his sister Mrs. 'S' who resides near his house on rent came to him crying and told him that victim Ms. 'S' was not at home and she could not find her, then he along with Mrs. 'S' started searching for the victim Ms. 'S' by making noise and shouting for her, then victim Ms. 'S' was found at the gate of her house, then they made enquiries from victim Ms. 'S', who told them that accused Suraj who stays in front of her house did wrongful act with her, then they went to the room of accused Suraj where accused Suraj and his father were present and a scuffle took place between them and he sustained some injuries on his hand, then her younger brother called at 100 number and when police came there then police took them, accused Suraj and his father to police station and investigated the matter. PW3 correctly identified accused present in the Court.

Ld. APP for the State was allowed to cross-examine PW3 as he was unable to disclose complete facts of the case wherein PW3 stated that police made enquiries from him about the incident and recorded his statement. PW3 further stated that when accused Suraj saw them, then he tried to flee away from there. PW3 admitted that on 19-20.03.2022 in the night at 12:30AM, mother of victim Mrs. 'S' came to his house crying. PW2 voluntarily stated that due to time lapse, he was unable to tell the exact date of incident. PW3 further stated that he does not remember that he had stated in his statement recorded U/s 161 Cr.P.C that victim Ms. 'S' told



them that accused Suraj had raped her on 12.03.2022 by taking her to his room. PW3 further admitted that victim Ms. 'S' told them at on 19-20.03.2022 during night, accused Suraj again took victim Ms. 'S' to his room and removed her clothes and 'chipakkar' slept with her and when they made hue and cry, then he made victim Ms. 'S' wear her clothes and sent her out of his room. PW3 further admitted that police took victim Ms. 'S' to hospital for conducting her medical examination.

PW3 was duly cross-examined by Ld. Defence Counsel.

9. PW-4 is Sh. Ramphool Sharma. He deposed that he has a plot bearing Khasra No. 673 near Jogi Chopal in which 4/5 rooms are built up in the rear side of the said plot, out of which the 3 rooms were rented to three persons including one Dinch Ram, there was a tinned shed for car parking at the main gate of the said plot which was rented by him to Dinch Ram who installed a rubber cutting machine in the said tinned shed. PW4 further deposed that in the month of March-April, 2022, he came to know that a quarrel happened between Dinch Ram, his son Suraj and the family members of the residents who were residing in the house situated in front of his plot. PW4 further deposed that he never saw accused Suraj. PW4 further deposed that he does not know anything more about the present case and he cannot identify the accused Suraj.

Ld. Addl. PP for the State was allowed to cross-examine the witness as he was not disclosing complete facts, wherein he stated that he does not know whether accused Suraj was residing with his father at the above said plot. PW4 admitted that police enquired from him about the present case.



PW4 further denied the suggestion that police recorded his statement Mark PW4/X. PW4 admitted that he came to know later on that accused Suraj was also residing with his father at the above said plot. PW4 further admitted that he also came to know that accused Suraj has been taken by the police.

PW4 was duly cross-examined by Ld. Defence Counsel.

10. PW-5 is Retired SI Gajpal Singh. He deposed that on 19-20.03.2022 (Midnight), he was posted at PS Burari as Sub-Inspector, on that day, he was on night emergency duty and he received DD No. 14A, on receiving the said information, he reached at the spot i.e. near Jogi Chopal, Burari Delhi, on reaching there, he came to know that PCR vehicle had already taken the victim and accused to police station, then he returned to police station where he met the mother of victim, victim and accused Suraj and came to know that the present matter pertains to sexual assault with a minor girl, then he apprised the facts of the case to the SHO, then he called NGO counselor at the police station for the counseling of the victim and victim was counseled by the said counselor, then he sent victim, along with her mother, counselor and Lady Ct. Reena to Aruna Asaf Ali Hospital for her medical examination then they returned to the police station after medical examination of victim and he received the MLC of the victim then he handed over the MLC of the victim to IO/SI Deepa as investigation was marked to her and he produced accused Suraj Kumar and victim before the IO. PW5 correctly identified the accused present in the Court.



PW5 was duly cross-examined by Ld. Defence Counsel.

11. PW-6 is W/SI Deepa. She deposed that on 20.03.2022, she was posted at PS Burari as Sub-Inspector, on being informed regarding DD No. 14 A, she recorded the complaint of victim as DD No. 14A was with respect to kidnapping of a minor girl and same was assigned to SI Gajpal, he produced the victim and her mother before her in the police station and medical examination of the victim had already been conducted and accused was also produced before her by SI Gajpal in the police station, in a separate room, the Counseling of the victim was also got conducted then after recording the complaint of the victim Ex.PW1/A, she prepared rukka Ex.PW6/A and got the case registered, then accused was arrested vide memo Ex.PW2/A, personally searched by Ct. Surrender vide memo Ex.PW6/B, then age memo Ex.PW6/C of accused was filled up, then Victim and her mother took her to the spot and she prepared the site plan Ex.PW6/D at the instance of the victim, she also recorded the supplementary statement of victim and statements of her mother and Mama and also conducted local enquiry, then accused was got medically examined and he was produced before the Ld. Duty MM and thereafter, he was remanded to JC. PW6 further deposed that on 23.03.2022, statement of victim was got recorded u/s 164 Cr.PC and her age related documents Ex.P4 (Colly) were collected from her school. PW6 further deposed that the mother of the victim requested for internal medical examination of her daughter, accordingly, victim was again sent to hospital and her internal medical examination got conducted vide MLC Ex. P8. PW6 further deposed that on 30.03.2022, potency test of the accused was



got conducted. PW6 further deposed that during the investigation, she also collected age related documents from his school and recorded the statements of the witnesses. PW6 further deposed that she prepared the charge sheet and filed the same in the Court through SHO. PW6 correctly identified the accused present in the Court.

PW6 was duly cross-examined by Ld. Defence Counsel.

12. Vide separate statement of accused he admitted the factum of recording documents though the contents were denied:-

1. Factum of recording of statement of victim under section 164 Cr.PC by Ld. MM. Copy of said statement is marked as Mark.P-1.
2. Factum of registration of present FIR alongwith certificate under section 65B of Indian Evidence Act as Ex.P-2 (Colly.).
3. Factum of recording of DD Entry no. 14A dated 20.03.2022 alongwith certificate under section 65B of Indian Evidence Act as Ex.P-3 (Colly.).
4. School record/documents with respect to the date of birth of victim as Ex. P-4 (Colly.).
5. School record/documents with respect to the date of birth of accused Suraj as Ex.P-5 (Colly.).
6. Factum of medical examination of victim conducted by Dr. Archana at Aruna Asaf Ali Hospital vide MLC no. 12/2022 dated 20.03.2022 as Ex.P-6.
7. Factum of conducting UPT test of victim and her UPT Test Report dated 20.03.2022 prepared by Dr. Kunal Khunt at Aruna Asaf Ali Hospital as Ex.P-7.
8. Factum of medical examination of victim conducted by Dr. Kavita Sharma at Aruna Asaf Ali Hospital vide MLC no. 13/2022 dated 23.03.2022 as Ex. P-8.



9. *Factum of my medical examination conducted by Dr. Surender Kumar at Aruna Asaf Ali Hospital vide MLC no. 453/2022 dated 20.03.2022 as Ex.P-9.*
10. *Factum of my potency test conducted by Dr. Anurag Thapar at Aruna Asaf Ali Hospital and opinion in this regard vide MLC no. 453/2022 as Ex.P-10.*

16. Thereafter, Defence Evidence of the accused was closed and the matter was fixed for final arguments.”

7. On the completion of prosecution evidence, an examination of accused U/s 313 Cr.P.C. was conducted on 24.03.2025, during his examination, he denied all the allegations levelled against them and claimed his innocence by stating that Mr. ‘A’ (uncle/mama of the victim) had taken some money as a loan from his father due to which there was a dispute going on between Mr. ‘A’ and his father and only owing to that dispute, he has been falsely implicated in the present case by the victim Ms. ‘S’. Thereafter, the accused opted to lead Defence Evidence and matter was listed for Defence Evidence. The discussion regarding the defence witnesses by the learned Trial Court is reproduced hereinbelow:

“14. DW-1 is Smt. Manki Devi. She deposed that she is a summoned witness and she resides at her residence (details are withheld in order to protect address of victim) since many years, in the room next to her room resides Mrs. ‘S’ (mother of the victim) and her family and on the other side resides Sagar and his family. DW1 further deposed that Mr. ‘A’ is uncle/mama of the victim and a financial dispute was going on between father of accused and Mr. ‘A’ (uncle/mama of the victim) later on, due to the said dispute police also came there and took



them along with victim Ms. 'S' and her family to police station. DW1 further deposed that she does not know as to what happened in police station. DW1 admitted that where they all stay, there is only one main gate for entry and exist and at night that main gate is locked and the keys of the main gate are kept with her and when anyone has any issue in the night, they take the key from her. DW1 further deposed that at night on 19-20.03.2022 the key of the main gate was with her. DW1 further deposed that on 19-20.03.2022, at around 12:30AM at night Mr. 'A' (uncle/mama of the victim) took key of the main gate from her. DW1 further deposed that she does not know what 'len-den' was going on between father of accused and Mr. 'A' (Uncle/mama of the victim), however, it was a financial dispute.

DW1 was duly cross-examined by Ld. APP for the State.

15. DW2 is Dinesh Ram. He deposed that he is father of accused and he had a financial dealing with Mr. 'A' (Uncle/mama of the victim). DW2 further deposed that he has a rubber factory and required a machine for his factory for which Mr. 'A' (uncle/mama of the victim) told him that he will arrange a meeting with a person who could get that machine for him in Rs.2.5 lakhs and took him to the person and also showed the machine to him then he gave Rs.2 lakh to Mr. 'A' to hand-over the same to seller for purchasing the machine, however, no machine was given to him and he started avoiding him. DW2 further deposed that when he told Mr. 'A' to either give him the machine or return the money, then Mr. 'A' started fighting with him and later on to take revenge on him, Mr. 'A' through victim Ms. 'S' got a false case registered against his son.



DW2 was duly cross-examined by Ld. APP for the State.

16. Thereafter, Defence Evidence of the accused was closed and the matter was fixed for final arguments.

8. The learned Trial Court, vide the impugned judgment dated 19th November 2025, convicted the appellant and held as under:

40. In the present case, testimony of the victim girl was corroborated by the statement of her mother examined as PW2 who stated that the victim girl narrated the incident of sexual assault committed upon her by the accused. The mother of the victim girl and uncle/Mama of victim who were examined as PW2 and PW3 deposed on the similar lines as PW1/victim, where PW2 categorically stated that “she started looking for the victim Ms. ‘S’ and saw that washroom gate was open but victim Ms. ‘S’ was not present there, then she shouted/called out for the name of the victim Ms. ‘S’, then all her brothers came there, she again said that her brother Mr. ‘A’ came there, she had called him, then she and Mr. ‘A’ started searching victim Ms. ‘S’ but they could not find her, then her daughter Ms. ‘S’ was found in the room of accused Suraj.” PW2 further deposed that accused Suraj used to reside in a house in front of her house on rent. PW2 further deposed that when she was shouting while searching for her daughter Ms. ‘S’, then accused Suraj pushed victim Ms. ‘S’ out of his room outside the gate of his house.

41. The defence taken by the accused surfaced in the form of suggestion given to the victim, her mother and her Uncle that admitted the suggestion w.r.t. the



dates of incident does not hold any ground as it is a known fact that minor contradictions are bound to occur in the testimony of a witness due to lapse of time and specifically when the victim is of such a tender age. The contention of Ld. Defence Counsel that DD No. 14A lodged by Uncle of victim was w.r.t. kidnapping and not sexual assault also does not have any substance, in view of the consistent testimony of the victim who was merely of about 10 years w.r.t. the penetrative sexual assault committed upon her by the accused. Similarly, the version of DW1 that keys of the lock was with her also is devoid of any merit as it is nowhere proved that there were no other keys. The victim has been consistent throughout about the aggravated penetrative sexual assault committed by the accused repeatedly upon her.

45. In view of the testimony of the victim, her mother and her Mama/Uncle, it is proved that the accused committed the alleged offences against the victim. The defence taken by the accused regarding false implication on refusal for repayment of loan taken by Mama/Uncle of victim is incredulous as no parent would get involved his minor child over such minor incident. There was no prior enmity between them and, therefore, question of the child victim being tutored does not arise and, thus, defence of the accused and contention of Ld. Counsel for accused regarding the minor victim girl being tutored, has no merit.

46. In view of the aforesaid evidence having come on record, the prosecution has succeeded in laying foundation of its case triggering the presumption U/s 29 and 30 of the POCSO Act. The prosecution has succeeded in proving that accused has



committed aggravated penetrative sexual assault under Section 6 of the POCSO Act.

47. In view of the aforesaid discussion and the evidence having come on record, the prosecution has successfully proved that the accused has committed penetrative sexual assault upon the minor victim who was under 12 years of age punishable under Section 6 of the POCSO Act and Section 376AB IPC r/w 376(2)(n) IPC, has committed house trespass punishable U/s 451 IPC, has committed wrongful confinement of minor victim punishable U/s 342 IPC and has committed kidnapping of minor victim punishable U/s 363 IPC. The accused has failed to rebut the presumption U/s 29 of the POCSO Act as all the necessary facts regarding commission of the offence U/s 6 of the POCSO Act have been proved by the prosecution. Further, the accused also did not rebut the presumption U/s 30 of the POCSO Act that he was not having culpable mental state while assaulting the victim when repeatedly committed rape and penetrative sexual assault with the victim.

48. Accordingly, accused is convicted U/s 6 of POCSO Act and U/s 451/342/363 IPC; 376 A-B IPC r/w 376(2)(n) of IPC. Convict be heard on the point of sentence on 08.12.2025.

49. Copy of this Judgment be given to the convict as well as to the prosecution on request for free of cost.

50. The matter shall be heard separately on the point of sentence on the NDOH.

9. Consequent upon the judgment of conviction, the learned Trial Court, vide Order on Sentence dated 16th December 2025, imposed the following



sentence upon the appellant:

“a) Convict Suraj Kumar for committing the offence punishable under Section 6 POCSO Act is directed to undergo rigorous imprisonment for a period of 20 years (Twenty years) and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) and in default of payment of fine, convict shall undergo simple imprisonment of 06 months (Six months).

b) Convict Suraj Kumar for committing the offence punishable under Section 363 of IPC is directed to undergo rigorous imprisonment for a period of 05 years (Five years) and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) and in default of payment of fine, convict shall undergo simple imprisonment of 03 months (Three months).

c) Convict Suraj Kumar for committing the offence punishable under Section 342 of IPC is directed to undergo rigorous imprisonment for a period of 01 year (One year) and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) and in default of payment of fine, convict shall undergo simple imprisonment of 03 months (Three months).

d) Convict Suraj Kumar for committing the offence punishable under Section 451 of IPC is directed to undergo rigorous imprisonment for a period of 01 year (One year) and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) and in default of payment of fine, convict shall undergo simple imprisonment of 03 months (Three months).

15. However, the convict is not being punished under Section 376AB IPC and U/s 376(2)(n) IPC, in view of Section 71 of IPC which provides inter alia



that if an offence is falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with more severe punishment for any one of such offences. In the present case, the convict has already been sentenced U/s 6 of the POCSO Act for 20 years and thus, no sentence is being awarded to the convict U/s 376AB IPC and U/s 376(2)(n) IPC.

16. It is further directed that the aforesaid fine imposed on the convict be paid to the victim by way of compensation, upon being deposited by the convict.

17. Convict shall be entitled to benefit of Section 428 Cr.P.C. All the sentences shall run concurrently.

18. State shall bear its own expenses.

Compensation to the victim

19. Section 33(8) of POCSO Act read with Rule 9 of POCSO Rules, 2020 encapsulate the aspect of due compensation. The parameters to be considered are also enumerated in Rule 9(3) of POCSO Rules, 2020. Considering gravity of offences in present case, I recommend payment of adequate compensation to the victim in the present case as per provisions of Section 357A Cr.P.C.

20. As per Delhi Victim Compensation Scheme, 2018 maximum awardable compensation for offence of rape is Rs.7,00,000/- and in case of minor victim, maximum compensation can be enhanced upto 50%, which comes to Rs.10,50,000/- (7,00,000/- + 3,50,000/-).



21. Since minor victim in present case was subjected to penetrative sexual assault, hence, in view of Delhi Victims Compensation Scheme, 2018, schedule applicable to women victim of crimes, I deem it a fit case to grant compensation of Rs.10,50,000/- (Rupees Ten Lacs Fifty Thousand only) to victim in present case in accordance with the Protection of the Children from Sexual Offences Rules, 2020. Said compensation of Rs.10,50,000/- (Rupees Ten Lacs Fifty Thousand only) is directed to be used for proper diet, counselling and for rehabilitation of victim 'S'. The said amount be deposited in the bank account of victim as per law.

22. It is clarified that interim compensation if any awarded earlier in present case to victim shall be subject to adjustment in final compensation, awarded by this Court.

23. Apparently convict Suraj Kumar does not seem to have means and capacity to pay the compensation. Therefore, it is appropriate that the amount of compensation awarded to victim be disbursed in duly verified Bank Account of Victim by Delhi Legal Services Authority Central as per rules, under the intimation to this Court."

10. Aggrieved by the aforesaid impugned judgment and order on sentence, the appellant has challenged both before this Court.

Submissions on Behalf of the Appellant

11. Learned counsel for the appellant submitted that, at the outset, the incident was first reported through a PCR call, pursuant to which DD No. 14A was recorded on 20.03.2022 at 1:11:51 AM, describing the incident as, "yaha par caller ki bhanji age 9 years ko ek admi age 24 years bhaga kar



le jaa raha tha jisko range haatho pakad liya hai”. It was submitted that when PW-3 and his brother had already come to know from the victim that the accused had committed sexual assault upon her, as also recorded in their examination-in-chief, there was no explanation as to why, at the time of the 100-number call, which was the first call made to the police regarding the incident, the same was not disclosed. It was further submitted that PW-6, WSI, also stated in her testimony that DD No. 14A related to the kidnapping of a minor girl.

12. It was further submitted that the prosecution has failed to establish that the appellant was present at the spot or that he had carried the victim from her house to his house, as alleged. No substantial evidence has been brought on record in this regard.

13. Learned counsel further submitted that the victim initially refused to undergo internal medical examination after registration of the FIR and no external injuries were found on her person. It was submitted that although the victim underwent medical examination again on 23.03.2022 and an internal examination was conducted, no tears or vaginal lacerations were found. It was argued that the contents of the MLC do not support the prosecution case.

14. It was further submitted that the statements of the victim are self-contradictory when compared with her statement recorded under Section 164 Cr.P.C., the FIR, her statement under Section 161 Cr.P.C. and her examination-in-chief and cross-examination.

15. Learned counsel submitted that, in her examination-in-chief, the victim did not mention any particular date of the incident. She also did not



elaborate upon any sexual assault having been committed upon her by the accused on two consecutive days, as stated in her previous statements. It was further submitted that there is no specific allegation of sexual assault pertaining to the intervening night of 19/20.03.2022.

16. It was submitted that, from the examination-in-chief of the victim, it is apparent that the alleged sexual assault took place only once, on a date not known, and that on the same day, when her mother raised an alarm and searched for her, the accused made the victim wear her clothes and sent her home. It was submitted that this version does not find mention in the statement under Section 164 Cr.P.C. or at the time of registration of the FIR.

17. Learned counsel further submitted that, in her examination-in-chief, the victim did not state that the accused had jumped over the wall, entered the premises, opened the lock of the gate and taken her away, as stated in her statement under Section 164 Cr.P.C. It was argued that this is also inconsistent with the version recorded at the time of registration of the FIR, wherein it was stated that the accused had opened the latch of the door and entered the premises, without any reference to his having jumped over the wall.

18. It was further submitted that, from the statement of the victim recorded under Section 164 Cr.P.C., the alleged incident was stated to have occurred on 12/13.03.2022, which is not consistent with the other versions on record.

19. Learned counsel submitted that, during cross-examination by the learned APP, the victim stated that she had not been threatened by the



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accused with regard to informing her family or any other person about the incident.

20. It was further submitted that, in her examination-in-chief, the victim stated that there was a kitchen and a toilet-bathroom on the first floor of the house where her family had rented a room. It was argued that it was difficult to comprehend why a girl aged about 10 years would go alone to use a washroom downstairs at such an hour instead of using the washroom situated on the same floor, a few steps away from her room.

21. Learned counsel further submitted that it is evident from the examination-in-chief of the victim that several other families/neighbours were residing in the same house and that one of the families/neighbours used to keep the keys of the main gate after locking the seven-feet-high gate at around 10:00–11:00 PM.

22. It was further submitted that the victim, in her examination-in-chief, stated that her mother, maternal grandparents, two maternal uncles, maternal aunt and she herself were present at the house before the arrival of the police. The victim also answered in the affirmative, stating “ji haan”, when asked whether her mother and maternal uncle had, before the arrival of the police, told her what had to tell or describe to the police.

23. Learned counsel submitted that when the victim was asked in her examination-in-chief, “kya ye baat theek hai ki aapke mama ne accused Suraj ke papa se 2 lakh rupey udhar liye the?”, she initially replied, “yes ma’am”, and thereafter stated, “nahi ma’am”.

24. It was further submitted that the victim’s mother did not state in her testimony that the accused had committed sexual assault upon her daughter



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on two consecutive dates, i.e. 12.03.2022 and 13.03.2022, as stated in her statement under Section 161 Cr.P.C. and also by the victim in her complaint/FIR, which was recorded in the presence of PW-2.

25. Learned counsel further submitted that, when the learned APP for the State cross-examined PW-2, the mother of the victim, and put to her, “kya ye baat theek hai ki aapki beti ‘S’ ne aapko bataya ki agle din 13.03.2022 ko accused Suraj ne aapki beti ke saath firse galat kaam kiya?”, PW-2 replied, “nahi aisa to usne kuch nhi bataya”. It was further submitted that PW-2, when questioned as to whether the police had recorded her statement, stated, “I don’t know, my brother must be knowing”.

26. Learned counsel submitted that the victim’s mother, in her examination-in-chief, stated that the victim had not informed her about the number of times the accused had taken her to his room, despite the fact that the first statement of the victim was recorded in the presence of PW-2 and the FIR was registered on the basis of the said statement.

27. It was further submitted that PW-3, the maternal uncle of the victim, mentioned an incorrect date in his examination-in-chief and stated that the incident pertained to 22.03.2022. PW-3 also stated in his examination-in-chief, “I don’t remember if I had informed the police in 161 statement that my bhanji had told us that accused had forcibly taken her away to his room on 12.03.2022 and made physical relations with her.”

28. Learned counsel further submitted that PW-6 stated in her examination-in-chief that the alleged place of incident was an open verandah, where there was no door, and a machine and other equipment were installed. The verandah had only one window towards the main road.



It was further submitted that PW-6 had made enquiries from other tenants residing there, but none of them could disclose anything as they had not witnessed any incident. PW-6 had also stated that she made enquiries from other tenants residing in the building where the victim was residing, but they expressed ignorance about the incident. It was further submitted that PW-6 recorded the statement of Poonam, the landlord, who stated that the door was locked by the tenants from inside.

29. Learned counsel submitted that there is no CDR, location chart or CCTV footage showing the victim being carried from her house to the appellant's premises on the alleged dates, despite CCTV cameras being installed at various places near their houses and on the adjoining streets.

Submissions On Behalf Of The Respondent-State

30. Learned APP for the State, opposing the appeal, submitted that the testimony of the victim is consistent on the material particulars and is duly corroborated by the testimony of her mother and maternal uncle. It was submitted that the minor discrepancies regarding the dates and the initial PCR call do not go to the root of the prosecution case.

31. Learned APP further submitted that the absence of external injuries or vaginal lacerations does not discredit the victim's testimony, particularly when the learned Trial Court, after appreciating the evidence, found her testimony to be trustworthy.

32. It was submitted that the alleged monetary dispute and tutoring of the victim were mere suggestions and were not supported by any substantive evidence. The absence of CCTV footage, CDR or other corroborative material was also submitted to be not fatal to the prosecution case.



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33. Learned APP submitted that the learned Trial Court has duly considered the defence raised by the appellant and, upon appreciation of the entire evidence, convicted him under Section 6 of the POCSO Act and Sections 363, 342 and 451 IPC. Accordingly, no ground is made out for suspension of sentence.

Findings and Analysis

34. This Court has heard learned counsel for both the parties and perused the material on record.

35. At the outset, this Court deems it appropriate to peruse the statement of the prosecutrix recorded under Section 164 Cr.P.C. In the said statement, the prosecutrix stated that, after going downstairs to use the washroom, the appellant came there by jumping over the wall, opened the lock of the gate, covered her mouth and took her to his room, where he sexually assaulted her. She stated that the incident had occurred on 12th or 13th March and further stated that, on the following day, the appellant again committed the same act with her. She further stated that, when her mother raised an alarm and called out her name, the appellant left her and asked her to go home. Thereafter, upon returning home, she disclosed the incident to her mother, who called the police. The relevant portion of the said statement is extracted hereinbelow:



मैं ~~अपराध~~ अपराध को नीचे उतारी थी washroom
 जाने की लड़का दिवार से कूदके आया और
 उसने तला खोला gate का, ~~कमरे~~ कमरे का
 और मेरा मुँह बन्द कर के ले गया अन्दर।
 फिर मेरे कपड़े उतारा और मेरे कपड़े भी
 उतारे, फिर अपना मुँह मेरे मुँह से डाल
 दिया। फिर उसके अगले दिन भी उसने
 ऐसा ही किया। ये 12-13 March की बात
 है, उसका नाम बूझ है, बंगल में रहता
 है। फिर उसके अगले दिन Mumukshu
 आवाज़ मारी तो अने कपड़े पहना के
 फ़ोन दिया। फिर Mumukshu 100 Number
 पर Phone मिलाया। फिर उसे Police वाले
 से ले गई। और कोई बात नहीं।

36. The Court shall now examine the examination-in-chief and cross-examination of the prosecutrix in the context of her statement recorded under Section 164 Cr.P.C. At the outset, it is significant that the prosecutrix, in her examination, nowhere stated that the appellant had unlocked the gate or opened the lock of the gate before taking her to his room. This assumes significance as, in her statement under Section 164 Cr.P.C., she had specifically stated that the appellant came by jumping over the wall, opened the lock of the gate, covered her mouth and thereafter took her to his room. Thus, a material circumstance forming part of her earlier account is conspicuously absent from her substantive testimony before the Trial Court. The relevant portion of the said examination is extracted



hereinbelow:

“Q. Aapke saath kya hua tha?

Ans. March, 2022 (tareekh mujhe theek se yaad nahi hai) raat ko mere pett (stomach) mein dard hua tha, toh main fresh hone ke liye ghar se nicche gayi thi, jahan bathroom baney hue hai. Hum log 1st floor par rehte hai. Jab main washroom use karke uppar apne ghar jaane lagi toh accused Suraj ne picche se aa kar apne hath se mera mooh band kar diya tha. Uske baad accused Suraj mujhe apne kamre mein le gaya aur fir usne mujhe apne bistar par leta diya tha. Fir accused Suraj ne mere kapde utaar diye aur mere sath galat kaam kiya tha.”

37. Secondly, the circumstances surrounding the recording of the subsequent version also require consideration. During her cross-examination by learned defence counsel, the prosecutrix admitted that, before the arrival of the police, her mother and maternal uncle had told her what she was required to tell the police. The relevant portion of the said examination is extracted hereinbelow:

“Q. Kya police ke aane se pehle aapke mama aur mummy ne aapko bataya tha ki aapko police ko kya bolna hai?

Ans. Ji haan.”

38. Further, when asked whether her maternal uncle had borrowed Rs.2 lakhs from the father of the appellant, she initially answered in the affirmative and thereafter immediately stated that no such money had been borrowed. The relevant portion of the said examination is extracted



hereinbelow:

“Q. Kya ye baat theek hai ki aapke mama ne accused Suraj ke papa se Rs. 2 Lakh rupay udhaar liye hai?”

Ans. Yes ma’am. Again said: nahi ma’am. Mere mama ne koi paise nahi liye.”

39. These circumstances, while not by themselves establishing tutoring or false implication, are relevant while assessing the reliability of the subsequent elaborations in the prosecution version, particularly when such elaborations are sought to be introduced through leading questions during the cross-examination conducted by the learned APP.

40. Now, this Court deems it appropriate to examine the examination-in-chief and cross-examination of the mother of the prosecutrix. Upon examination of her testimony, this Court finds material contradictions. Firstly, the prosecution as well as the prosecutrix in her cross – examination allege that the incident occurred on two or three occasions. However, when the mother of the prosecutrix was specifically asked whether the prosecutrix had disclosed to her that the alleged incident had occurred on three occasions, she categorically denied the same. This assumes significance, particularly as the testimony of the mother forms an important foundation of the prosecution case and the alleged immediate disclosure made by the prosecutrix. The relevant portion of the said examination is extracted hereinbelow:

“Q. Kya ye baat theek hai ki jab aapne apni beti victim ‘S’ ne ye bhi bataya ki agle din i.e. 13.03.2022



ko accused Suraj ne aapki beti 'S' ke sath firse galat kaam kiya?

Ans. Ji nahi, aisa toh usne nahi bataya tha.”

41. Secondly, PW-2's own account as to where the prosecutrix was found is not consistent. In her examination-in-chief, PW-2 stated that the prosecutrix was found in the room of the appellant. However, during her subsequent testimony, she stated that the prosecutrix was found at the main gate of her own house and that the appellant had pushed her out of his room. She was confronted with her statement under Section 161 Cr.P.C., wherein it was recorded that the prosecutrix was found at the main gate of her house. Thus, the manner and place in which the prosecutrix was allegedly found are themselves not consistently stated by PW-2. The relevant portion of the said examination is extracted hereinbelow:

“.....Dhundhne ki koshish ki lekin meri beti (victim 'S') nahi mili. Meri beti (victim 'S') Suraj (accused) ke kamre mein mili, Suraj (Accused) hamare ghar ke saamne wale ghar mein kiraye par rehta hai. Jab main chillane lagi toh meri awaz sun kar accused Suraj ne meri beti (victim 'S') ko apne kamre ke gate se dhakka dhakkar de kar bahar nikaal diya. Meri beti (victim 'S') ne mujhe bataya ki Suraj (accused) ne paiso ka lalach de kar, uske (victim 'S') sath galat kaam kiya hai. Meri beti (victim 'S') ne mujhe bataya ki Suraj (accused) ne uska hath pakad kar uske sath galat kaam kiya aur jab wo apne aap ko accused Suraj se bachane ki koshish kar rahi thi toh accused ne meri beti (victim 'S') ka muh band kar diya.....

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Q. Aapne bataya ki aap aur aapke bhai 'A' victim 'S' ko dhoondh (search) rahe the, toh kya ye baat theek hai ki aapki beti victim 'S' aapko aapke ghar ke main gate par mili?

Ans. Ji nahi. Meri bhai ne meri beti ko dhoondha tha aur wo accused Suraj ke kamre mein mili thi. Again said: Ji haan, meri beti mere ghar...

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..ke gate par hi mili thi lekin accused Suraj ne meri beti victim 'S' ko dhakka de kar apne kamre se bahar nikaal diya tha.

At this stage, statement of witness under Section 161 Cr.P.C. Mark-PW2/A is read over to her and confronted from portion A to A, where it is mentioned, "Meri beti mujhe mere ghar ke main gate par mili".

42. Not only this, but also, the prosecutrix, in her statement, specifically stated that the main gate remains locked and that the keys remain in the possession of the tenants residing therein. In such circumstances, it is highly unlikely that the accused would have been in possession of the keys. The prosecution has failed to explain how the accused came into possession of the keys, which further casts doubt on the prosecution's version. The relevant portion of the said examination is extracted hereinbelow:

"Q. Ground floor ke gate ki chaabi (key) kiske paas rehti hai?

Ans. Hamare pass mein jo kirayedaar rehte hai unke paas rehti hai."

43. It is also very significant to note that initially, on 12th March 2022,



during the first MLC, the mother of the prosecutrix refused to have an internal examination. The MLC recorded no external injuries. Thereafter, on 18th March 2022, when the prosecutrix underwent the MLC, no tears or vaginal lacerations were found present.

44. Keeping in view the material inconsistencies between the testimonies of the prosecutrix and her mother on material particulars, coupled with the uncorroborated medical evidence, a doubt is created in the mind of the Court regarding the alleged commission of the incident.

45. The aforesaid principle is also reiterated by the Supreme Court in **Deepak in JC v. State Govt. of NCT Delhi, 2026 INSC 1008**, wherein it was held that the presumptions under Sections 29 and 30 of the POCSO Act do not dispense with an objective appreciation of the prosecution evidence, and that inherent inconsistencies, contradictions and gaps in the prosecution case may be relied upon to rebut the statutory presumption. The Relevant portion is quoted hereinbelow:

“5.2.3 Juxtaposing the versions of PW-5 and PW-1, the account narrated by both of them revealed manifest contradictions. While PW-1 stated that the victim was brought by PW-5 at about 4/5 pm on 09.12.2015 and that PW-5 was the only one who accompanied the victim, PW-5 deposed that she had gone to PW-1 at 9.30 pm on 09.12.2015 and that she went to PW-1 along with her husband. While the doctor (PW-1) mentioned the time of the coming of PW-5 with the victim at about 4/5 pm, but PW-5 mother’s say was that they had gone in the night at 9.30 pm. This inconsistency could not be brushed aside to be a minor kind or insignificant in nature more particularly when read with the facts of the



case and other attendant evidence.

5.2.5 A close reading of the evidence of PW-1 raises doubts as to the credibility of what he said. PW-1 stated that he did not prepare any case papers and that PW-5 and the victim did not come for any medical treatment. While according to PW-1, he himself informed by telephone Kalkaji Police Station that a child had come who was a victim of sexual assault, none of the police witnesses confirmed in their evidence about receiving any such call from PW-1. The incident allegedly took place on 09.12.2015 whereas the FIR was registered on 11.12.2015. The deposition of PW-1 in its very nature, coupled with the version of PW-5, in stating facts, reeled into unreliability and remained devoid of trustworthiness.

The statutory presumptions cannot be read to mean that the prosecution version is liable to be treated as gospel truth in every case. It has to be additionally observed by this Court the presumptive provisions notwithstanding, the courts are not absolved from discharging their essential duty to analyse the evidence on record in light of the features emerging in a particular case. The court should not mechanically accept the ipse dixit of the prosecution riding on the provisions regarding presumption of guilt to give a stamp of approval to every prosecution even if they are absurd or improbable in its story. At the end of the trial, the accused should not stand at a discount or at disadvantage only for the reason that the particular statute under which he is tried for the offence contains presumptive provisions about the guilt of the accused.

9.2 The court should not therefore be overshadowed



or inhibited by the provision of presumption of guilt and commission of offence by the accused and would weigh the evidence with usual principles. The accused should be given full room to prove to the contrary to displace the presumption and demolish the case of the prosecution.

10.1 For all the foregoing discussion and reasons, the impugned judgment and order dated 03.07.2025 passed by the High Court of Delhi confirming the trial court judgment to uphold the conviction and sentence of the appellant under Section 363, IPC and under Section 6 of the POCSO Act is liable to set aside. The same is hereby set aside. The appellant is held not guilty and stands acquitted of the aforesaid offences.

10.2 He shall be forthwith released if behind the bars, unless his custody is required for any other offence.”

46. The Supreme Court in ***Debraj Dutta v. State of West Bengal (Criminal Appeal arising out of SLP (Crl.) No. 16838 of 2025, decided on 07, April, 2026)*** reiterated that the statutory presumption under Section 29 of the POCSO Act does not arise automatically upon registration of a case. The prosecution must first establish the foundational facts constituting the alleged offence. Unless such foundational facts are proved through cogent and reliable evidence, the burden does not shift upon the accused.

47. This Bench, in ***Vikash v. The State Govt. of NCT of Delhi & Anr., 2026:DHC:6255***, dealt with a similar matter, wherein the Court held as under:

“33. It is well settled that though the testimony of



the prosecutrix can, by itself, form the basis of conviction, such testimony must inspire confidence and should not suffer from material infirmities or inherent improbabilities. Where the prosecution case is founded solely upon the testimony of the prosecutrix and such testimony undergoes material improvements or is inconsistent with her earlier versions, the Court is required to scrutinize the evidence with greater caution

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37. Applying the aforesaid principles to the facts of the present case, this Court finds that the prosecutrix has furnished materially different versions in her statement under Section 161 Cr.P.C., her subsequent statement under Section 164 Cr.P.C. and her deposition before the learned Trial Court. These inconsistencies are not minor discrepancies but go to the very genesis of the prosecution case. The learned Trial Court has failed to adequately appreciate these material improvements while recording the conviction. In the absence of reliable and consistent evidence establishing the foundational facts beyond reasonable doubt, it would be unsafe to sustain the conviction. Consequently, the appellant is entitled to the benefit of doubt.”

Conclusion

48. Keeping in view the aforesaid principles, the entire case and evidences led by the prosecution has created a reasonable doubt in their case. The material contradictions in the testimonies of the prosecutrix and her mother, particularly with regard to material particulars of the alleged incident, further create doubt regarding the prosecution case. It is also pertinent to note that there is no medical evidence corroborating the alleged



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incident.

49. Therefore, the appeal is allowed. The judgment dated 19.11.2025 and order of sentence dated 16.12.2025 are set aside. The pending application(s), if any, stand disposed of in the above terms.

50. The appellant be released from jail forthwith, if not required in any other case.

51. A copy of this order be sent to the concerned Jail Superintendent for necessary information and compliance.

**MADHU JAIN
(JUDGE)**

SEPTEMBER 30, 2026/RM