



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on:20.05.2026
Judgment pronounced on:25.05.2026

+ CRL.A. 877/2016

NAVEEN

.....Appellant

Through: Mr. Hari Shanker, Advocate with Mr.
Pankaj Sharma, Advocate

Versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State
Ms. Nishtha Jain, Advocate (*Amicus Curiae*) for Victim

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 read with Section 482 of the Code of Criminal Procedure, 1973, the sole accused in SC No. 63/2014 on the file of the Additional Sessions Judge-I, East District, Karkardooma Courts, Delhi, assails the judgment



dated 06.08.2016 and order on sentence dated 09.08.2016 as per which he has been convicted and sentenced for the offence punishable under Section 376 of the Indian Penal Code, 1860 (the IPC) and Section 4 of the Protection of Children from Sexual Offences, 2012 (the PoCSO Act).

2. The prosecution case is that on 12.09.2013 at about 03.30 p.m., the accused kidnapped PW4, a minor aged about 16 years, from her residence, that is, House No. 7/396, Trilok Puri, Delhi and took her to a village in Bihar. It is further alleged that between 12.09.2013 and 22.09.2013, the accused raped PW4. Hence, as per the charge-sheet/final report, the accused was alleged to have committed the offences punishable under Sections 363, 366, 366A, 376 IPC and Section 4 of the PoCSO Act.

3. On the basis of Ext.PW2/A FIS/FIR of PW2, given on 13.09.2013, Crime no. 545/2013, Kalyanpuri Police Station, that is, Ext.PW1/A FIR was registered by PW1, Head Constable. PW7,



Sub Inspector (SI) was entrusted with the investigation of the case. On completion of the investigation into the crime, the charge-sheet/final report was filed alleging the 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 25.04.2014, framed a Charge under Section 376, 363 IPC and Section 4 of the PoCSO Act, which was read over and explained to him, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 10 were examined, and Exts. PW1/A-B, PW2/A-B, PW3/A-D, PW4/A, PW5/A-C, PW6/A-C, PW9/A-B, PA, P2, PA-1, PA-3 and Mark X were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the



incriminating circumstances appearing against him in the evidence of the prosecution. He denied all those circumstances and maintained his innocence. The accused submitted that he is deeply in love with PW4. However, PW2, the father of PW4, was annoyed with their relationship. Therefore, PW2 in collusion with the police officials, lodged a false case against him. He married PW4 on 23.05.2026 as per Hindu rites and customs.

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 on record, and after hearing both sides, the trial court, *vide* the impugned judgement dated 06.08.2016, found the accused guilty of the offences punishable under Section 376 IPC and Section 4 of the PoCSO. *Vide* order on sentence dated 09.08.2016, the accused has been sentenced to rigorous imprisonment for a period of seven years, fine of ₹5,000/- and in default of payment of fine, to simple imprisonment of one month. Aggrieved, the accused has preferred this appeal.

10. It was submitted by the learned counsel for the appellant/accused that the impugned judgment suffers from grave misappreciation of evidence, inasmuch as the trial court failed to



consider the admission of PW4 that the relationship between the parties was consensual, arising out of a love affair, and that the FIR came to be lodged by PW2, the father of PW4, in a fit of anger. PW4 testified that the accused was not at fault, and whatever happened took place out of her own free will. It was further submitted that the trial court ignored the mitigating circumstances, including the subsequent marriage between the appellant and PW4 during the pendency of the trial. On these grounds, it was prayed that the impugned judgment of conviction and order on sentence be set aside and the appellant be acquitted.

11. *Per contra*, the learned Additional Public Prosecutor supported the impugned judgment and submitted that consent of PW4 is wholly immaterial in law, once her minority stands established. It was submitted that the evidence on record conclusively proves that PW4 was a child within the meaning of the PoCSO Act on the date of occurrence, and therefore any



purported consent, willingness, or voluntary participation is of no legal consequence. There is no infirmity in the impugned judgment calling for an interference by this Court.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment calling for an interference by this court.

14. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. The law was set into motion by a missing complaint filed by PW2, the father, recorded on 13.09.2013, marked as Ext. PW2/A FIS/FIR, stating that on 12.09.2013 at around 03:30 p.m., his eldest daughter (PW4), aged 16 years, left the house without informing anyone and had not returned home since. Nothing was known about her whereabouts. He suspects that Naveen (the accused), a resident of Block 9, Trilokpuri, had kidnapped his daughter.



15. PW4, the victim, in Ext. PW4/A 164 statement, recorded on 23.09.2013, has stated thus:- Naveen (the accused) had given her a mobile phone. Her mother found out about it and started beating her. Her younger sister also beat her. Her mother called her father and told him to throw her out of the house and beat her. Her father had beaten her earlier also. Her father told her to call Naveen and tell him that she had been thrown out of the house. Her father asked her to leave home and go with Naveen and that he would not file any case against them. So, she called Naveen in the presence of her father and asked the former to meet her. Naveen met her at Block No. 15. She informed Naveen that her father had thrown her out of the house. Naveen responded by saying that her parents might have said it out of anger and advised her to return home. She refused to go back as she was scared that her parents would beat her. She told Naveen that he could go wherever he wanted, but she would not return home. After a while,



her cousin called Naveen and enquired whether she was with him. Out of fear, Naveen denied it. Her cousin then informed Naveen that a case had been filed against him. She told Naveen that since a case had already been filed, she would definitely not go back home. On 12.09.2013, Naveen took her to a friend's place. The next morning, Naveen's friend told them that his *nana-nani* lived in Bihar and suggested that they go there. They then boarded a train from Anand Vihar to Bihar. It took them two days to reach there. Upon reaching, Naveen called his friend, who informed him that the former's parents were being harassed by her parents. The friend's nanaji refused to keep them at his house, so they stayed at the railway station. They could not think of what to do next because they had run out of money. They then prepared an application and surrendered before the Deputy Inspector General (DIG). The DIG concerned informed the *Mahila Thana* there, and they were taken to the police station. They informed the police that



they had come from Delhi. The police officials then contacted the Delhi police station. They remained at the police station until the Delhi police arrived in Bihar. Her mother and father also came along with the Delhi police. They were brought back to Delhi. It is not Naveen's fault. Whatever happened took place entirely of her own free will. She does not wish to pursue any legal action against Naveen. She wants to marry Naveen.

16. PW4, when examined before the court, deposed that she was in a relationship with the accused. PW4 also deposed that though the accused had advised her to return home, she refused to return and responded thus:- *“I told accused that I want to go with him and otherwise, I will commit suicide”*. PW4 further deposed that after they left for Bihar, they had stayed at the house of a person known to the accused. At the said house, they established physical relations with her consent. Thereafter, they surrendered



2026:DHC:4687



before the local police. PW4 deposed that she wanted to marry the accused.

17. To determine the age of PW4, PW3, Principal, Govt. Girls Sr. Sec. School, Kalyan Puri, Delhi-91, was examined. She produced the admission record and Ext. PW3/A the admission register. At Serial No. 3632 of the register, PW4 is shown to have been admitted to Class VI on 02.04.2008. As per the record, the date of birth of PW4 is 19.03.1998. PW3 also produced the file containing Ex. PW3/B the admission form; Ex. PW3/C the School Leaving Certificate (SLC); and Ex. PW3/D the fee receipt. The Class X examination result of PW4, certified by her, is also marked as Ex. PW3/E. The prosecution has satisfactorily established the age of PW4. Therefore, on the date of the incident, i.e., 12.03.2013, PW4 was 15 years, 5 months old and thus, a minor.



18. As noticed earlier, the accused has been convicted for the offences punishable under Section 376 IPC and Section 4 of the PoCSO Act. The prosecution primarily relies on the testimony of PW4, to which I have already referred to in detail. In her 164 statement, there is no allegation regarding the establishment of physical relations by the accused. However, in the court, PW4 deposed that when they were in Bihar, the accused had physical relations with her. In the 164 statement, she is categorical that there was no fault on the part of the accused. Therefore, the case in the box seems to be a material improvement made by PW4. The trial court relied on the testimony of PW4 to the effect that the appellant/accused had established physical relations with her while in Bihar coupled with the medical evidence which showed her hymen to be torn, to find the appellant/accused guilty of the offences charged against him. It is true that the sole testimony of the prosecutrix is sufficient in an offence of such nature and



corroboration is not required if the testimony of the victim is of sterling quality. However, in the case on hand, as the statements given by PW4 are not consistent, it is not possible to base the conviction solely on the testimony of PW4. As noticed earlier, she has no case of the accused establishing “physical relations” with her while in Bihar. This version comes only in the box, which is apparently an improvement of the earlier version. In such circumstances, I find that the appellant/accused is entitled to the benefit of doubt. Hence, I find that the trial court was not justified in convicting the appellant/accused based on the sole unsatisfactory testimony of PW4.

19. In the result, the appeal is allowed. The impugned judgment is set aside and the accused is acquitted under Section 235(1) Cr.P.C. of the offences punishable under Section 376 IPC and Section 4 of the PoCSO Act. The accused is set at liberty. His



2026:DHC:4687



bail bond shall stand cancelled, and the sureties, if any, shall stand discharged.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 25 , 2026

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