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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 07.07.2026

Judgment pronounced on: 09.07.2026

+ **CRL.A. 1030/2018**

ANARHUL HAQUE

.....Appellant

Through: Mr. Rashid Hashmi, Advocate along
with appellant in person.

versus

STATE

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for
the State with SI Abhishek Singh,
P.S. Timarpur.
Ms. Inderjeet Sidhu, Advocate for
Victim/Prosecutrix (DHCLSC).

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal filed under Section 374(1) of the Code of Criminal Procedure, 1970 (Cr.P.C.), by the sole accused in Sessions Case No. 44/2016, on the file of the Special Court



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(POCSO Act)/Additional Sessions Judge-01 (Central), Delhi, assails the judgment dated 27.08.2018 and order on sentence dated 01.09.2018 as per which he has been convicted and sentenced for the offences punishable under Section 376(1) of the Indian Penal Code, 1860 (the IPC) and Section 6 of the Protection of Children from Sexual Offences, 2012 (the PoCSO Act).

2. The prosecution case is that on 07.10.2014, at about 07:30 a.m., the accused kidnapped PW1, aged below 13 years and took her to village Bosantopur, Kotwali police station, New Koot Bihar, West Bengal. It is further alleged that between 07.10.2014 and 17.07.2015, in village Bosantopur, Kotwali police station, New Koot Bihar, West Bengal and in Noida, Uttar Pradesh, the accused repeatedly committed aggravated penetrative sexual assault upon PW3. Hence, as per the charge-sheet/final report, the



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accused was alleged to have committed the offences punishable under Sections 363, 366, 376 IPC and Section 4 of the PoCSO Act.

3. On the basis of Ext.PW3/A FIS/FIR of PW3, given on 09.10.2013, Crime no. 688/2014, Timarpur Police Station, that is, Ext.PW3/B FIR was registered by PW6, Woman Sub-Inspector. PW16, Sub Inspector (SI) was entrusted with the investigation of the case. On completion of the investigation into the crime, the chargesheet/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 363, 376(2)(1)(n) IPC and Section 6 of the PoCSO Act,



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which was read over and explained to him, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 16 were examined and Exts. PW1/A, PW2/A-D, PW 3/A-C, PW4/A-B, PW5/A, PW 6/A-C, PW8/A, PW9/A-B, PW9/B1-B3, PW9/PX, PW10/A, PW10/X, PW11/B-C, PW11/X1, Mark A, Mark B, Mark X, Mark Y, Mark XX, Mark YY and Mark Z were marked.

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 led by the prosecution. He denied all those circumstances and maintained his innocence. He submitted that he married PW1 with the consent of their families. PW3, the father of PW1, demanded money from him after his *nikah* with PW1, which he refused to



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pay. According to him, due to this grudge and the non-fulfillment of the said demand, PW3 falsely implicated him in the present case

7. After questioning the accused under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen to have been 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 in support of his case.



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9. Upon consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 11.11.2014, convicted the accused for the offences punishable under Section 376(1) IPC and Section 6 of the PoCSO Act. Accordingly, the accused was sentenced to undergo rigorous imprisonment for a period of ten years and fine of ₹500/- and in default of payment of the fine, to simple imprisonment for a period of one month. Aggrieved, the accused has preferred this appeal.

10. It was submitted by the learned counsel for the appellant/accused that the materials on record establish that PW1 voluntarily left her parental home and solemnized the *nikah* with the appellant on 08.10.2014. In her testimony before the trial court as well as in her Section 164 Cr.P.C. statement, PW1 deposed that she married the appellant voluntarily. Further, the prosecution case



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that PW1 was a child on the date of the incident has not been proved beyond reasonable doubt. PW1 deposed before the trial court that she was born in 1995, though she was unable to recall the exact date or month. Both PW1 and PW3 deposed that the date of birth entered in the school records is incorrect and that the age had been intentionally reduced to secure her admission in the school. PW5, who solemnized the *Nikah*, also deposed that PW1 was about 19 years of age at the time of marriage. An entry regarding age in a school register, though relevant under Section 35 of the Indian Evidence Act, 1872 (the Evidence Act), cannot by itself be treated as conclusive proof of age unless the source on which such entry was made is proved. Therefore, the impugned judgment is liable to be set aside, and the accused is entitled to benefit of doubt.



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11. It was submitted by the learned Additional Public Prosecutor that there is no infirmity in the judgment calling for an interference by this Court.

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

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

14. I will first briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. The law was set into motion by PW3, the father of PW1, by filing a missing person complaint relating to PW1, his daughter. Ext. PW3/A, the FIS/FIR of PW3, the father of PW1, recorded on 09.10.2014, reads thus: “*My daughter [REDACTED] (PW1), aged 14 years, had gone out to fetch milk on 07.10.2014 at around 07:30 a.m. and has not returned yet. I have been searching for her on my own*



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level among many relatives until now..... I suspect that some unknown person has enticed, lured away, and kidnapped my daughter [REDACTED] (PW1). Appropriate action may be taken.”

15. In Ext. PW1/A 164 statement seen recorded on 17.07.2015, PW1 has stated thus:- She is a 15-year-old girl. Earlier, she used to reside with her family in a house at Wazirabad, Gali no. 9, Timarpur. The accused used to reside in her neighbourhood in Timarpur itself. They got acquainted and they took a liking to each other. They were afraid that their parents would refuse their marriage, therefore they did not tell them anything. On 07.10.2014 she called Anarul (the accused) on her own and went away with him of her own free will. On the same day, they went to a *madarsa* and got married. Then they went to Bengal, where her in-laws' house is located. The accused works there as a contractor. Only her mother-in-law lives at her in-laws'



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house. She has a child who was born just a few days back. Two days ago, she along with her child came to Delhi to meet her father (PW3) to seek forgiveness. Then she came to know that her father (PW3) had lodged a missing report. She had voluntarily left her home and married the accused. None has committed any wrong act with her or enticed or lured her. She is married now and wants to live with her husband (the accused).

16. PW1 in the box deposed that she was residing in Wazirabad with her family at which time the accused was their neighbour. She became familiar with the accused. Her parents and the parents of the accused were ready for their marriage and were negotiating, but her grandmother did not agree to the marriage. Some of their neighbors also did not agree to their marriage, and therefore, her father got her married to the accused in a *madarsa*. After the marriage, she accompanied him to West Bengal in the



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year 2014, where they resided together for about one year. During their stay in West Bengal, they frequently had sexual relations as husband and wife. She gave birth to a female child on the first day of the month of *ramzan* in the year 2015, but the child died. According to PW1, she is unaware of her date of birth as recorded in her school certificate. Her father had not disclosed her correct age in the school certificate. She was born in the year 1995. She had studied in a Government school at Zeenat Mahal. Her father had wrongly disclosed her age as 16 years and that she does not know what had been written in her statement to the police.

16.1 The prosecutor is seen to have sought permission to “cross-examine” PW1 on the ground that she had resiled from her earlier statement. Permission was granted by the trial court. On further examination, PW1 deposed that she had disclosed her age as 15 years before the Metropolitan Magistrate because the police



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officials had instructed her to do so, although she was 19 years old at that time. She denied the suggestion that she was 15 years old when her Section 164 Cr.P.C. statement was recorded. She admitted that her school records mentioned her date of birth as 04.03.2002. PW1 deposed that her father had disclosed a lesser age to secure her admission, as the school authorities were unwilling to admit her due to her higher age. She had been living with the accused since 07.10.2014, and that she had established physical relations with the accused after their *nikah*. She admitted that on 07.10.2014, she had telephoned the accused, who thereafter came to Wazirabad and took her to his native village. She denied the suggestion that she was below 14 years of age when she accompanied the accused and also denied that she was falsely deposing regarding her age.



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16.2 PW1, in her cross-examination, admitted that she had married the accused on 08.10.2014 with the consent of both her parents and the parents of the accused. She admitted that in the *nikahnama*, all particulars, including her age, had been disclosed by her father. She denied the suggestion that on 09.10.2014 her father had demanded ₹1,00,000/- from the accused. She admitted that after the Nikah, when she left with the accused for his native village, her father was aware that she was accompanying him. PW1 deposed that she was 19 years of age when she accompanied the accused and at the time of her *nikah*.

17. PW3 deposed that PW1, his daughter, was about 19 years of age. On 07.10.2014, at about 07:30 a.m., his daughter (PW1) left the house to fetch milk but did not return. He searched for PW1 but could not trace her. Thereafter, he filed Ext. PW3/A complaint. In the complaint, he had mentioned the age of his



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daughter (PW1) as 14 years. After a considerable period, his daughter (PW1) had called her maternal uncle, namely, Raju @ Mohd. Saiyed and informed the latter that she had married and was residing with her husband. PW1 came to his house along with her daughter and told him that she had married the accused, and had accompanied him voluntarily. On 17.07.2015, he had taken his daughter (PW1) to the police station, from where she was produced before the Metropolitan Magistrate for recording of her statement. She was also medically examined at Aruna Asaf Ali Hospital. On 30.07.2015, the accused came to his house, whereupon he produced the latter before the police. The accused was arrested *vide* Ext. PW3/Carrest memo.

17.1 The prosecutor is seen to have sought permission to cross-examine PW3 on the ground that he had resiled from his earlier statement. The request is seen allowed. On further



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examination, PW3 denied the suggestion that his daughter was 14 years of age at the time of the incident. He admitted that he had submitted Ext. PW2/C photocopy of the application for her admission to the school where he had mentioned his daughter's (PW1) date of birth as 04.03.2002. He could not recall whether he had disclosed his daughter's (PW1) age as 15 years when he produced the latter before the police on 17.07.2015. According to him, he is unaware as to whether the accused had enticed away his daughter on 07.10.2014. He denied the suggestion that when the accused took away his daughter (PW1), she was about 14 years of age. He denied the suggestion that he was deposing falsely regarding his daughter's (PW1) age because she had married the accused and was residing with him. He denied the suggestion that he was deposing falsely.



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17.2 PW3 in his cross-examination admitted that he had got the lesser age of his daughter (PW1) recorded in the school to get her admitted in the school. His daughter (PW1) was between 19 and 20 years of age. He admitted that his daughter (PW1) had married the accused and that he himself had arranged the marriage. He further admitted that he had disclosed his daughter (PW1)'s age as 19 years at the time of her marriage and that he, along with other relatives, had participated in the *nikah* ceremony. He could not recall whether the marriage had taken place on 08.10.2014. He admitted his signature in Mark A, the marriage certificate. He denied the suggestion that he had demanded ₹2.5 lakhs from the accused and, upon refusal, had lodged a false complaint against the latter. He denied the suggestion that the accused had taken his daughter (PW1) with his consent. He denied the suggestion that the present case had been falsely instituted to harass the accused or



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that he was deposing falsely. He reiterated that his daughter was 19 years of age at the time of her marriage.

18. PW4, the wife of PW3, when examined before the trial court, supported the case of the latter. PW4 deposed that her husband (PW1) informed her about the marriage of PW1 and the accused. They invited PW1 and the accused to their house and noticed that they were happy. She does not want to pursue the present case.

19. The trial court has found the accused guilty of the offences punishable under Section 376(1) IPC as well as Section 6 of the POCSO Act. To determine the age of PW1, PW2, Principal, East Delhi Municipal Corporation, Adarsh Vidhyalaya, (Hindi) Ghonda, North Delhi, was examined. She produced the original student admission register. In this register, it is seen mentioned that PW1 was admitted to the school on 22.08.2008 in the second



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standard. As per the register, the date of birth of PW1 is 04.03.2002. At the time of admission, PW3, the father of PW1 had submitted Ext. PW2/C application accompanied by Ext. PW2/D affidavit. PW2 in her cross-examination admitted that at the time of admission, the parents of PW1 had not furnished any documentary proof of the date of birth from the MCD. She also admitted that the affidavit on stamp paper was not submitted by the parents of the student at the time of her admission. In the absence of any proof of the birth of the child, the date of birth furnished by the parents was considered and entered into the school records.

20. The prosecution has sought to prove the age of PW1 on the basis of Ext. PW2/A admission register of the first school attended by her wherein her date of birth is recorded as 04.03.2002. The entry was made on the basis of Ext. PW2/C the admission form and Ext. PW2/D affidavit submitted by her father,



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PW3. There is no dispute that the school record was prepared on the information supplied by PW3. It is settled that the record of the first school attended is an important piece of evidence for determining age. However, in the case on hand, PW3 admitted in his testimony that he had mentioned a lesser age of PW1 at the time of her admission in school so that she could secure admission. PW1 also stated that the date of birth recorded in the school record was not her actual date of birth and that PW3 had deliberately mentioned a lesser age. Thus, the person who supplied the information for preparing the school record later stated that the information given is incorrect. In the FIR filed in the year 2014, the age of PW1 was mentioned as 14 years, and in her 164 statement recorded in the year 2015 as well as in Ext. PW10/A, she herself disclosed her age as 15 years. The age mentioned in the FIR is only the information supplied by PW3/informant and is not



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proof of age. Similarly, the age mentioned by PW1 in her 164 statement is also not substantive evidence of her actual date of birth. These statements cannot establish the age of PW1. It is also important to note that there is no birth certificate issued by any Municipal Authority, Panchayat or Hospital on record. No matriculation certificate has been produced. No ossification test or any other medical examination for the determination of age was conducted. Thus, apart from the school record, which itself is based on the declaration of PW3, there is no independent evidence regarding the age of PW1.

21. Although the testimony of PW1 and PW3 also do not independently establish the age of PW1, the admissions made by PW1 and PW3 regarding the incorrect school entry cannot be ignored altogether. In these circumstances, the prosecution evidence regarding the age of PW1 is not free from doubt. In the



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absence of any reliable independent evidence, it cannot be said that the prosecution has proved beyond reasonable doubt that PW1 was below eighteen years of age on the date of the incident. That being the position, an offence of rape as contemplated under Section 375 IPC is not made out in the light of the testimony of PW1 that the relationship was consensual. The offence punishable under Section 6 PoCSO Act would also not be made out as there is no clear proof that PW1 was a minor at the time of the incident.

22. Before I conclude, it is also necessary to refer to Ext. X-1 FIR and Ext. X-2 Judgment. Ext. X-1 FIR, that is, Crime No. 1253/2013, Shakarpur police station, is seen registered on 30.11.2013. PW3 herein is the informant therein and it was based on the information given by him under Section 154 Cr.P.C. to the effect that his daughter (PW1 herein) had been kidnapped by some unknown person on 30.11.2013 at about 06:00 a.m. the crime was



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registered. Admittedly, Ext. X-2 is the copy of the judgment in the said case. On going through the judgment, it is seen that two persons were arrayed as the accused persons. They were alleged to have kidnapped PW1 herein and thereafter committed the offences punishable under Section 376 IPC, Section 6 POCSO Act as well as Section 9 of the Prohibition of Child Marriage Act, 2006. However, when PW1, the alleged victim, was examined before the court, she turned completely hostile and deposed that nothing had happened to her and that she had not been kidnapped or sexually assaulted by anybody. Hence, as per Ext. X-2 judgment dated 30.01.2016, the accused persons were acquitted under Section 235(1) Cr.P.C. The incident in the present case is alleged to have taken place on 07.10.2014 (less than an year after the earlier incident) at about 07:30 a.m. The allegations in Ext. PW3/A FIS/FIR of PW3 are similar to the one given in Ext. X-1 FIR. In



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the present crime also, the case of PW3 is that his daughter had gone out and not returned and so he believed that his daughter had been enticed/induced and taken away by some unknown person. However, PW1, the daughter, enters the scene and then claims in her¹⁶⁴ statement that she had accompanied the accused voluntarily to his village. PW3 who had given Ext. PW3/A FIS/FIR claiming his daughter to be a minor, in his testimony before the trial court resiles from his earlier statement and claims that his daughter was a major at the time of the incident and that he had intentionally given a wrong date of birth while she was admitted in the school. His explanation for giving a wrong date of birth is that the school authorities would have refused admission had he given the correct age of his daughter, and therefore, a lesser age had been given.

23. The prosecution in this case has relied on the records given in the school for proving the age of PW1. PW2, the Principal



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of the school, has admitted that it was based on the Ext. PW2/C application accompanied by Ext. PW2/D affidavit of PW3, that the date of birth of PW1 had been recorded in the school register. Now, PW3, who had given Ext. PW2/D affidavit, himself appears before the court and says that his affidavit is wrong. If that be so and if PW3 was well aware that his daughter was not a minor at the time of the alleged incident, what was the earthly purpose for him to have given Ext. PW3/A FIS/FIR alleging that his minor daughter had been kidnapped by some unknown person? So, was there any demand for money made by PW3 to the accused, which demand on being refused by the latter, led to the registration of the present crime (containing false allegations) as contended by the accused? This appears quite probable especially in the light of the Ext. X-1 FIR and X-2 judgment. Is giving false complaints one after the other the *modus operandi* adopted by PW3 to extract



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money from others as contended by the accused? I refrain from making further comments or recommending or initiating action against either the father or daughter, as it appears from the materials on record that PW1 and the accused are leading a married life and also have children.

24. In the light of the aforesaid unsatisfactory materials on record, I find that the trial court went wrong in finding the accused guilty of the offences punishable under Section 376(1) IPC and Section 6 of the PoCSO Act.

25. In the result, the appeal is allowed and the impugned judgment is set aside. The accused is acquitted under Section 235(1) Cr.P.C. of the offences punishable under Section 376(1) IPC and Section 6 of the PoCSO Act. The accused is set at liberty and his bail bond shall stand cancelled and the sureties, if any, shall stand discharged.



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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 09, 2026/kd