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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 06.01.2026

Judgment pronounced on: 12.01.2026

+ CRL.A. 192/2025 and CRL.M.(BAIL) 330/2025

PANKAJ

.....Appellant

Through: Mr. Abhinav Bajaj, Mr. Saksham Ojha, Ms. Geetashi Chandna and Ms. Priya Fandon, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Sections 415(2) and 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellant, the sole accused, in S.C. No. 932/2017 on the file of the Special Court under the Protection of Children from Sexual Offences Act, 2012, Tis Hazari Courts, Delhi, challenges the conviction entered, and sentence passed against him for the offences punishable under



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Sections 354, 376(2)(i) of the Indian Penal Code, 1860 (the IPC) and Section 10 of the Protection of Children from Sexual Offences Act, 2013 (the PoCSO Act).

2. The prosecution case is that on 03.11.2017 between 07:30 PM and 08:00 PM near Sati Mandir, Aram Bagh, Paharganj, the appellant/accused committed rape/aggravated penetrative sexual assault on PW3 and PW4, who were aged about seven years and six years respectively. On the next day, i.e., 04.11.2017, a PCR call was received at Police Station Paharganj *vide* DD No. 14A, Ext. PW17/A, regarding the incident, pursuant to which PW17 and PW19, the Sub Inspectors, reached the aforesaid place where they met PW3 and PW4 as well as their parents. The accused was also present, as he was held by members of the public. The accused was handed over to the police. PW19 recorded the FIS of PW2, that is, Ex. PW2/A. Based on the same, Crime No. 329/2017 was registered, that is, Ex. PW5/A FIR by PW5 ASI. On completion of



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investigation, charge sheet/final report was submitted before the court by PW19 alleging the commission of the offences punishable under Section 376 IPC and Section 5 of the PoCSO Act. After receiving the FSL result, i.e., Ext. PW19/F, a supplementary charge sheet was also filed.

3. The accused on being produced before the trial court was served with copies of the chargesheet and the documents in compliance with Section 207 Cr.P.C.. As per order dated 09.01.2018, a charge under section 376 IPC and Section 5 of the PoCSO Act was framed, read over and explained to the accused, to which he pleaded not guilty.

4. On behalf of the prosecution, PWs.1 to 19 were examined and Exts. PW1/A-G, PW2/A-C, PW2/1, PW3/A, PW4/A, PW5/A-B, PW6/A-B, PW11/A-E, PW 12/A-B, PW14/A, PW15/A, PW16/A-B, PW17/A, PW18/A-C, PW19/A-D, DA, DB, E-G, PW19/1-3, Mark A to D, Ex PA - P4 were marked in support of



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the case. After the close of the prosecution evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C), with regard to the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. He submitted that he had been falsely implicated in the case. According to him, there were disputes between him and PW8, the father of PW3, regarding encroachment and parking rehri in front of his house/ temple as the latter used to take rehri on a daily basis from one Danish and Sultan. He had given a complaint to the police against the said two persons regarding the parking of rehri/encroachment. Hence, Danish and Sultan, in connivance with the parents of PW3, have falsely implicated him in the present case.

5. As the trial court did not find it a fit case to acquit the accused under Section 232 Cr. P.C., the accused, was asked to



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enter on his defence and adduce evidence in support thereof. No oral or documentary evidence was adduced by the accused.

6. On a consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 05.09.2024, found the accused guilty of the offences punishable under Sections 354, 376 IPC and Sections 6 and 10 of the PoCSO Act and hence sentenced him to rigorous imprisonment for 10 years and fine of ₹1,000/- and in default to undergo simple imprisonment of one month for the offence punishable under Section 376(2)(i) IPC; to rigorous imprisonment for 5 years and fine of ₹1,000/- and in default to undergo simple imprisonment of one month for the offence punishable under Section 354 IPC and to rigorous imprisonment of 5 years and fine of ₹1,000/- and in default to undergo simple imprisonment of one month for the offence punishable under Section 10 of the PoCSO Act. The fine, when deposited by the accused, has been directed to



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be paid to the victim for her rehabilitation. The sentences have been directed to run concurrently. Set off under Section 428 Cr. P.C. has been allowed. Aggrieved, the accused has come up in appeal.

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

8. It was submitted by the learned counsel for the appellant/accused that the trial court erred in convicting the accused when there was only the uncorroborated testimony of the victims, namely, PW3 and PW4. PW3 and PW4 are not sterling witnesses, and hence their testimony alone ought not to have been made the basis for conviction. The testimony of PW3 and PW4 are full of contradictions and inconsistencies. The medical evidence also does not in any way support the prosecution case. No injuries have been noted in the medical certificates, namely, PW6/A and



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PW6/B. There are no injuries noted in the private parts of the victims. The hymen has been reported to be intact in the case of both PW3 and PW4, despite the allegation of penetrative sexual assault.

8.1. According to the learned counsel for the appellant/accused, the present case is a false one foisted on the accused due to the enmity between the accused and the parents of the victims. Hence, the impugned judgment, which is based on totally unsatisfactory evidence, deserves to be set aside, goes the argument. In support of the argument, reference was made to the dictums in **Santosh Prasad v. State of Bihar (2020) 3 SCC 433**; **State of Madhya Pradesh v. Ramesh & Anr. (2011) 4 SCC 786**; and **Promud Yadav v. State of Assam 2025 SCC OnLine 1937**.

9. *Per contra*, it was submitted by the learned Public Prosecutor that while appreciating the evidence in the case on hand, this court must be sensitive of the fact that PW3 and PW4



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were aged about 6 and 7 years at the time of the incident. In such circumstances, there is bound to be some inconsistencies and also contradictions in their statements. However, the contradictions and inconsistencies pointed out by the defence are quite immaterial and irrelevant, which have not affected the core prosecution case. No contradictions whatsoever have been brought out in the testimony of either PW3 or PW4. The testimony of the victims has not been discredited in any way, and hence the trial court was right in finding the accused guilty of the aforesaid offences. There is no infirmity in the impugned judgment calling for an interference by this Court, argued the prosecutor.

10. Heard both sides.

11. Exts. PW6/A and PW6/B are the certificates relating to the medical examination of PW4 and PW3 respectively conducted on 04.11.2017. The brief history recorded in Ext. PW6/A reads thus:



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“As per _____ (PW4), d/o _____ (PW10), she was playing near to Mandir, Rani Bagh. She was called by neighbour Pankaj, Pankaj called _____ (PW4) and took her to Mandir whereunder some tent, he undressed _____ (PW4) and inserted his finger in her private parts. As per _____ (PW4), Pankaj had removed his underwear too. Now she has been brought for medical examination”

11.1. There are no injuries noted in PW6/A, and the hymen is reported to be intact.

11.2. In Ext. PW6/B, the brief history recorded reads:-

“As per _____ (PW3), daughter of _____ (PW8) she was playing near Mandir, Ranibagh. She was called by neighbour Pankaj to Mandir, where under the shed of some tent he undressed her & inserted his finger in her private parts. Pankaj also removed his underwear. Now she has been brought to LHMC for medical examination.”



12. As in the case of PW4, no injuries are noted, and the hymen is reported to be intact. Therefore, referring to these certificates, it was argued by the learned counsel for the appellant/accused that the medical evidence does not in any way support the prosecution case though the allegation is that the accused committed penetrative sexual assault on PW3 and PW4.

13. The trial court disbelieved the case of penetrative sexual assault on PW4 and has convicted the accused for the offences punishable under Section 354 IPC and Section 10 of the PoCSO Act only as far as the assault on PW4 is concerned. In the case of PW3, the prosecution case of penetrative sexual assault has been held to have been proved and hence the accused convicted for the offence punishable under Section 376(2)(i) IPC.

14. It is true that the medical evidence on record does not support the prosecution case of penile penetration of PW3. PW4, in the box, does not have a case of the accused having committed



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digital rape on her. The certificates say no internal examination was conducted as consent for the same was not given. PW14, the mother of PW4, deposed that both the children were crying during the medical examination and hence, she did not give consent for internal examination. Therefore, the medical evidence on record does not in anyway support the case of the prosecution. Be that as it may, if the remaining evidence on record is believable and trustworthy, then the court can certainly look into the same to see whether the prosecution case stands established. Hence, I will refer to the testimony of the victims in this case, namely, PW3 and PW4.

15. The incident in this case is alleged to have taken place on 03.11.2017 between 7 and 8 pm. Section 164 Cr.P.C. statement, namely, Ext. PW3/A of PW3, is seen recorded on 06.11.2017. PW3 in her statement has stated thus:- "I was playing near the temple with my friend PW4. Pankaj uncle (accused) dragged both



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of us into the tent. I know his name because he lives nearby. He spoke dirty things to me. He then removed my undergarment, and put his genital inside my genital. (The Magistrate has recorded thus- “*At this stage, the victim starts moving back and forth to show how accused behaved, i.e., the pelvic thrust movement of back and forth*”) He then removed the undergarment of PW4 and put his finger inside her genital. (The magistrate has recorded thus- “*the witness points out at her vagina*”) Then I returned home. PW4 told her friend about the incident. The friend in turn told my sister about the incident. My sister informed my mother about the incident.”

16. PW3 was examined before the trial court on 02.02.2019.

The relevant portion of her testimony reads thus:

“*Question: What happened to you?*

Answer: Kachhi utaari thi. Uncle ne. Pankaj uncle ne. Pehle bulaya tha ye lo prasad. Main andar chali gayi mandir me. Vaha



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ek kamra tha. Vahan le gaye the. Prasad dekar meri aur meri friend W ki kacchi utaari thi. Phir apni toilet ki jagah meri toilet ki jagah iagai. Usne apni toilet waii jagah meri aur meri friend ki toilet waii jagah me ghusane ki koshish kari thi aur phir ghusa diya tha. Phir hamne chiiaya par kisi ne suna nahi. Phir usne chod diya. Meri friend 'M' ka nahi pata par main ghar aa gayi thi”.

16.1. The aforesaid testimony roughly translated reads:-
“Pankaj uncle called me and gave prasad. I went inside the temple where I was taken into a room. After giving prasad to me and my friend (PW4), he removed our undergarment. He put his genital into my genital. He tried to insert his genital into my genital and the genital of my friend and then he did it. We screamed/cried out. But nobody heard us. Then he left us. I don't know about my friend, but I went home.”

17. Section 164 Cr.P.C statement of PW4, namely, Ext.



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PW4/A also seen recorded on 06.11.2017, says thus: "I was playing with my friend (PW3) in the temple. Uncle Pankaj spoke dirty things (*gandi baate*). Uncle called us to the tent near the temple. He removed my undergarment and put his hand. (The Magistrate has recorded thus- "*At this stage, victim points out at her vagina and makes a gesture that he put his hand inside her vagina*")". He put his hand inside my genital. He removed the undergarment of my friend (PW3) also and put his genital inside her genital and moved back and forth. (The Magistrate has recorded thus:- "*At this stage, she moves back and forth to show how accused entered victim PW3 and kept moving his penis*") I told my friend _____ about the incident. That friend told _____ (PW3's elder sister), who in turn told her mother about the incident.

18. PW4, when examined, deposed thus-

"Question: What wrong had happened with you when you



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had gone to the Temple?

Answer: Uncle bula rahe the, naam pata nahi hai. Vo kachchi nikai kar hath laga rahe the, jahan shushu karte hain vahan hath laga rahe the. Fir hum bhaag gaye the. Us din mere sath meri friend _____ (PW3) bhi thi, vo bhi mere sath gayi thi. Us Uncle ne Pooja ki kahchi nikal kar aur apni kachcha nikal kar ganda kaam kar rahe the. Us Uncle ne _____ (PW3) ko sutta kar uske upper khud bhi leit gaya tha. Fir vo bahar aa gaya. Fir _____ (PW3) bhaag gayi thi. Vo _____ (PW3) ke shushu mein hath laga raha tha. Fir hum dono bhag kar apne apne ghar par chale gaye. Fir maine ghar jaakar apni friend _____ ko bataya. _____ ne _____ (PW3) ki didi ko bata diya. Fir _____ (PW3) ki didi ne _____ (PW3) ki Ammi ko bata diya. ”

19. A rough translation of the aforesaid testimony reads thus: “Uncle was calling. Do not know his name. He removed the undergarment and put his hand on the genital. Then we ran away.



On that day my friend (PW3) was also with me. Uncle removed his as well as my friend's undergarment and did bad things. That uncle lay on top of _____ (PW3). Then _____ (PW3) came out and ran away. He was putting his hand in the genital of _____ (PW3). Thereafter both of us ran away to our respective homes. I went home and told my friend about the incident, who in turn told _____ (PW3's sister). _____ (PW3's sister) informed their mother.”

20. A reading of the cross-examination of PW3 and PW4 show that no contradiction(s) have been brought out or proved. According to the learned counsel for the appellant/accused, it was a lawyer appointed by the Legal Services Authority who had conducted the trial, and that many crucial aspects have not been brought out in the cross-examination of the witnesses and that the contradictions have not been proved. Though the appellant/accused had taken up a contention that the present case is a false one foisted on him due to the enmity existing between him and the



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parents of PW3 and PW4, there are no materials to support the same. The medical evidence to which I have already adverted to does not support the prosecution case of penetrative sexual assault. So the only question to be considered by this court is whether the testimony of PW3 and PW4 are credit worthy and whether on their sole testimony the conviction can be sustained. It is no doubt true that conviction can be made on the basis of the sole testimony of the victim(s). But in such cases as has been held in several earlier cases, the evidence/testimony of the witness must be of sterling quality. Hence, I will proceed to examine whether the testimony of PW3 and PW4 satisfies the said test.

21. As noticed earlier, the Section 164 statements of PW3 and PW4 have been marked as Exts. PW3/A and PW4/A respectively. These statements can be used for corroboration as well as for contradiction. As stated earlier, no contradiction(s) have been brought out by the defence in the cross-examination of



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the witnesses. The statements have been marked by the prosecution obviously to corroborate the testimony of PW3 and PW4. So now, the question is, does Exts. PW3/A and PW4/A Section 164 statements, corroborate the prosecution case? I am afraid the answer will have to be in negative. It is no doubt true that the victims were of quite young age/tender age, and therefore, there are bound to be variations or differences in their testimony. The question is whether those variations/differences or inconsistencies are material and have affected the core prosecution case.

22. The first inconsistency pointed out is the place of occurrence. In the Section 164 statements, PW3 and PW4 state that the incident took place inside a tent near the temple. However, in the box, their case is that the incident took place in a room situated inside the temple. PW3 in Ext. PW3/A, has a case that both of them were dragged into the tent near the temple by the accused and



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that the accused committed penile penetration on her and digital rape on PW4. However, her case in the box is different as she deposed that the accused committed penile penetration on both of them and that both of them cried out/screamed, but nobody heard them. She has no case that they were dragged into the tent. On the other hand, her case is that the accused invited them inside the temple by offering *prasad*.

23. PW4, on the other hand, in Ext. PW4/A Section 164 statement, stated that the accused committed digital rape on her and that PW3 had been subjected to penile penetration. However, in the box, PW4 deposed that the accused had removed their undergarment as well as his undergarment; that the accused lay on the top of PW3 and committed digital rape on PW3. PW4 has no case of penile penetration by the accused. These are material inconsistencies in the statements of PW3 and PW4 in describing the sexual assault by the accused. These inconsistencies, coupled



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with the absence of medical evidence, raise doubts regarding the prosecution case. As referred to earlier, despite the prosecution case being of penile penetration and digital rape, no injuries were found on the private parts of PW3 and PW4, who admittedly were of tender age at that time of the incident. The hymen has also been reported to be intact. Now even assuming that there was no complete penetration resulting in complete or partial tear of the hymen, there would have been some injury/tenderness or mark indicating the assault, as the medical examination was conducted on the very next date of the assault. But no seen injury is recorded.

24. Further, it is true that no plausible reason(s) or any reason for that matter have been shown by the defence to substantiate his case that the case on hand is a false one foisted due to the alleged existing prior enmity between the parents of the victims and the accused. But that would not mean that the prosecution case will automatically stand established. The burden is always on the



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prosecution to establish its case beyond reasonable doubt. Merely because the accused does not give any explanation or set up a consistent defence, is no ground to find that the prosecution has succeeded in establishing the case unless there are materials in support of the same. The testimony of PW3 and PW4 alone could not have been made the basis for the conviction, as there are material inconsistencies in describing the act of the accused. In such circumstances, it would not be safe to convict the accused on such unsatisfactory evidence. Suspicion however strong cannot take the place of proof beyond reasonable doubt. That being the position, I find that the trial court went wrong in relying on the sole testimony of the victims to conclude regarding the guilt of the accused. I find that the accused is entitled to the benefit of doubt in this case.

25. In the result, the appeal is allowed, and the impugned judgment is set aside. The conviction and sentence imposed



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against the appellant/accused by the trial court is set aside and the accused is acquitted under Section 235(1) Cr.P.C of the offences charged against him.

26. The accused shall forthwith be set at liberty if not required in any other case. A copy of the judgment be sent to the Jail Superintendent concerned.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JANUARY 12, 2026/mj/er