



2026:DHC:3061



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Judgment Reserved on: 08.04.2026**  
**Judgment pronounced on: 15.04.2026**

+ **CRL.A. 1144/2016**

SUDARSHAN

.....Appellant

Through: Ms. Manika Tripathy, Advocate  
(DHCLSC) with Mr. Aakash M., Mr.  
Raman Khan, Ms. Nandini Goel and  
Mr. Saksham Singh, Advocates.

versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for State with SI  
Komal, P.S. Aman Vihar  
Mr. Raghavendra Mohan Bajaj,  
Ms. Shagun Agarwal and Mr. Pritesh  
Raj, Advocates for victim.

**CORAM:**

**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA**  
**JUDGMENT**

**CHANDRASEKHARAN SUDHA, J.**

1. In this appeal filed under Section 374(2) of Code of Criminal Procedure (the Cr.P.C.), the sole accused in SC No. 182 of 2014 on the file of the Additional Sessions Court, Rohini District Courts, New Delhi, assails the judgment dated 08.12.2015 as per which he has been convicted and sentenced for the offences



punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act).

2. The prosecution case, is that on 10.07.2014 at about 02:30 PM, at House No. B-337, Gali No. 2, Prem Nagar-III, Gauri Shankar Enclave, Delhi, the accused attempted to commit aggravated sexual assault on PW12, a minor girl aged approximately 4½ years, by removing her underwear and climbing over her back with the intent to commit a wrongful act on her.

3. Based on Ext. PW11/A FIS/FIR of PW11, the mother of PW12, given on 10.07.2014, crime no. 730/2014, Aman Vihar Police Station, that is, Ext. PW1/A FIR was registered by PW1 Head Constable (HC) alleging commission of the offence punishable under Section 354 IPC. PW14 conducted investigation into the crime and on completion of the same filed the charge-sheet/final report alleging commission of offences



punishable under Sections 511, 354 and 376 IPC and Section 10 of the PoCSO Act.

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 as per order dated 29.01.2015 framed a charge under Section 9(m) read with Sections 10 and 18 of the PoCSO Act, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs.1 to 14 were examined and Exts. PW1/A-B, PW2/A-F, PW3/A-D, PW4/A, PW5/A, PW7/A-B, PW8/A, PW11/A-C, PW13/A-C, PW14/A 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. The accused denied all those



circumstances and maintained his innocence. He submitted that he has been falsely implicated in this case.

7. After questioning the accused under Section 313(1)(b) CrPC, compliance of Section 232 CrPC was mandatory. In the case on hand, no hearing as contemplated under Section 232 CrPC 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 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. No oral or documentary evidence was adduced by the accused.

8. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 08.12.2015 held the accused guilty of the offence contemplated under Section 9(m)



punishable under Section 10 of the PoCSO Act and hence sentenced him to undergo rigorous imprisonment for a period of 5 years and to a fine of ₹5,000/-, and in default of payment of fine, to undergo simple imprisonment for six months. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred the present appeal.

9. It was submitted by the learned counsel for the appellant/ accused that the prosecution case suffers from serious infirmities as there were no injuries, bruises or abrasions found on PW11, which would ordinarily be expected if she had been forcibly pushed to the ground, as alleged. It was further submitted that there was no evidence of any attempt at penetration or ejaculation as the clothes worn by PW12 was not recovered by the police. The learned counsel also submitted that PW12, being only four and a half years old, was too young to accurately comprehend or describe the specific acts alleged, and therefore, the detailed nature of her testimony raises a reasonable



apprehension of being tutored by her parents. It was further contended that the accused has been falsely implicated due to a financial dispute, inasmuch as PW12's family owed a substantial sum of money to the father of the accused, and the accused has been implicated to avoid repayment of the amount. It was additionally submitted that the Charge framed against the accused was under Section 9(m), punishable under Section 10 read with Section 18 of the POCSO Act, relating to an attempt to commit aggravated sexual assault, and not the commission of the offence itself. It was argued that the trial court did not amend the Charge from attempt to one of completed offence, and therefore, the accused cannot be convicted for an offence for which he has not been charged.

10. *Per Contra*, it was submitted by the learned Additional Public Prosecutor that the impugned judgment does not suffer from any infirmity warranting interference by this court as the trial court has duly considered each and every



ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits. The testimony of PW12 corroborated by the testimony of PW11, her mother, as well as PW9 her father clearly proves the prosecution case. No contradiction, whatsoever, has been brought out in their testimony. The witnesses have given consistent statements all throughout the proceedings. Their testimony has not been discredited in any way and hence, there is no reason(s) to disbelieve them.

11. The learned counsel for the victim submitted that Section 9(m) of the POCSO Act classifies a sexual assault as “aggravated” when it is committed upon a child below the age of twelve years. It was, therefore, contended that the conviction of the accused under Section 10 of the POCSO Act by the trial court is in accordance with law and does not warrant any interference.



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

13. I shall first briefly refer to the evidence on record relied on by the prosecution in support of the case. The incident in this case is alleged to have taken place on 10.07.2014 at 02:30 p.m. inside the shop of the accused. Exhibit PW11/A, the FIS/FIR of PW11, the mother of the victim, was recorded on the very same day of the incident. In the FIS/FIR, PW11 has stated thus: *“...My younger daughter Aanchal, aged about 4 ½ years, went from our house to the grocery shop in Gali No. 2 to get a toffee today, dt 10-7-14 at 2:30 PM. My daughter Aanchal came back crying at around 2:40 PM and told me that the shopkeeper brother climbed onto her back, pulled down the underwear she was wearing, and put something like water on her buttocks. After this, taking my daughter Aanchal, I reached his house where his mother started quarrelling. Meanwhile, my husband called the police. Sudarshan s/o Shri Ram Prajapati r/o B-337*



*Gali No. 2 Prem Nagar III Gauri Shankar Enclave has attempted to do a wrong act with my daughter Aanchal, legal action should be taken against him...”*

14. Ext. PW3/A, the 164 statement of PW12, is seen recorded on 14.07.2014 by the magistrate. In the said statement PW12 states thus:- “One day, after coming from school, I went to the shop to buy something. The shopkeeper took off my pants, climbed onto my back, and then was not getting off. He also spilled water on me. That is all, he did nothing else. I cried a lot. Then I came home. After coming home, I told all this to Mummy.”

15. PW12, when examined, fully supported the version given in her Section 164 statement. PW12, in her cross examination, deposed that no one was present there in the street during her visit to the accused’s shop. The parents of the accused had come to her house only once, that too when the accused was apprehended. PW12 further deposed that she had visited the



shop on several occasions also. PW12 denied any tutoring by her mother.

16. PW11, mother of the victim, when examined before the trial court, stood by her version in Ext. PW11/A FIS/FIR given by her. According to PW11, on the said day her daughter returned from school at about 02:00 PM and after a while, the latter went to purchase toffee from a nearby shop. Her daughter came weeping after 10-15 minutes and told her that "*dukan wala bhaiya meri peeth par upar chadh gaya tha meri pehni hui kachhi ko niche karke mere chutad par pani jaisa kuch dal diya*". On hearing this she went and confronted the accused. PW11 further deposed that medical examination of her daughter had been conducted, but she refused internal examination due to the tender age of her daughter.

16.1. PW11, in her cross examination, deposed that there is only one shop in their gali, which belongs to the father of the accused and the same is situated at a distance of about 15



paces from her house. Although, the gali is frequented by passersby during morning and evening hours, it was generally not very busy during noon. After the incident, she went to the house of the accused, where the other family members were found sleeping. According to PW11, the accused had confessed his guilt before her and sought her forgiveness. PW11 denied the suggestion that she and her husband used to regularly purchase goods from the shop of the accused, or that her husband owed a substantial sum of money to the father of the accused or that the present case was falsely instituted to avoid repayment. She admitted that the police had not seized the clothes of her daughter.

17. PW9, father of PW12, when examined before the trial court, fully supported the prosecution case. PW9, in his cross examination, denied the suggestion that the accused has been falsely implicated in order to extort money from the latter.



18. As stated earlier, the version of PW12, the victim, is that on 10.07.2014, when she went to the shop of the accused to purchase toffee, the latter took her inside the premises, made her lie on her stomach, removed her pants, climbed on top of her and '*poured water*' on her. '*Water*' in the context spoken to by PW12 could possibly only have been the semen of the accused. PW12 also deposed that after the accused let her go, she immediately returned weeping to her mother and disclosed the incident. This version of PW12 is substantiated by the testimony of PW11, her mother. The defence's reliance on the absence of bruises or abrasions in Ex. PW-5/A MLC is without merit, inasmuch as the Charge is not one of penetrative sexual assault, but of an attempt to commit aggravated sexual assault. Also, the contention that a monetary dispute existed between the accused and the family of PW12 is in no way probalised by the materials on record. The accused does not have a consistent version also on this aspect because when PW11, the mother,



was examined the suggestion put to her was that her husband, that is, PW9, owed a substantial sum of money to the father of the accused and to avoid repayment the accused has been falsely implicated. But when PW9 was in the box, the accused has no such case, on the other hand the suggestion was that the accused has been falsely implicated as the former's intention was to extort money from the latter. However, when the accused was examined under Section 313(1)(b) Cr.P.C, he has no such case. He only said that he has been falsely implicated. On going through the testimony of PW12, I do not find any reasons to disbelieve her. As held by the Apex Court in **Ganesan v. State, (2020) 10 SCC 573**, the sole testimony of victim regarding the sexual assault, if found credible and reliable, requires no corroboration and is sufficient in law to sustain a conviction.

19. Now coming to the question as to the offence committed by the accused. The court charge reads –



*“That on 10.07.2014, at about 2.30 pm, at shop/house no. B-337, Gali no. 2, Prem Nagar-III, Gauri Shankar Enclave, Delhi, within the jurisdiction of PS Aman Vihar, Delhi, you committed aggravated sexual assault upon the prosecutrix/victim child A (whose name and particulars are mentioned in the charge sheet and have also been verbally told to the accused today), a minor girl aged about 4 ½ years (less than 12 years), by removing down her underwear and by climbing over her back and attempting to commit wrong act with her and thereby committed offence of attempt of aggravated sexual assault u/s 9 (m) of POCSO Act punishable u/s 10 of POCSO Act r/w Section 18 of POCSO Act, within the cognizance of this Court.”*

(Emphasis Supplied)

20. However, the trial court by the impugned judgment has found the accused guilty of the offence punishable under Section 9(m) read with Section 10 of the PoCSO Act. Sexual assault has been defined under Section 7 of the PoCSO Act to mean that whoever, with sexual intent, touches the vagina, penis, anus or breast of a child, or makes the child touch such parts of that person or any other person, or does any other act with sexual intent involving physical contact without penetration, is said to commit sexual assault. Section 9(m)



classifies an offence as aggravated sexual assault when sexual assault is committed upon a child below the age of twelve years.

That being so, the act of the accused in taking PW12 inside his shop, undressing her, climbing on top of her and lying over her, and thereafter '*pouring water*' on her body, would necessarily come within the expression "*does any other act with sexual intent involving physical contact without penetration*" as contemplated in the latter part of Section 7 of the PoCSO Act. The offence of sexual assault when perpetrated upon a child below 12 years of age as in the present case, where PW12, the victim was a girl of approximately 4½ years, assumes the nature of aggravated sexual assault within the meaning of Section 9(m) of the PoCSO Act. But the accused has been charged only for an attempt to commit the offence of aggravated sexual assault and not for commission of the offence under Section 9(m). The Charge was never amended by the trial court from attempt to commit aggravated sexual assault to commission of aggravated



sexual assault. Therefore, the trial court apparently went wrong in convicting him for committing the offence of aggravated sexual assault, as he was never Charged for the same. Though the materials does make out a case of aggravated sexual assault, the accused cannot be convicted for the same as he has been Charged only for an attempt to commit aggravated sexual assault on PW12.

21. Now coming to the sentence to be imposed on the accused. Section 18 of the PoCSO Act which deals with attempt to commit an offence says that whoever attempts to commit any offence punishable under the Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, is liable to be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with



both. Section 7 defines sexual assault and as the assault has been committed on a child below 12 years, the same falls under section 9(m) punishable under Section 10 PoCSO Act. As per Section 10 PoCSO Act, the offender is liable to be punished with imprisonment which shall not be less than five years but which may be extended to seven years. Going by Section 18 PoCSO, half of the longest term of imprisonment provided of seven years, will obviously be three and a half years (3 ½). Therefore, the trial court could not have sentenced the accused to five years imprisonment, which is apparently wrong. Hence the sentence will have to be modified to the said extent.

22. In the result, the appeal is partly allowed. The appellant is found guilty of having committed the offence of attempt to commit aggravated sexual assault as contemplated under Section 18 read with Section 9(m) of the PoCSO Act punishable under Section 10 of the Act. Half of the maximum of seven years of imprisonment provided under Section 10 would be



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three and a half years. Hence, the substantive sentence of imprisonment is modified to rigorous imprisonment for three and a half years for the aforesaid offence.

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

**CHANDRASEKHARAN SUDHA  
(JUDGE)**

**APRIL 15, 2026**

*Kd/rs*