



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment Reserved on: 06.07.2026**
Judgment pronounced on: 09.07.2026

+ **CRL.A. 880/2025 & CRL.M.(BAIL) 1381/2025**

KANHAIYA LAL

.....Appellant

Through: Mr. Rohan J. Alva, Advocate
(DHCLSC) with Mr. Anant Sanghi,
Advocate.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for
State with SI Monika.
Ms. Sowjhanya Shankaran Advocate
(DHCLSC) for Victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA
JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 415(2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS), the sole accused in Sessions Case No. 977/2022 on the file of the Additional Sessions Judge (PoCSO), North-West, Rohini Courts, New Delhi, assails the judgement dated 15.05.2025 and order on sentence dated 17.05.2025, as per which he has been



convicted and sentenced for the offences punishable under Section 9(m) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act) and Sections 354, 354A, 354B and 506 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 19.08.2022, between 07:00 PM and 08:00 PM, at C-35, Satsang Colony, WPIA, Ashok Vihar, Delhi, the accused committed penetrative sexual assault upon PW1, a minor girl aged about 6 years and further criminally intimidated her by threatening to beat her if she disclosed the incident to anyone. As per the charge sheet/final report, the accused is alleged to have committed the offences punishable under Sections 376 and 506IPC and Section 6 of the PoCSO Act.

3. On the basis of Ext. PW2/A FIS/FIR of PW2, given on 21.08.2022, Crime no. 711/2022, Ashok Vihar Police Station, i.e., Ext. PX1/1 FIR was registered by PW7, Woman Sub-Inspector(WSI). PW7 conducted investigation into the crime and



on completion of the same, filed the chargesheet/final report alleging 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 17.01.2023, framed a Charge under Sections 376, 506 (I) IPC and Section 6 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 7 were examined and Ext. PW1/A-B, Ext. PW2/A-B, Ext. PW4/A, Ext. PW5/A-C, Ext. PW6/A, Ext. PW7/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. The accused submitted that it is a false and fabricated case filed by PW1 and her family as he had a quarrel with the latter's grandfather relating to his shop (*khoka*).

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. DW1 was examined in support of the defence and No 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 15.05.2025 held the accused guilty of the offences punishable under Sections 354, 354A, 354B, 506 IPC and Section 9(m) read with Section 10 PoCSO Act. *Vide* order on sentence dated 17.05.2025, he has been sentenced to undergo rigorous imprisonment for a period of 7 years and to fine of ₹40,000/-, and in default of payment of fine, to simple imprisonment for a period of nine months for the offence punishable under Section 10PoCSO Act, and to rigorous imprisonment for a period of 2 years and to fine of ₹10,000/-, and in default of payment of fine, to simple imprisonment for a period of 3 months for the offence punishable under Section 506 IPC. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.

10. The learned counsel for the appellant/ accused submitted that the *Khoka* in which the offence is alleged to have



taken place is situated in a densely populated area surrounded by jhuggis with continuous public movement and therefore it is highly improbable for the alleged incident to have transpired in such an open and public space without attracting the attention of any person. It was further submitted by the learned counsel that despite PW1 having stated in her Section 164 statement that two other children, namely, 'P' and 'A', were present at the spot and had witnessed the incident, the prosecution failed to record their statements or bring them as prosecution witnesses.

10.1. Relying upon the testimony of PW2, mother of PW1, and DW1, the son of the accused and the accused's statement recorded under Section 313 of the CrPC, it was submitted by the learned counsel for the accused that the trial court has failed to take into account the prior dispute that existed between the accused and PW1's family due to which, the accused have been falsely implicated in this case out of animosity. It was further contended that there was an unexplained delay in lodging



the FIR, inasmuch as the alleged incident is stated to have occurred on 19.08.2022, whereas Ext.PW1/A FIS/FIR came to be lodged only on the 21.08.2022, thereby casting a doubt on the prosecution version. Without prejudice to the submissions on merits, the learned counsel canvassed for leniency regarding the quantum of sentence and prayed that the sentence be reduced to a period of 5 years which is the minimum prescribed punishment under Section 10 PoCSO Act.

11. *Per Contra*, the learned Additional Public Prosecutor submitted 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.

11.1. The learned counsel appearing for the victim submitted that the sentence of seven years imprisonment awarded by the trial court is just and appropriate, having regard to the



gravity of the offence committed by the accused, who was about 62 years of age, against PW1, a minor aged about 6 years. It was further pointed out that the accused has criminal antecedents as he is an accused in another case registered for commission of offence punishable under Section 307 IPC.

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

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

14. 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 19.08.2022 inside the shop/house of the accused. Ext. PW2/A, the FIS/FIR of PW2, the mother of PW1, was recorded on 21.08.2022. In the FIS/FIR, PW2 has stated thus:- “...*Today, on 21.08.2022 at around 7-8 PM in the evening, when I was bathing my daughter ‘N’ (PW1) aged 6 years, my daughter said, ‘Mummy, don't touch my private part, it is*



hurting me. 'When I asked my daughter the reason, my daughter replied that the day before yesterday, when she went to the ice-seller uncle's (barf wale uncle's (the accused)) house to play with Pooja and Aanchal, he had taken off her underwear and rubbed his private part against hers. When she started screaming, the uncle covered her mouth with his hand and said, 'Do not tell anyone, otherwise I will beat you severely, no one will be able to save you.' After that, he let her go and she came home...."

15. PW1 in Ext. PW1/B, the 164 statement seen recorded on 22.08.2022 states thus:- *"An uncle took me to a house the day before yesterday and put his private part in my private part. The ice-seller uncle did this. After that, he said do not tell anyone, otherwise I will beat you a lot. He had taken me to his house. He did all this there. I can recognize him. Pooja and Aanchal were in that house. They also saw wrong being done to me. Both of them had run away."*



15.1. PW1, when examined, stood by the version given in her Section 164 statement. PW1 also deposed that on the said day she was playing with 'A' and 'P' when the accused called her and that when 'A' and 'P' left, the accused removed her underwear, placed his private part on her private part, and threatened to kill her if she disclosed the incident to anyone. The accused had taken her inside his room and committed the act. No one had witnessed the occurrence because the shop is situated in the front while the accused's room is at the rear of the premises, where two battery rickshaws were parked.

16. PW1, in her cross-examination, deposed that she had known the accused for many years and used to address him as "Baba". According to her, the accused touched her private part and slightly inserted his private part into her private part, though not completely.

17. PW2, mother of PW1, when examined before the trial court, stood by her version in Ext. PW2/A FIS/FIR. PW2, in her



cross examination, deposed that she knew Bhola, the son of the accused, and that her husband had once quarrelled with him. According to her, the quarrel arose when her husband was having an argument with his mother, at which time Bhola intervened, resulting in an altercation between them. PW2 further deposed that her family ran a roadside shop selling Kurkure, bidis and cigarettes, which is situated opposite the shop of the accused and that their shop was on rent whereas the accused owned his shop. PW2 denied any knowledge of the accused having made a complaint to the MCD against their shop. PW2 denied the suggestion that there had been a quarrel between her father-in-law and the accused over such a complaint. According to PW2, the MCD had merely directed all kiosk owners to shift their kiosks slightly away from the road and that there had never been any quarrel or dispute between her father in law and the accused in this regard. PW2 further deposed that the accused did not reside in his house as it had been let out on rent, instead he resided at his shop,



where he had made arrangements for his residence. PW2 further deposed that the place where accused was residing is not a *Kokha* (road side stall or shack) but a structure covered with tarpaulin and wooden planks. 'P' and A' aged about eleven to thirteen respectively are the daughters of the accused's elder brother and resided near her house. The medical examination of PW1 was conducted on 21.08.2022. She initially refused the medical examination because her daughter was crying, screaming and was not allowing anyone to touch her.

18. PW6, Head of Department, Obstetrics and Gynaecology, Deep Chand Bandhu Hospital, Delhi deposed that he had been deputed by the Medical Superintendent to depose on behalf of Dr. Ankita Shivhare, Senior Resident, who had left the services of the hospital. Dr. Ankita Shivhare had worked under his supervision and, therefore, he was acquainted with her handwriting and signature, having seen her writing and signing during the course of discharge of her official duties. On 22.08.2022, PW1 was



brought to the hospital by PW3 with an alleged history of sexual assault. PW1 was medically examined by Dr. Ankita Shivhare and Ext. PW1/A MLC No. 17374/22 issued. PW6, in his cross examination, admitted that, as recorded in the MLC, the same was prepared in the presence of the victim's mother. No signs of injury were noted on PW1.

19. PW7, the Investigating officer (IO), when examined, spoke about the various steps taken during the course of investigation. According to PW7, the accused had one residential house and a temporary tarpaulin covered *khokha*, and that the alleged incident occurred in the said *khokha*. PW7 admitted that several jhuggies were situated beside the *khokha* on the roadside, that the accused sold ice slabs from the *khokha* and also resided there, while his family lived separately in nearby jhuggies.

20. DW1, one of the sons of the accused, when examined, deposed that on 19.08.2022, PW1 had never come to the place where he had set up his cart nor had she visited the



accused's shop or hut at any time during the day or night. DW1 further deposed that about one to two months before the incident, the accused had an altercation with PW1's grandfather after the accused lodged a complaint with the MCD for removal of the PW1's grandfather's illegal *khokha*. DW1 further deposed that about six months prior to the incident, his brother Bhola had also quarrelled with PW1's father, following which PW1's grandfather and father threatened to falsely implicate the accused in a criminal case.

21. Though, the accused stood charged for the offences punishable under Section 6 of the PoCSO Act also, the trial court found evidence lacking to establish the same. In view of Section 222 Cr.P.C., which permits conviction for a minor offence where the facts established disclose the commission of such offence, the accused has been held liable to be convicted for the lesser offences punishable under Section 9(m) read with 10 of the PoCSO Act and Sections 354, 354A and 354B IPC along with



Section 506 IPC. The question is whether the aforesaid evidence on record is sufficient to find the appellant/accused guilty of the said offences.

22. It was submitted on behalf of the accused that the alleged place of occurrence, namely, the accused's *Khokha*, was situated in a densely populated locality surrounded by jhuggis and other shops with constant public movement. It was, therefore, contended that the alleged incident was inherently improbable as such an occurrence could not have taken place without attracting the attention of persons present nearby. The aforesaid submission does not merit acceptance. Neither PW1, the child victim, nor PW2, the mother of the victim, was confronted with any suggestion that the alleged incident could not have occurred because the accused's *khokha* was situated in a crowded locality or that the presence of people in the vicinity rendered the commission of the offence impossible. On the contrary, PW1 consistently deposed that the accused took her inside his room situated behind



the shop, where no one else was present, and committed the sexual assault. Her testimony that the occurrence took place inside the accused's room remained consistent in cross examination as well. Similarly, PW2 was not questioned to suggest that the accused's khokha was so crowded or exposed that the commission of the offence, as alleged, was impossible. The only material relied upon by the defence is the testimony of PW7, the Investigating Officer, who admitted that there were jhuggis near the khokha, that the khokha was situated on the roadside, and that many people remained present in the nearby area. However, these admissions merely establish the existence of movement in the vicinity. They do not establish that persons were present inside the accused's khokha at the relevant time or that the commission of the offence inside the khokha was impossible. PW7 also deposed that the alleged incident had taken place in the accused's khokha and that the accused used to reside there. The prosecution case is that the assault occurred inside an enclosed space used by the accused as



his residence. Merely because a structure is situated in a populated locality does not lead to the conclusion that an offence of sexual assault cannot be committed therein. The possibility of public movement outside such premises does not exclude the possibility of an offence being committed inside, particularly when PW1, the victim has consistently stated that she was taken into the accused's room and assaulted there. The defence has not brought on record any evidence regarding the dimensions of the khokha, its visibility from outside, whether its interior was open to public view, or whether persons could actually witness activities taking place inside it. Accordingly, the argument that the incident was improbable merely because the accused's khokha was situated in a populated locality is devoid of merit and hence rejected.

23. It was further submitted by the learned counsel for the accused that the prosecution failed to examine two material witnesses, namely 'P' and 'A', who, according to PW1's statement under Section 164 Cr.P.C., had witnessed the occurrence. It was



contended that the non-examination of these witnesses created a serious lacuna in the prosecution case and cast doubt on the prosecution version. The aforesaid contention is also devoid of merit. Merely because the statements of 'P' and 'A' were not recorded or they were not examined as prosecution witnesses does not, by itself, render the prosecution case doubtful. It is a settled principle that evidence has to be weighed and not counted, and conviction can be based on the testimony of a single witness if found wholly reliable. In the present case, PW1 has consistently narrated the incident from the inception, including in her statement under Section 164 Cr.P.C., as well as in the box. Her testimony has remained cogent and trustworthy on the material particulars regarding the commission of the offence. The non examination of 'P' and 'A', therefore, is not fatal to the prosecution case, particularly when the testimony of the child victim inspires confidence and does not suffer from any material contradiction or infirmity. Moreover, it has been brought out in the cross-



examination of PW2 that 'P' and 'A' are the daughters of the elder brother of the accused. So there would be no point in examining them because it was highly unlikely for them to have supported the prosecution case. Further, it is settled law that the sole testimony of the victim, if found to be trustworthy and credible, can form the basis of conviction even in the absence of independent corroboration (See **Ganesan v. State**, (2020) 10 SCC573) Accordingly, the failure to examine 'P' and 'A' does not, in any way, create any doubt in the prosecution case.

24. It was further submitted by the learned counsel for the appellant/accused that the prosecution case was a result of prior enmity between the parties arising out of disputes regarding an alleged complaint made by the accused to the MCD against the victim's family's shop and an earlier altercation between the accused's son and the victim's family. It was contended that these circumstances furnished a motive for falsely implicating the accused. The aforesaid contention is equally devoid of merit. The



defence has sought to attribute a motive for false implication on the basis of an alleged prior dispute between the accused and the family of PW1 concerning an MCD complaint against their shop. However, the said plea remains a mere assertion without any independent corroboration. No witness from the MCD or any other independent source has been examined to establish that any complaint was ever lodged by the accused against the family of PW1. Likewise, the defence has not produced any documentary evidence, such as a copy of the alleged complaint, any notice issued by the MCD, or any receipt evidencing imposition or payment of any penalty upon the family of PW1 pursuant to such alleged complaint. Hence, the testimony of DW2 alone is insufficient to probabalise the defence version. On the contrary, PW2 categorically denied the suggestion that any dispute had arisen between her family and the accused on account of any MCD complaint or that the accused had been falsely implicated for such reason. The Investigating Officer (PW7) also deposed that she had



inquired in the locality regarding any previous quarrel or dispute between the parties, but no one disclosed the existence of any such dispute. In these circumstances, the defence has failed to establish the existence of any prior enmity capable of furnishing a motive for false implication.

25. It was further contended by the learned counsel for the appellant/accused that the prosecution case is rendered doubtful on account of the delay in registration of the FIR, as the alleged incident occurred on 19.08.2022 whereas the FIR came to be registered only on 21.08.2022. The learned counsel for the appellant has not demonstrated as to how the delay of about two days in the registration of the FIR has caused any prejudice to the defence or rendered the prosecution case doubtful. More importantly, the evidence on record explains the delay. PW2, the mother of the victim, deposed that the victim disclosed the incident to her only thereafter, and upon learning about the occurrence, she promptly approached the police. Thus, the FIR was lodged at the



earliest opportunity after the offence came to the knowledge of PW2. In the absence of any material to suggest that the delay was deliberate or was utilised for fabrication or false implication, the mere interval between the date of occurrence and the registration of the FIR is not sufficient to discredit the prosecution case. Therefore, a careful perusal of Ext. PW2/A FIS/FIR, the Section 164 Statement of PW1, and the testimony of PW1 clearly establishes that the accused took PW1 inside his *khohka*, undressed her, and touched her private part with his private part. PW1 further deposed before the Court that although the accused did not completely insert his private part, he did it to some extent.

26. As noticed earlier, the trial court has found the accused guilty of the offences punishable under Section 10 PoCSO Act and Sections 354, 354A, 354B and 506 IPC. The trial court relying on Section 71 IPC and Section 42 PoCSO Act, confined the sentence to the offences punishable under Section 10 PoCSO Act and Section 506 IPC. Section 354 IPC for which also the accused has



been found guilty does not come under Section 42 PoCSO Act. Therefore, the trial court went wrong in not awarding sentence for the offence punishable under Section 354 IPC. However, there is no appeal by the State. Hence, this Court is only considering the sentences awarded under Section 10 PoCSO Act and Section 506 IPC, which sentences have been directed to run concurrently. 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. Therefore, the aforesaid discussion clearly establishes that the accused committed aggravated sexual assault upon PW1 within the meaning of Section 9(m) read with Section 10 of the PoCSO Act.



27. It was submitted by the learned counsel for the accused that, if at all the crime be proved, given the aforesaid reasons and old age of the accused, i.e., 62 years old at the time of incident, the sentence be reduced to the statutory prescribed minimum punishment which is 5 years of imprisonment. 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 extend to seven years. It has been brought to my notice that the accused has been booked in Crime No. 522048/2016 for the offence punishable under Section 307 read with Section 34 IPC. However, there is no material(s) to show the present status of the said crime.

28. In the facts and circumstances of the case, I find awarding a sentence of five years for the offence punishable under Section 10 PoCSO Act would serve the ends of justice. The conviction and sentence for the offence under Section 506 IPC is confirmed.



29. In the result, the appeal is partly allowed. The conviction of the accused for the offences punishable under Sections 354, 354A, 354B and 506 IPC and Section 9(m) read with Section 10 PoCSO Act is confirmed. However, the sentence of rigorous imprisonment for 7 years imposed for the offence punishable under Section 10 PoCSO Act is modified to a period of 5 years.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 9, 2026

p'ma/kd/rs