

(2026) 08 DEL CK 4519

In the Delhi High Court, Principal Bench, New Delhi

Case No : CRL.A. 348/2026 & CRL.M.(BAIL) 749/2026

Vikash

APPELLANT

Vs

The State Govt Of NCT Delhi & Anr.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 415(2), 528
Indian Penal Code, 1860 — Sections 366, 376(2)(n), 506(II), 363
Protection of Children from Sexual Offences Act, 2012 — Section 5(l), 6, 29, 30
Cr.P.C. — Section 161, 164, 294, 313, 428
Indian Evidence Act — Section 65B

Citation : (2026) 08 DEL CK 4519

Hon'ble Judges : Madhu Jain, J

Bench : Single Bench

Advocate : Mr. Ankur Sood, Ms. Romila Mandal, Mr. Dhaman Trivedi, Mr. Prajwal Suman, Mr. Digam Singh Dagar

Final Decision : Allowed

Judgement

Madhu Jain, J.

1. The present appeal has been preferred under Section 415(2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), assailing the Judgment dated 06.10.2025 and the Order on Sentence dated 03.12.2025 passed by the learned ASJ (FTSC) (POCSO), North District, Rohini Courts, Delhi, in **SC No. 702/2023** arising out of **FIR No. 695/2023**, Police Station Bawana, whereby the appellant has been convicted for the offences punishable under Sections 366, 376(2)(n) and 506 (II) Indian Penal Code, 1860 and Section 5(l) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act').

FACTUAL MATRIX

2. Information regarding the prosecutrix having gone missing was first received vide GD No. 133A dated 16.08.2023. Pursuant thereto, ASI Manoj reached the

spot and met the complainant, namely, 'R' (identity withheld), who stated that her daughter, namely, 'S' (identity withheld), had been missing since 16.08.2023. According to the complainant, despite efforts made by the family, the prosecutrix could not be traced. On the basis of her complaint, the aforesaid FIR was registered under Section 363 IPC.

3. As per the prosecution case, during the course of investigation, on 23.08.2023, acting upon secret information, the prosecutrix was recovered along with the appellant/accused, Vikash, from Ambala Railway Station. The appellant was thereafter apprehended/arrested, and the statement of the prosecutrix under Section 161 Cr.P.C. was recorded.

4. In her statement under Section 161 Cr.P.C., the prosecutrix stated that she was studying in Class IX and that approximately one month prior to the registration of the FIR, she and the appellant, who was her neighbour, had become friends and had started speaking to each other. With the passage of time, they developed a liking for each other. She further stated that when their respective family members came to know about their relationship, they objected to the same and asked them not to remain in contact.

5. The prosecutrix further stated that on 16.08.2023, she met the appellant outside, whereafter they went to Ambala. According to her statement, they established physical relations with her consent. She further stated that on 17.08.2023, she and the appellant got married at a temple and continued to remain together until 23.08.2023, when they were apprehended by the police at Ambala.

6. In view of the statement made by the prosecutrix during the course of investigation, Sections 376 IPC and 6 of the Protection of Children from Sexual Offences Act, 2012 were subsequently added.

7. Upon completion of the investigation, the charge-sheet was filed against the appellant on 21.10.2023. Thereafter, vide order dated 25.10.2023, charges were framed against him for the offences punishable under Sections 366, 376(2)(n) and 506 IPC, and Section 5(I), punishable under Section 6 of the POCSO Act. The appellant pleaded not guilty and claimed trial.

8. During the course of trial, on 02.04.2024, the statement of the appellant under Section 294 Cr.P.C. was recorded. The appellant admitted the genuineness of the preparation, though not the contents, of the statement of the prosecutrix recorded under Section 164 Cr.P.C. (Ex. P1); DD No. 29A dated 23.08.2023 (Ex. P2); FIR No. 695/2023 along with the certificate under Section 65B of the Indian Evidence Act (Ex. P3 colly); and MLC No. 4740/2023 prepared by Dr. Deepak (Ex. P4). Consequently, the witnesses mentioned at Serial Nos. 3, 5, 6 and 8 of the charge-sheet were dropped from the list of prosecution witnesses.

9. In support of its case, the prosecution examined eight witnesses. The prosecutrix, 'S', was examined as PW-1, while her mother/complainant, 'R', was

examined as PW-2. HC Avina was examined as PW-3; Sh. Pradeep Kumar Solanki, Head/Manager of the school attended by the prosecutrix, as PW-4; HC Rajbir as PW-5; Dr. Shubham Kaushik as PW-6; ASI Manoj as PW-7; and SI Darshana as PW-8. All the said witnesses were duly cross-examined on behalf of the appellant.

10. Upon conclusion of the prosecution evidence, the statement of the appellant under Section 313 Cr.P.C. was recorded on 19.04.2025. The appellant denied the incriminating circumstances put to him and opted to lead defence evidence. In defence, the father of the prosecutrix, namely, 'RK', was examined as DW-1 on 03.07.2025 and was duly cross-examined by the prosecution.

11. Upon conclusion of the trial, the learned Trial Court, vide judgment dated 06.10.2025, convicted the appellant. The relevant findings recorded by the learned Trial Court are extracted hereunder:

"11.63 In the present case, the accused is being prosecuted inter-alia for offence punishable under Section 6 of the POCSO Act. The presumption as provided under Section 29 of POCSO Act is applicable to the present provision of law also which is against the accused as the Special Court has the mandatory duty to presume that such accused has committed such an offence unless is proved contrary by the accused. In the present matter, the accused has not been able to prove the contrary. Although such presumption is rebuttable presumption and it could have been rebutted by the accused but he has been unable to do so.

11.64 Section 30 of POCSO Act, 2012 is also applicable to the present case which also stipulates that Special Court shall presume the existence of such 'culpable mental state'. However, in respect of such presumption also, accused had opportunity to defend his case by proving that no such culpable mental state existed with regard to the act charged. In the considered view of the court, intention is within the mind of the person and it is too difficult for the person or the survivor or the witnesses to prove that accused was having the such culpable mental state or not.

11.65 Moreover, explanation to Section 30 of POCSO Act clearly explains that 'culpable mental state' includes intention, motive, knowledge of the fact. As such intention also includes culpable mental state. As such the presumption is that the accused must be having the culpable mental state until and unless contrary is proved by the accused.

11.66 In view of the exhaustive discussion as above and well settled law and provisions of POCSO Act 2012, the prosecution has been able to prove its case beyond reasonable doubt against the accused and accused has been unable to rebut the presumptions Under Section 29 and 30 of POCSO Act, 2012.

11.67 In view thereof, accused Vikash S/O Sh. Ranveer Singh is convicted of all offences i.e. U/S 366/376(2)(n)/506(II) IPC & Section 5(I) punishable U/S 6 of POCSO Act, 2012."

12. Consequent upon the judgment of conviction, the learned Trial Court, vide Order on Sentence dated 03.12.2025, imposed the following sentence upon the appellant:—

"24. Keeping in view the submissions by all concerned and also keeping in view the facts of the present case and also well settled proposition of law, Convict is sentenced to undergo rigorous imprisonment of 04 (Four) years and a fine of Rs.5,000/- for the

offence U/S 506(II) IPC and in default of payment of fine, he shall further undergo the simple imprisonment for fifteen days.

25. Convict is sentenced to undergo rigorous imprisonment of 07 (Seven) years and a fine of Rs.5,000/- for the offence U/S 366 IPC and in default of payment of fine, he shall further undergo the simple imprisonment for fifteen days.

26. Convict is sentenced to undergo rigorous imprisonment of 20 (Twenty) years and a fine of Rs.10,000/- for the offence U/S 5(I) punishable U/S 6 POCSO Act, 2012 and in default of payment of fine, he shall further undergo the simple imprisonment for thirty days.

27. Convict shall be entitled to the benefit U/S 428 CrPC. All the substantive imprisonments/punishments shall run concurrently. Fine imposed shall be paid to the survivor.

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31. In view of all the submissions made by Ld. Counsel for the DCW and Ld. SPP, parents of the survivor and record, a final compensation of Rs. 10,50,000/- (Rupees Ten Lakhs Fifty Thousand Only) is awarded to the survivor herein under 'Delhi Victim Compensation Scheme' as modified by the Judgment of Hon'ble High Court of Delhi titled as X Vs State of Delhi decided on 20.12.2022. However, any other amount already awarded and disbursed as interim compensation or final compensation shall be adjusted in the final compensation awarded today."

13. Aggrieved by the judgment of conviction dated 06.10.2025 and the order on sentence dated 03.12.2025, the appellant has preferred the present appeal, inter alia, questioning the appreciation of the testimony of the prosecutrix and contending that the material contradictions and improvements in the prosecution evidence have not been duly considered by the learned Trial Court.

SUBMISSIONS ON BEHALF OF THE APPELLANT

14. Learned counsel for the appellant submitted that the learned Trial Court failed to properly appreciate the material on record and overlooked the statement of the child victim recorded under Section 161 Cr.P.C., wherein she stated that she had voluntarily accompanied the appellant to Ambala, entered into a consensual relationship with him, and married him at a temple.

15. It is further submitted that the victim's subsequent statement under Section 164 Cr.P.C. and her testimony before the Trial Court materially differed from her earlier statement under Section 161 Cr.P.C., resulting in multiple inconsistent versions of the prosecution case and thereby creating serious doubt regarding its reliability.

16. Learned counsel further submitted that the learned Trial Court erred in placing reliance upon the improved and contradictory version of the victim without assigning any reason for disregarding her earlier statement recorded under Section 161 Cr.P.C.

17. Learned counsel for the appellant submitted that the prosecution failed to establish the alleged places of occurrence, inasmuch as the factory was neither

properly investigated nor identified, no site plan was prepared at the instance of the victim, and neither the factory owner nor the alleged witness, Ranjeet, was examined.

18. Learned counsel further submitted that the prosecution case suffers from a lack of corroborative evidence, as no call detail records (CDRs), independent witnesses, or other circumstantial evidence were produced in support of the allegations.

19. Learned counsel for the appellant further contented that the prosecution story is inherently improbable, as despite allegedly being forcibly taken away, the victim did not make any distress call after obtaining access to the appellant's mobile phone and instead used it to access the internet.

20. He submitted that the learned Trial Court erroneously held the testimony of the prosecutrix to be reliable and consistent despite material contradictions regarding the dates, places, and circumstances of the alleged incidents.

21. Learned counsel further submitted that the prosecution has failed to prove its case beyond reasonable doubt and that the impugned judgment is contrary to the evidence on record. It was submitted that the appellant has a strong prima facie case and craves leave to urge such other or additional grounds as may be necessary at the time of hearing.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

22. Learned APP for the State submitted that the Status Report has already been placed on record.

23. Learned APP further submitted that the prosecutrix was admittedly about 17 years of age at the time of the incident and, therefore, being a minor, her consent is immaterial in the eyes of law.

24. Learned APP further submitted that the date of birth recorded in the school certificate has primacy for determining the age of the prosecutrix. It was contended that the submission of the appellant that the prosecutrix was a major is misconceived and, therefore, the plea of consent is of no consequence.

FINDINGS AND ANALYSIS

25. I have heard learned counsel for the appellant and the learned APP for the State and have carefully perused the learned Trial Court record, the evidence led by the parties and the impugned judgment.

26. According to the appellant, the prosecutrix has given materially different versions at different stages of the proceedings and the learned Trial Court failed to appreciate that such inconsistencies go to the root of the prosecution case. The State, on the other hand, has contended that the prosecutrix was admittedly a minor and, therefore, her consent is wholly immaterial.

27. The statement of the prosecutrix recorded under Section 161 Cr.P.C. assumes significance. The relevant portion thereof, as noticed by the learned Trial Court, is extracted hereunder:

"1.4 In her statement U/S 161 CrPC, survivor stated that she is student of 9th class; about one month prior, she and her neighbour i.e. accused Vikash became friend and they started talking to each other; after some time, they started liking each other; her family members came to know about their relationship; their family members objected to the same and told them not to talk to each other; on 16.08.2023, they both met outside and went to Ambala; during that period, the physical relations were developed between them consensually; on 17.08.2023, they got married at a temple and on 23.08.2023, police apprehended them from Ambala".

28. In the said statement, she categorically stated that she had voluntarily accompanied the appellant to Ambala, that both of them were in a relationship, that they solemnized marriage in a temple and that physical relations were established with her consent.

29. However, in her subsequent statement recorded under Section 164 Cr.P.C., the prosecutrix attributed a different role to the appellant and departed from the version furnished in her statement under Section 161 Cr.P.C. Her deposition before the learned Trial Court contains further improvements regarding the manner in which she accompanied the appellant and the nature of the alleged sexual acts. These variations are not confined to peripheral matters but concern the genesis of the prosecution case itself. The relevant portion of her statement under Section 164 Cr.P.C. is reproduced hereunder:

"Vikas mere pados mein rahta tha aur mein use nahi jaanti aur jab hum makan khali kar rahe the to 11.08.2023 ko Vikas naam ke ladke ne mujhe chaku dekhaya or Sector 4 mein ek company mein le gaya. Waha per usne mere saath gaalat kaam kiya.

At this stage, it has been observed by the Court that the survivor is not comfortable. Let the statement be recorded in VWDC. Gaalat kaam se matlab usne mere kapray uttare aur gaalat kaam kiya aur wo mujhe wapis ghar chor gaya aur bola ke agar ghar walo ko bataya to wo unko maar dega. On 17 tarik ko bola ke mein teray mummy papa ko jaan se marr dega. Mahena yaad nahi hai yah baat 2023 ke hai. Usne mujhe bulaya tha aur mujhe gadi me bitha kar le gaya. Uskay baad wo mujhe company me Sector 4 me le gaya tha. Uske baad mere mummy pappa ne police mein complaint likhwaai thi. Uskay baad police ne us ladke ke pass phone kiya tha. Mujhe nahi pata ke uskay pass phone aya tha. Uskay baad har bahart me mujhe gadi me bitha kar le gaya. Uskae baad usne apni gadi change ke. Uske baad kisi aur ke gadi le kar ghar Faridabad nikal gaya mujhay le kar mein uske saath thi. Uskay baad Faridabad se maal bhar kar Agra nikal gae mein bhi saath thi. Uskay ke baad mein bola ke mujhe ghar chor do magar usne kaha ki mai tujhe yahi chor deta hu. Is per mai usay kuch nahi boli. Uske baad usne gadi ek hotel per rokhi. Usney pahalay se daru pe rakhi thi. Wo hotel mein gaya hua tha uska phone gadi mein para hua tha to meine uska phone utha liya. Maine uska phone switch on kiya aur uska net khol diya. Uskay baad waha police aa gai. Phir police hum dono ko police le kar thane lai aai. Jaab hum dono police thane puchay to accused kay pitaji wahi the jinonae dhamki de ke agar meray ladke ko kuch ho gaya to mai teray parivar ko nuksaan pauchu ga. Uskay baad mere mummy pappa thane pauch gaye aur police walo ne unkay hawlay kar diya. Faridabad mein meray saath koi gaalat kaam nahi hua tha. Mgar do baar gaalat

30. The Supreme Court in ***Debraj Dutta v. State of West Bengal (Criminal Appeal arising out of SLP (Crl.) No. 16838 of 2025, decided on 07, April, 2026)*** reiterated that the statutory presumption under Section 29 of the POCSO Act does not arise automatically upon registration of a case. The prosecution must first establish the foundational facts constituting the alleged offence. Unless such foundational facts are proved through cogent and reliable evidence, the burden does not shift upon the accused.

31. The learned Trial Court appears to have proceeded on the assumption that the statutory presumption under Section 29 of the POCSO Act became operative merely because the appellant was facing trial for an offence under Section 6 of the Act. Such an approach, in the opinion of this Court, is legally unsustainable. The minority of the prosecutrix renders her consent legally irrelevant; however, it does not relieve the prosecution of its obligation to establish the essential ingredients of the offences charged through reliable and cogent evidence.

32. It is also noteworthy that several investigative lapses remain unexplained. The alleged place of occurrence was neither properly identified nor proved; no site plan was prepared at the instance of the prosecutrix; neither the owner of the alleged factory nor the witness Ranjeet was examined; nor were any call detail records or other independent circumstances produced to corroborate the prosecution version. Though every lapse in investigation may not necessarily enure to the benefit of the accused, such deficiencies assume significance where the testimony of the star witness itself suffers from material inconsistencies.

33. It is well settled that though the testimony of the prosecutrix can, by itself, form the basis of conviction, such testimony must inspire confidence and should not suffer from material infirmities or inherent improbabilities. Where the prosecution case is founded solely upon the testimony of the prosecutrix and such testimony undergoes material improvements or is inconsistent with her earlier versions, the Court is required to scrutinize the evidence with greater caution.

34. In ***Nirmal Kumar v. State (NCT of Delhi), 2026:DHC:4028***, this Court held that where the prosecutrix furnished materially inconsistent versions regarding the occurrence and the foundational facts constituting the offence were not satisfactorily established, the benefit of doubt must enure to the accused. The Court further held that the statutory presumption under Section 29 of the POCSO Act does not arise automatically and can operate only after the prosecution has first established the foundational facts constituting the alleged offence.

35. The Supreme Court in ***State of Uttarakhand v. Sanjay Ram Tamta, (2025) 3 SCC 433*** held that material omissions in the statements recorded under Section 161 Cr.P.C., which subsequently emerge as improvements during deposition before the Court, materially affect the credibility of the prosecution

case and such improved versions cannot be safely relied upon. The relevant extract is reproduced below:

"15. On a reading of the evidence recorded at the trial, we are of the considered opinion that the demand of dowry was not proved by the prosecution. The omissions in the statements under Section 161 CrPC which are deemed to be material contradictions put to peril the prosecution story of demand of dowry. A three-Judge Bench of this Court on such omissions held so in Darshan Singh v. State of Punjab, in para 31 : (SCC p. 176) "31. If the PWs had failed to mention in their statements under Section 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance. [See : (i) Rohtash v. State of Haryana⁵ , (ii) Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (iii) Rudrappa Ramappa Jainpur v. State of Karnataka, and (iv) Vimal Suresh Kamble v. Chaluverapinake Apal S.P.]"

36. The aforesaid principle is also consistent with the law laid down by the Supreme Court in ***Alamelu & Anr. v. State represented by Inspector of Police, (2011) 2 SCC 285*** , wherein the Court held that although conviction in a sexual offence can be based solely on the testimony of the prosecutrix, such testimony must be free from basic infirmities and improbabilities. Where the evidence of the prosecutrix does not inspire confidence and suffers from inherent inconsistencies rendering it unworthy of credence, the accused is entitled to the benefit of doubt.

37. Applying the aforesaid principles to the facts of the present case, this Court finds that the prosecutrix has furnished materially different versions in her statement under Section 161 Cr.P.C., her subsequent statement under Section 164 Cr.P.C. and her deposition before the learned Trial Court. These inconsistencies are not minor discrepancies but go to the very genesis of the prosecution case. The learned Trial Court has failed to adequately appreciate these material improvements while recording the conviction. In the absence of reliable and consistent evidence establishing the foundational facts beyond reasonable doubt, it would be unsafe to sustain the conviction. Consequently, the appellant is entitled to the benefit of doubt.

CONCLUSION

38. Accordingly, the appeal is allowed. The judgment of conviction dated 06.10.2025 and the order on sentence dated 03.12.2025 passed by the learned Trial Court are set aside.

39. The appellant is acquitted of the offences punishable under Sections 366, 376(2)(n) and 506(II) of the Indian Penal Code, 1860, as well as Section 5(I) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, by extending to him the benefit of doubt.

40. The appellant be released forthwith, if not required in any other case.

41. A copy of this judgment be forwarded to the Superintendent of the concerned Jail for information and necessary compliance.
42. Pending application(s), if any, also stand disposed of.