



2026:DHC:462



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 16.01.2026

Judgment pronounced on: 20.01.2026

+ CRL.A. 328/2018

ALAUDDIN @ SHAKEEL

.....Appellant

Through: Ms. Sunita Arora, Advocate
(DHCLSC).

versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Urvashi, PS – Sonia Vihar.
Mr. Luv Manan, Advocate for
respondent no. 2.
Counsel for DSLSA (appearance not
given).

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374(2) read with Section 482 of the Code of Criminal Procedure, 1973(the Cr.PC) has been filed by the first accused (A1) in S.C No. 09/2017 on the file of the Special Court under the Protection of Children from Sexual Offences Act, 2012,(the PoCSO Act) Karkardooma, North East District, Delhi, assailing the judgment dated 05.02.2018 as per which he has been



2026:DHC:462



convicted of the offences punishable under Section 10 of the PoCSO Act and Section 506 Part II of the Indian Penal Code, 1860 (the IPC). The second accused (A2) has been acquitted by the trial court.

2. The case of the prosecution is that two months before 17/10/2016, A1 and A2 wrongfully confined PW1 to 3 in a room in house No. C-1/133, Rahul Gujjar ka Makan, Gali No.9, Sonia Vihar, Delhi and subjected them to penetrative sexual assault and then threatened them with dire consequences in case they revealed the incident to others. As per the charge sheet/final report, the accused persons are alleged to have committed the offences punishable under Sections 342, 376, 506 read with Section 34 IPC and Section 6 of the PoCSO Act.

3. Crime No. 354/2016, Khajuri Khas, Police Station, that is Ext PW4/2 FIR, was registered by PW4, ASI, Sonia Vihar, Police Station, based on Ext PW1/PA FIS dated 17.10.2016 of PW1, one



2026:DHC:462



of the victims. PW11 the Sub Inspector, conducted the investigation into the crime, and on completion of the same filed the charge sheet/final report alleging commission of the offences punishable under the above mentioned sections.

4. When the accused persons were produced before the trial Court, all the copies of prosecution records were furnished to them as contemplated under Section 207 Cr.PC. After hearing both sides, the trial Court as per Order dated 06.02.2017 framed a Charge under Sections 376, Part II of Section 506 IPC and Section 6 of the PoCSO Act against A1 and a Charge under Section 376 IPC and Section 6 of the PoCSO Act against A2, which was read over and explained to them, to which they pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 15 were examined and Exts., PW1/A-C, PW 1/PA, PW 2/A-C, PW 3/A-C, PW4/1-4 , PW7/1-2, PW8/1-13, PW 12/1-3 , PW13/1, PW14/1-6, PW14/D1, PW15/1-5 and Mark P-1 were marked in support of the case.



2026:DHC:462



6. After the close of the prosecution evidence, the accused persons were questioned under Section 313 Cr.PC regarding the incriminating circumstances appearing against them in the evidence of the prosecution. Both of them denied all those circumstances and maintained their innocence.

7. After questioning the accused persons under Section 313 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 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.PC has caused any prejudice to them.

8. No oral or documentary evidence was adduced by the



2026:DHC:462



accused.

9. On consideration of the oral and documentary evidence and after hearing both sides, the trial Court *vide* the impugned Judgment dated 05.02.2018, acquitted A2 of all the offences charged against him under Section 235(1) Cr.PC. However, A1, the appellant herein, has been found guilty of the offences punishable under Section 10 of the PoCSO Act and Part II of Section 506 IPC and hence has sentenced him to undergo rigorous imprisonment for a period of 6 years for the offence punishable under Section 10 PoCSO Act and fine of ₹ 30,000/- and in default of payment of fine, to undergo simple imprisonment for a period of six months and to rigorous imprisonment for a period of 3 years for the offence punishable under Part II of Section 506 IPC along with fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. The sentences have been directed to run concurrently. Aggrieved, A1 has



2026:DHC:462



preferred the present appeal.

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

11. It was submitted by the learned counsel for the appellant/accused that when the co-accused (A2) has been acquitted giving the benefit of doubt, the same benefit ought to have been extended to the appellant herein also. PW1 in the box admitted that no wrongful act had been done by the accused on her. The statements and testimonies of PW1 to PW3 are full of inconsistencies, contradictions and improvements. Hence, the trial court ought not to have relied on their testimony. Further, in the arrest memo, the place of arrest is stated to be Sonia Vihar, Delhi. But the Daily Dairy entry (DD) says that the arrest was affected in Uttar Pradesh. This was pointed out as yet another defect in the prosecution case. Hence, the learned counsel for the appellant



2026:DHC:462



submitted that the benefit of doubt ought to have been given to the appellant/accused also. In the alternative, it was also submitted that in the event of this Court confirming the conviction, leniency regarding sentence may be shown.

12. *Per contra*, it was submitted by the learned Additional Public Prosecutor that though, PW1 was initially partially hostile to the prosecution case, on further examination by the prosecutor, she has given an explanation as to why she did not initially reveal the abuse/assault by the appellant/accused. This is sufficient explanation given by PW1 and hence, there is no reason to disbelieve or reject her testimony. It was also pointed out that the testimony of PW2 and PW3 are consistent and there are no contradictions or inconsistencies and hence, the impugned judgment suffers from no infirmity, calling for an interference by this Court.

13. Heard both sides and perused the records.



2026:DHC:462



14. I shall briefly refer to the evidence relied on by the prosecution in support of the case. PW1 to PW3 are the victims in this case. The incidents of abuse came to light when PW9, the teacher of the victims, found them exchanging notes during class hour. PW9 when examined before the trial court deposed that on 17.10.2016, she was working as a contract teacher in EDMC Nigam Pratibha School-I, 3rd Pushta, Sonia Vihar, Delhi and she was teaching in Class 5 H. Around 11.15 am, she instructed the student to sit silently. However, she saw two students, namely, PW1 and PW2 communicating with each other by exchanging paper slips. She took the slips/notes from them. On going through the contents, she saw that the children had written that one Chacha Kalia, after giving them ten rupees used to molest them. In the slips/notes, the name of PW3 was also seen mentioned. She inquired with the children as to whether the contents of the slips/notes were true. PW1 and PW2 became nervous and was



2026:DHC:462



initially reluctant to disclose anything. But when she spoke to them amiably, they confirmed that the contents in the slips were true. She then went to PW10, the class teacher of PW3, who was studying in class 3. PW10 spoke to PW3. Thereafter, she along with PW10, informed the Principal and showed him the slips/notes. The Principal summoned the guardians of the children. PW9 identified Exts. PW1/B and PW2/B as the paper slips/notes she had taken from PW1 and PW2.

15. PW10 when examined deposed that in the year 2016 she was also a teacher in Pratibha Vidyalaya, EDMC, 3rd Pushta, Sonia Vihar, and that she was teaching the students of Class 3. On 17.10.2016, while she was in the class, PW9 came to her along with PW1 and PW2 and informed her that one of the neighbours of the children, namely, Kalia was molesting them. PW9 also told her that PW1 and PW2 had informed her that PW3 was also being molested by the said person. So, she spoke to PW3, who was



2026:DHC:462



initially afraid/ scared and hesitant to say anything. Thereafter, PW3 informed her that a person named Kalia in their neighbourhood whom she addresses as Chacha, used to pay her money and then molest/abuse her. She and PW9 took PW1 to PW3 to the Principal's room and informed him of the matter. The parents of the children were summoned and informed.

16. PW1/B, the paper slip/note, recovered from PW1 by PW9 written in Hindi translated reads:-“Shakeel forcibly dragged me away. After giving me ten rupees, he would ask me to remove my pyjama. He touched me all over my body and lay on top of me. He did something on my pyjama as a result of which my pyjama became yellow (पीली). I told him that I would tell my mother. Then, he said that he would tell my name. I had lot of pain. He told me to go back home and not to disclose the incident to anybody”.

16.1. PW2/B, the note recovered by PW9 from PW2, again in Hindi, translated reads thus:- “Shakeel took me forcibly to his



2026:DHC:462



place. He took off my pyjama and fingered me. He threatened to kill me if I disclosed it to others. He said he would give me ten rupees. I asked him why he was doing such things. He replied that he enjoyed the same, though I did not like the same. He, then, ejaculated. (और फिर पजामा पर टॉयलेट कर दिया”.

17. Now coming to the 164 statements of PW1 to PW3, recorded on 20.10.2016 in Hindi. The statement of PW1 translated reads:- “Shakeel uncle (accused) is staying near my house. On two occasions, he forcibly took me to his house. He forcibly laid me down and removed my pyjama despite my resistance. Then, he also removed his pyjama and he touched my private part/genital. He threatened me with dire consequences, in case I revealed the incident to others.”

17.1. The 164 statement of PW2, i.e. Ext. PW2/A translated reads:- “Shakeel used to forcibly take ‘S’ and ‘P’ (PW1 and PW3) to his house and ask them to remove their undergarment. When we



2026:DHC:462



refuse, he used to forcibly remove it. Then, he used to put his finger down (*niche ungli lagate the*) and lie on top of us. He used to threaten to kill us, if we revealed the incident”

17.2. The 164 statement of PW3, i.e., Ext. PW3/A also recorded in Hindi translated reads thus:- “When we used to play in the afternoon in the street along with Sonia, her uncle Shakeel, used to give us ten rupees and forcibly drag us into his house. He took me twice to his house. He would remove my salwar as well as his salwar and lie on top of me. He put his finger in my private part. He, then, told me not to tell my mother”.

18. Now, coming to Ext. PW1/PA, the FIS, based on which, the law was set in motion. The FIS was given by PW1 in which she states thus:- “About two months back, Shakeel uncle (accused) called me to his room and after giving me ten rupees, he made me lie on the bed. He removed my pyjama and put his finger in my private part. He did it twice. He touched my private part with his



2026:DHC:462



penis. He threatened to kill me, if I disclosed the incident to others. After some days, he went to jail. After 15 days, he returned from jail. He again repeated the aforesaid acts on me and threatened to kill me.” She has referred to the acts of A2 also. However, I am not referring to the same, as he stands acquitted by the trial court. PW1 in her FIS has also stated that PW2 and PW3, her friends, had told her that Shakeel uncle had done such similar acts on them. When they were talking about this in School, their Class teacher overheard it and took them to the Principal, who in turn informed her father.

19. Now coming to the testimony of PW1 to PW3 in the box. PW1 deposed that the accused resides in front of her house and that while she was studying in Class 5, she used to play outside her house with her friends (PW2 and PW3). The accused used to take PW2 and PW3 inside his house and in a threatening manner ask her to return home and watch TV. According to PW1, the accused



2026:DHC:462



never called her inside his house. She further deposed that PW2 was studying in her Class. One day PW2 wrote something on a slip of paper and while she was handing it over to another girl, the Class teacher caught them and took the slip to the Principal, who called the police. The police came to the School and on being asked she told the aforesaid facts. On further examination, she deposed that on a day when PW2 and PW3 were playing in the street, the accused had forcibly taken all three of them inside his room and closed the room. The accused tried to take off their pyjamas but they managed to run away. She further deposed that the accused used to allure them to his house by offering ten rupees. She refused to take it, but the accused used to take her inside the room and remove her pyjama and touch her private part.

19.1. As PW1 had initially not deposed in tune with her earlier statements, the prosecutor is seen to have sought the permission of the trial court to put questions to her as put in cross



2026:DHC:462



examination, which request was allowed. On further questioning by the prosecutor, PW1 deposed that she had in fact stated to the police that about two months before the lodging of the complaint, the accused had called her inside his room, given her ten rupees, lay on top of her, took off her pyjama and inserted his finger into her genital. On the said date, the accused did the act twice. Thereafter, he touched her genital with his genital and threatened to kill her if she disclosed the incident to others. PW1 admitted that she had stated to the police that after the aforesaid incident, the accused went to jail and about 15 days before the lodging of the FIS, he returned. He, again called her and did the very same acts and threatened to kill her. She further deposed that she had also stated to the police that PW2 and PW3 had told her that the accused after giving money, had done similar acts on them. She further admitted that while she and her friends were talking about this matter in the School, their teacher overheard them and



reported the matter to the Principal, who called her father to the School, pursuant to which the police was informed.

20. PW2 deposed that about 08 months back, while they were residing in their old house, they had a neighbour, a boy named Shakeel (accused), who was a bad person. When she along with her friends PW1 and PW3 play in the street, he used to call them to his house. The accused used to take her and PW3 inside the house and ask PW1 to go back home. He would close the door, switch on the TV in a high volume, take off her underwear and that of PW3 and touch their private parts. He would also touch their private parts with his genital. He used to called them on the pretext of showing them something and give them ten rupees. The accused had done the aforesaid acts with her for one or two days and then had vacated the room. The accused had threatened her that he would kill her if she disclosed the incident to others. Shakeel (accused) had gone to jail and when he returned PW1 told



2026:DHC:462



her in the School that the accused had been calling the former also to his house. While they were talking so, one of their friends heard it and started inquiring about the same. She and PW1 wrote down the incidents. The paper was snatched by the Class teacher and given to the Principal, who in turn called their parents and informed the police.

21. PW3 deposed that Kaalia @ Shakeel who resided near the house of PW1 was a bad man. While she, along with PW1 and PW2 play in the street, he would call them to his house. He used to call her and PW2 inside the house on the pretext of showing TV and would send PW1 back as she was having TV in her house. He would close the door. He would make them lie on the floor, take off their pyjama and touch their urinating place with his urinating organ. He used to do it daily for about 3 to 4 days. Thereafter, he would give them ₹10/- to purchase eatables and let them go. Earlier PW2 was in her class .PW1 was also studying in the same school.



2026:DHC:462



One day, PW2 wrote about the above facts on a paper and was passing it to her friend when it was taken by the teacher. The teacher gave it to the principal who then informed their parents. Later, the police was called.

22. PW15, Dr. Meghali Kelkar, CMO, JPC Hospital, Shastri Park, Delhi, deposed that on 17.10.2026, she examined PW1 to PW3, and had issued Exts. PW15/1 to PW15/3, Medico-Legal Certificates (MLC). No external injuries have been noted by the doctor in the certificates.

23. The trial court found the aforesaid evidence satisfactory to find sexual assault by the accused on PW2 and PW3. It is true that there are certain inconsistencies in the statement of PW1. PW1 was initially reluctant to disclose the facts. In fact, she initially deposed that the accused had not taken her inside his room. But on further questioning, she admitted the prosecution case and stated that she was scared and hence the reason why she was initially



2026:DHC:462



reluctant to disclose the events. It needs to be kept in mind that PW1 was quite a young child at the time of the incident. She was about 11 years when she was examined before the court on 29/04/2017. The abuse took place in the year 2016, when she must have been around 9 to 10 years old. Therefore, there is bound to be some discrepancies and inconsistencies. However, a whole reading of the statements and testimony of the witnesses bring out one consistent case, which is that the accused used to take the victims to his room and touch their private parts. Though, the learned counsel for the appellant/accused submitted that there are several contradictions between the statements and testimony of the witnesses, no contradictions have been proved as per the procedure contemplated under Section 145 of the Evidence Act.

24. As far as the argument regarding inconsistency in the place of arrest of the accused is concerned, the same has not affected the case in any manner. It is well settled that defective



2026:DHC:462



investigation cannot be made the basis for acquitting the accused if despite such defects and failures of the investigation, a case is made out against the accused. (See **State of U.P. v. Hari Mohan, 2000 KHC 1753: (2000) 8 SCC 598**). If the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the Court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt. (See **Ganga Singh v. State of M.P., 2013 KHC 4515: (2013) 7 SCC 278**). In **Veerandra v. State of M.P., 2022 KHC 6548: (2022) 8 SCC 668**, it has been held that there can be no doubt with respect to the position that a fair investigation is necessary for a fair trial. Hence, it is the duty of the investigating agency to protect the rights of both the accused and the victim by adhering to the prescribed procedures in the



2026:DHC:462



matter of investigation and thereby to ensure a fair, competent and effective investigation. Even while holding so, the court cannot be oblivious of the well - nigh settled position that solely on account of defects or shortcomings in investigation, an accused is not entitled to get acquitted. In other words, it also cannot be the sole reason for interference with a judgment of conviction if rest of the evidence are cogent enough to sustain the same.

25. In the case on hand, no reasons whatsoever have been shown, as to why the victims should depose falsely against the accused. The testimony of PW1 to PW3 has not been discredited in any way. It is no doubt true that there are some inconsistencies in the statements and testimonies of the witnesses. However, these inconsistencies and the infirmities are not quite material and they have not affected the core prosecution case. It is pertinent to note that the appellant/accused has no case that PW9 and PW10 have any reason(s) whatsoever to depose against him. The crime comes



2026:DHC:462



to light only when PW9 overhears the children and comes into possession of the paper slips written by the latter narrating/describing the abuse. The testimony of PW9 and PW10 also corroborates the prosecution case. In such circumstances, I do not find any reason(s) to disbelieve the prosecution case.

26. Now coming to the sentence that has been imposed by the trial court. The trial court has found the accused guilty of the offence punishable under Section 10 of the PoCSO Act as well as under Part II of Section 506 IPC. The victims have clearly spoken about the criminal intimidation of the accused. It needs to be kept in mind that the children were of tender age and, therefore, it was quite easy for the accused to intimidate them. It also needs to be noted that the accused has criminal antecedents. PW1 and PW2, the victims also speak the fact that after the first instance of abuse, the accused had gone to jail. After he returned and he continued to repeat the acts of abuse on the victims. Therefore, the



2026:DHC:462



appellant/accused appears to be a person who does not have any fear or respect of law.

27. The offence under Section 9 punishable under Section 10 of the PoCSO Act prescribes a minimum sentence of 05 years which can extend to 07 years. The trial court has only imposed a imprisonment of 06 years, which in the facts and circumstances of the case seems quite reasonable.

28. As far as the offence of criminal intimidation is concerned, Part II of Section 506 IPC is punishable with imprisonment which can extend up to 07 years. The sentence awarded is 03 years by the trial court. It is seen from the nominal roll dated 05.01.2026, that the appellant/accused has another crime registered against him, that is, FIR No. 133/2016, Sonia Vihar, Police Station, Delhi, alleging the commission of offences punishable under Sections 380, 411 read with Section 34 IPC. It is not clear from the materials on record as to whether the



2026:DHC:462



appellant/accused has been convicted or acquitted in the said case. This fact also corroborates the testimony of the victims who deposed that the appellant/accused in between the acts of abuse had gone to jail for a few days. Therefore, the appellant/accused is not a first offender. He is seen to have sexually abused and assaulted three minor girls of tender age after alluring them with money and thereafter criminally intimidating them. However, taking into account the fact that the appellant/accused was only 24 years of age at time of the incident, the sentence of imprisonment for the offence punishable under Part II of Section 506 IPC is reduced to one year. The sentences shall run concurrently.

29. In the result, the appeal is partly allowed. The conviction of the appellant/accused for the offences punishable under Section 10 of PoCSO Act and Part II of Section 506 IPC by the trial court is confirmed. The sentence awarded by the trial court for the offence under Section 10 of PoCSO Act is confirmed. However,



2026:DHC:462



the sentence of 03 years awarded by the trial court for the offence punishable under Part II of Section 506 IPC is modified to one year.

CHANDRASEKHARAN SUDHA
(JUDGE)

JANUARY 20, 2026
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