



2026:DHC:2424



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

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Judgment Reserved on: 16.03.2026

Judgment pronounced on: 24.03.2026

+ **CRL.A. 23/2025 and CRL.M.(BAIL) 44/2025**

NAVDEEP @ SONU

.....Appellant

Through: Mr. Sudarshan Rajan (DHCLSC) and
Mr. Hitain Bajaj, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for the State.

+ **CRL.A. 47/2025 and CRL.M.(BAIL) 87/2025**

KRISHAN

.....Appellant

Through: Mr. Shivek Trehan (DHCLSC) and
Ms. Manika Pandey, Advocates.

versus

THE STATE (GOVT.OF NCT) DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In these appeals filed under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS), accused nos. 1 and 2 (A1 and A2) in Sessions Case No. 407/2018 on the



file of the Additional Sessions Judge- Special, FTSC (POCSO), North District, Rohini Courts Complex, Delhi assail the judgment dated 02.08.2024. By the said judgment, the accused persons have been convicted and sentenced for the offences punishable under Section 377 read with Section 34 of the Indian Penal Code, 1860 (the IPC) and Section 6 of the Protection of Children from Sexual Offences, 2012 (the PoCSO).

2. The prosecution case is that for about one year prior to 23.06.2017, on several occasions at different places and also on 23.06.2017 at about 11:00 AM in a room situated at Patase Wali Gali, Bawana, the accused persons repeatedly committed gang penetrative sexual assault upon PW1. It is also alleged that the accused persons, in furtherance of their common intention, committed repeated carnal intercourse against the order of nature with PW1. Hence, the accused persons are alleged to have committed the offences punishable under Section 377 read with Section 34 IPC and Section 5(g) and (l) of the PoCSO Act.



3. Based on Ext. PW1/A FIS of PW1, crime no. 257/2017 Bawana Police Station, that is, Ext. PW6/A FIR was registered by PW10, Sub Inspector. PW10 conducted investigation into the crime and on completion of the same, submitted the chargesheet/final report before the Court, alleging the commission of the offences punishable under the aforementioned Sections.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 of the Code of Criminal Procedure, 1973 (the Cr.P.C). After hearing both sides, as per order dated 20.08.2018, a Charge under Section 377 read with Section 34 IPC and Sections 5(g) and (l) of the PoCSO Act was framed against the accused persons, which was read over and explained to them, to which they pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 12 were examined and Exts. PW1/A, PW1/B, PW2/D1, PW3/A-C, PW6/A, PW6/C, PW6/D, PW7/A, PW9/A-B, PW10/A-K, PW10/M and PW12A-C



were marked. On 09.11.2022, a joint statement of the accused persons was recorded under Section 294 Cr.P.C. wherein the genuineness of the preparation of the 164 statement of PW1 was admitted.

6. After the close of prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. The accused persons denied all those circumstances and maintained their innocence. Both A1 and A2 submitted that while playing *kabbadi*, they had a scuffle with PW1, and so the latter, in order to take revenge, gave a false complaint against them. The case property sent to the FSL was tampered with by the Investigating Officer (IO) at the instance of the mother of PW1 in order to create false evidence.

7. After questioning the accused persons 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



2026:DHC:2424



Section 232 Cr.P.C is seen made 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 persons have no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to them.

8. DWs. 1 to 4 were examined on behalf of the accused persons and Ext. DW2/X-1 and DW4/A were marked.

9. On consideration of the oral and documentary evidence and after hearing both sides, the trial court *vide* the impugned judgment dated 02.08.2024, held the accused persons guilty of the offences punishable under Section 377 read with Section 34IPC and Section 6 of the PoCSO Act. The accused persons have been sentenced to undergo rigorous imprisonment for fifteen years each and fine of ₹10,000/- each and in default of payment of fine, to



2026:DHC:2424



simple imprisonment for a period of 15 days each for the offence punishable under Section 6 of the PoCSO Act and rigorous imprisonment for a period of ten years each and fine of ₹10,000/- each and in default of payment of fine, to simple imprisonment for a period of fifteen days each for the offence punishable under Section 377 IPC. The sentences have been directed to run concurrently. The benefit under Section 428 Cr.P.C. has been extended to the accused persons. Aggrieved, A1 and A2 have preferred these appeals.

10. It was submitted by the learned counsel for A1 and A2 that the alleged video capturing the incident has neither been recovered during the investigation nor produced before the court. There was a fight between the accused persons and PW1 earlier, and due to this enmity, the latter lodged a false complaint against the former. It was also pointed out that the injury recorded in the MLC is merely described as an erosion and not as a cut, bruise, or reddish mark. Such erosion could have occurred due to several



other reason(s). According to PW11, the anal tone of PW1 was normal, and the anal sphincter was not lax, meaning thereby that no penetrative sexual assault had taken place. The burden of proof was heavily on the prosecution to establish the case. However, the evidence brought on record is insufficient to convict A1 and A2 for such a serious offence.

11. It was also pointed out that there is a delay of almost one year in depositing the samples of the accused persons in the *Malkhana*. Ext. PW7/A MLC of PW1 shows that his perianal and anal swabs were taken on 23.06.2017. Ext. PW10/A seizure memo also indicates that the samples were seized on 23.06.2017. However, the said samples were deposited in the *Malkhana* only on 10.04.2018. It was submitted that the last incident of assault is stated to have occurred on 23.06.2017. Admittedly, A1 was not involved in the said incident. But, Ext. PW4/A, the FSL report, states that the DNA in the samples taken from the clothes worn by PW1 on the date of the incident matched with the samples of both



the accused persons. It was submitted that initially, the accused persons were sent to the Juvenile Justice Board (JJB), and their subsequent arrest took place only in March 2018. After their apprehension, their semen samples were collected, and thereafter, the case property was deposited in the *Malkhana*. Therefore, there is a high possibility that the case property was tampered with. It was further submitted that in PW1's statement under Section 164 Cr.P.C., he stated that the video was sent to him on Facebook. However, the same was not produced by him before the police. The place of the incident was not inspected by the police, nor was the mattress on which PW1 is stated to have been assaulted seized. In light of the aforesaid facts, the trial court ought not to have found A1 and A2 guilty of the offences alleged against them, goes the argument.

12. It was submitted by the learned Additional Public Prosecutor that the testimony of PW1 is consistent throughout without any major inconsistencies. It has been corroborated by the



testimony of PW2. The injury on the left cheek of PW1 has been corroborated by the MLC of PW1. There is a possibility of the video having been removed/deleted by the accused persons since they were only arrested after the JJB declared them as major on 06.09.2017. There is no infirmity in the impugned judgment calling for an interference by this court, argued the prosecutor.

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

14. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellants/ A1 and A2 by the trial court are sustainable or not.

15. I shall briefly refer to the evidence relied on by the prosecution in support of the case. The gist of the case of PW1 in Ext. PW1/A FIS/FIR, seen recorded on 23.06.2017, reads as follows: “For the past several years, I have been visiting the Rajiv Gandhi Stadium in Bawana. While so, I met two individuals: Krishan Sehrawat (A1) and Navdeep Malik (A2) both residents of Village Bawana, Delhi. Around a year back, Krishan (A1) and



2026:DHC:2424



Navdeep (A2) threatened me and committed *galat kaam* on me. (लैट्रीन वाली जगह में सेक्स किया था) Since that time, they had repeatedly committed such acts on me. Whenever I tried to refuse, they would threaten me, stating that they had recorded an obscene video and if I refused, they would show the video to everyone and tarnish my reputation. Out of fear of these threats, I did not report the matter to anyone. This morning at around 10:00 AM, Krishan (A1) and Navdeep (A2) came to my house and pressurised me to accompany them, threatening again to release the video if I refused. They took me to a room in Patase Wali Gali, Bawana. Upon reaching the room, Navdeep (A2) stated he would go first, while Krishan (A1) stood outside the room, saying he would take his turn afterwards. Navdeep (A2) then forced me to remove my clothes and lie on the bed and committed an unnatural act with me. I experienced significant pain and began to cry. Seeing this, Navdeep (A2) told Krishan (A1) that they should stop. The accused persons allowed me to leave. When I reached home at



2026:DHC:2424



around 11:30 PM, on being questioned by my mother (PW2), I narrated the entire incident to her”.

15.1. Ext PW1/B, the 164 statement of PW1 is seen recorded on 25.06.2017, in which he has stated thus: He used to play *kabaddi*. He met two older boys, Navdeep Malik (A2) and Krishan Sehrawat (A1), who also played *kabaddi*. This started about a year and a half ago. One day, while he was returning after practice, he was running late. The two individuals stopped him on the ground, saying they needed to talk. They forcibly took him to the changing room in the stadium, where they committed an unnatural act. They told him they had done the same to other boys and threatened him not to tell his family. They warned him that if he spoke out, they would beat him and repeat the act. Following the first incident, they did nothing for two months. However, after that, they began coming to his school every month. They would intimidate him and take him with them. On several occasions, under the pretext of taking him to a stadium or a room, they took him to their homes



2026:DHC:2424



and committed unnatural acts. On the last working day before a school holiday, the school closed early. They came to pick him up and took him to Krishan's (A1's) house, where they again committed the act. When PW1 said he wanted to go home, they told him he would have to come back quickly. While he was at home, they sent him messages and videos on Facebook, threatening that if he didn't return quickly, they would show the videos to everyone. They claimed to have recorded videos of the acts. When they came to his house the next day and he refused to go, they showed him the videos to scare him. They then forcibly took him to a friend's room in Bawana. At that location, Navdeep (A2) stayed in the room while Krishan (A1) and another person (PW5) stayed outside. Navdeep (A2) again committed an unnatural act. When he began to cry, Krishan (A1) told Navdeep (A2) to stop, and Navdeep (A2) eventually let him go. He reached home late, around 12:00 PM. His mother (PW2) questioned him about his lateness and scolded him. He eventually told her



2026:DHC:2424



everything that had happened. His mother then took him to the police station. Last day, the family members of A1 and A2 had come home and apologized for the incident. After they left, a person named Chander Mohak Shastri came to his house. The said person intimidated him by saying they were influential *zamindars* and threatened that they would not let him reach the stage of giving testimony in the court.

15.2. PW1, when examined before the trial court, deposed that he had been playing *kabaddi* since he was in the ninth grade at the Rajiv Gandhi Stadium, Bawana. Accused Navdeep's (A2's) brother, Jaydeep, his friend, also played *kabaddi*. Navdeep (A2) and Krishan (A1) were his seniors in *kabaddi* and used to practice and play matches at the same stadium. One day, after practice at the stadium, Navdeep (A2) and Krishan (A1) stopped him and took him to the changing room. They first beat him, then forced him to remove his clothes and committed *galat kaam* (unnatural act). Thereafter, they threatened and intimidated him, promising



2026:DHC:2424



that they would not do it again as long as he did not tell anyone. Out of fear, he stopped going to the stadium for several days. When he used to go to school, A1 and A2 would show up and pressurize him to return to the stadium under the pretext of practising for the national games. Trusting them, he returned only to find no practice/trials were taking place. They again committed *galat kaam* with him, stating that they had recorded an obscene video of the previous act and threatened to make the video viral if he refused them. He complied in fear of the video getting leaked. In the year 2017, when he gave the FIS/FIR he had passed the eleventh grade and by then for almost 3 years A1 and A2 had been assaulting him. They would take him to the stadium once or twice a month and then would beat and threaten him that they would leak the video and used to force him into these acts. On 23.06.2017, A1 and A2 came to his house and asked him to accompany them. He went with them due to the aforesaid fears. They took him on a motorcycle to a friend's room in Bawana. Navdeep (A2) had the



keys to the room. First, Navdeep (A2) forced him to undress and assaulted him as before, also biting him on the left side of his face. He began to cry from the pain. Krishan (A1), who was sitting outside, saw him crying and said that he would not commit *galat kaam* that day and allowed him to leave. A1 and A2 came to his house in the morning around 10:00 AM and he returned home between 11:30 AM and 12:00 Noon. His mother (PW2) noticed the mark on his face and questioned him. Under her pressure, he revealed everything. His mother (PW2) then took him to the Bawana Police Station, where his complaint was registered.

15.3. PW1 in his cross-examination reiterated his case that he did not disclose the incident for a long time because the accused persons used to threaten him that they would circulate his video. While he could not recall if he had mentioned the video to the police in his initial statement, he confirmed that he mentioned about it in his subsequent statements. He admitted that he had never told his mother (PW2) about the previous incidents. He



2026:DHC:2424



admitted that he did not provide a specific date for the first incident but denied that the date provided for the final incident, i.e., 23.06.2017, was false. PW1 deposed that he continued to attend school normally during the 3-4 years during which the incidents of abuse occurred. On 23.06.2017, A1 and A2 took him to a location in Bawana, about 3-4 km from his home. His mother (PW2) was home that day as she was not at work. He did not inform his mother (PW2) that he was leaving with them. He clarified that when A1 and A2 asked him to accompany them, he had initially refused, citing that they had assaulted him just two days prior. However, they threatened him with the video again and therefore, he went with them without informing anyone. PW1 was unable to give the exact address of the room to which he was taken. However, he deposed that it is called *patashe wali gali*. There was a mattress on the floor. PW1 admitted that the police had not seized the mattress in his presence and that he had never gone with the police to identify the room. PW1 denied the



suggestion that the mark on his cheek was an injury he had sustained while playing *kabaddi*.

16. PW2 deposed that the date of birth of PW1, her youngest child, is 01.08.2001. On the morning of 23.06.2017, after 09:00 AM, two boys called PW1 from outside their house. PW1 went out to see them and did not return. When she went outside, neither her son nor the boys were there. She did not see who the boys were. About one and a half hour later, PW1 returned home in a state of total distress and he had a large, blue bruise-like mark on his cheek. When she asked PW1 what happened, he fell into her arms and began to cry. He told her that Navdeep (A2) (Jaydeep's brother) and Krishan (A1) had done *galat kaam* with him. She had never seen Navdeep (A2) or Krishan (A1) before and only knew their names through PW1. She subsequently informed the police and took her son to the police station. The police then took him to the hospital for a medical examination. She saw Navdeep (A2) and Krishan (A1) for the first time at the police station. On a day



2026:DHC:2424



before PW1 testified in the court, a friend of Navdeep (A2) blocked his path and threatened him, stating that Navdeep would not spare him once he was released from jail. Her son is quite frightened due to this despite the fact that she has lodged an FIR regarding the threat. PW2 also deposed that on the day PW1 was examined, A1 and A2 abused her and threatened that they would not leave her alone.

16.1. PW2 in her cross-examination deposed that she was then working as a 'Nursing Ardali' at Sanjay Gandhi Memorial Hospital. She previously worked as a Security Guard at Maharishi Valmiki (MV) Hospital for about 2–3 months in late 2013 or early 2014. PW2 denied exaggerating the facts to strengthen the case. PW2 denied that the complaint was a result of a quarrel during *kabaddi* practice. She denied using her influence at MV Hospital to have doctors prepare a false MLC or colluding with the police and doctors to manufacture false evidence. PW2 denied that the mark on her son's face was a sports injury or due to a skin



2026:DHC:2424



condition.

17. PW10, the IO, deposed that on 23.06.2017, he was posted as Sub Inspector at Bawana Police Station. There was no tampering of the sealed parcels till the same remained in his custody. According to PW10, the blood samples and parcels were deposited in the malkhana on the same day, though he could not recall the entry numbers or if he had signed Register No. 19. He denied that the records were fabricated or that the case property was unsealed. The property was sent to the FSL on the direction of the SHO. PW10 denied that the semen samples had been planted or that the signatures of A1 and A2 had been obtained on blank papers. He admitted that he did not seize the mobile phones or obtain CDRs, as A1 and A2 claimed that they did not use phones. He maintained that he had visited the scene of occurrence.

18. PW7, Medical Officer, MV Hospital, deposed that on 23.06.2017 he examined PW1 and prepared the MLC. During the examination, he found bruises on PW1's left cheek (reddish color).



2026:DHC:2424



PW7 deposed that he does not know if PW2 was working at the MV Hospital, Pooth Khurd. He denied the suggestions that he was intentionally or deliberately concealing the same or that he was fully aware that PW2, the mother of the victim, was working in MV Hospital Pooth Khurd.

19. PW11, Senior Resident, MV Hospital deposed that he had also examined PW1 on 23.06.2017. He noticed that there was a bite pattern on the left cheek of the patient. The perianal area had paste like material, which was sent for forensic examination. Patient's anal canal had multiple erosions, three in number: one anterior and two posterior. According to PW11, the possibility of recent anal penetration could not be ruled out. PW11 in his cross-examination denied the suggestions that there was no injury on the private part of PW1 and that PW2, the mother of PW1, was earlier working at MV Hospital, and that he had prepared a report at her instance. He deposed that in case of chronic anal-penile penetration, the anal sphincter can become lax. PW1's anal tone



2026:DHC:2424



was normal, which means that his anal sphincter was not lax.

20. The question, is whether the aforesaid evidence proves the prosecution case beyond reasonable doubt. According to the learned counsel for A2, Ext. PW7/A MLC of PW1 records only an erosion and does not indicate injuries such as cuts, bruises, or marks that would suggest forceful penetration. It was also pointed out that the anal tone and sphincter were reported as normal and not lax. Therefore, the argument is that the medical evidence is not supporting the prosecution case.

21. Ext. PW7/A MLC of PW1 records the presence of injuries in the anal canal in the form of multiple erosions and also notes the presence of paste like material in the perianal region, which was collected for forensic examination. Moreover, PW11 has noted in the MLC as well as deposed that the possibility of recent anal penetration could not be ruled out. It is well settled that medical evidence is primarily corroborative in nature and cannot override reliable ocular testimony. As held in **Solanki**



2026:DHC:2424



Chimanbhai Ukabhai v. State of Gujarat, AIR 1983 SC 484, ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence (See also **Rangnath Shamrao Dhas v. State of Maharashtra, (2009) 4 SCC 33: 2009 KHC 4471**).

21.1 As held in **Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204**, a medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the



2026:DHC:2424



basis of symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the court.

21.2 In Vishnu Alias Undrya v. State of Maharashtra, AIR 2006 SC 508: 2006 KHC 29, it has been held that the expert medical evidence is not binding on the ocular evidence. The opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact.

21.3 In Punjab Singh v. State of Haryana, 1984 KHC 803:



AIR 1984 SC 1233 the contention that the prosecution case had to be disbelieved as the medical evidence was inconsistent with the direct testimony was rejected and it was held that if direct evidence is satisfactory and reliable the same cannot be rejected on hypothetical medical evidence.

21.4 It is only in cases where the ocular testimony is so inherently improbable and intrinsically incredible, that the same cannot be accepted in preference to the evidence of the medical expert (Purshottam v. State of M. P., AIR 1980 SC 1873: 1980 KHC 487). Likewise, if the evidence of the prosecution witnesses is totally inconsistent with the medical evidence, it would be a fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case (**Mani Ram v. State of U. P, (1994) Supp. 2 SCC 289: 1994 KHC 963**).

22. Coming back to the case on hand, this is not a case where



2026:DHC:2424



the ocular testimony is so inherently improbable or intrinsically incredible that the same needs to be rejected. The absence of severe injuries or the presence of normal anal tone does not by itself rule out the possibility of sexual assault, particularly when the examination reveals other relevant findings such as multiple erosions. In the case on hand, the medical evidence, far from contradicting the version of PW1, substantially supports it. The medical evidence, when read together with the consistent version of PW1, corroborates the prosecution case.

23. The prosecution case rests primarily on the testimony of PW1, supported to a limited extent by the testimony of his mother (PW2) and the medical evidence. It is settled law that the sole testimony of the victim, if found to be trustworthy and credible, can form the sole basis of conviction even in the absence of independent corroboration (See **Ganesan v. State, (2020) 10 SCC 573**).

24. The testimony of PW1 gives a pattern of repeated sexual



2026:DHC:2424



assault committed by the accused persons over a period of time, accompanied by threats that an obscene video had been recorded and would be circulated if he resisted. The explanation given by PW1 for not reporting the earlier incidents is stated to be the fear created by these threats. A few inconsistencies in PW1's testimony have been pointed out. In Ext. PW1/A FIS/FIR, PW1 states that A1 and A2 had been committing *galat kaam* with him for about a year prior to 23.06.2017. However, in the Section 164 statement, he states that the incidents began about one and a half year earlier. In his testimony before the court, PW1 stated that the accused persons had been assaulting him for almost three years. In the 164 statement, he stated that video and messages were sent to him through Facebook. However, this fact was not mentioned in Ext. PW1/A FIS or in the testimony before the court. In the Section 164 statement, PW1 stated that A1 and A2 came to pick him up from his house and took him to a friend's (PW5) room in Bawana. On the said day, while A2 was sexually assaulting him, A1 and PW5



were waiting outside. But PW5 denied his presence at the spot. Further, there is no mention of physical injury, such as the bite mark, in Ext. PW1/A FIS and it is only mentioned later in the 164 statement and in the testimony before the court. Hence, pointing to the aforesaid aspects it was submitted on behalf of A1 and A2 that PW1 is not a credible witness who can be believed for arriving at a conclusion regarding the guilt of the accused persons.

25. It is true that the video recording alleged to have been used by the accused persons to threaten PW1 was never seized or produced before the court. According to the learned counsel for A1 and A2, no such video exists and hence the reason why the same could not be recovered/seized. The non-recovery/seizure of video alone cannot be made a ground to disbelieve the entire prosecution case because on going through the testimony of PW1, I do not find any reasons to disbelieve or discard his testimony. It is true that there are inconsistencies regarding the duration of the period during which the abuse/assault is stated to have continued.



2026:DHC:2424



However, the inconsistencies pointed out has in no way affected the prosecution case. To assess the credibility of PW1, a reference to the defence version is also necessary. I hasten to add that it is no doubt true that the burden is always on the prosecution to establish the case beyond reasonable doubt. But if the accused takes up a defence, then he needs to establish the same though the degree of proof required is not proof beyond reasonable doubt. But, the accused need only show a preponderance of probabilities. Therefore, I shall refer to the defence evidence also.

26. DW1, a friend of A1, deposed that on the date of the incident i.e., on 23.06.2017 at about 08:00 AM, A1 had called him and asked him to accompany the former for an outing. He asked A1 to come to his shop situated at Auchandi Road, Bawana. A1 came to his shop at about 09:00 AM and remained there till 01:00-2:00 PM. Thereafter, he went to his house for lunch and A1 left for his own house. DW1 deposed that A1 had mentioned on several occasions that PW1, who frequently played with him, would often



quarrel over issues arising during their games.

26.1 A1 has no such case as deposed by DW1 when PW1 was examined. Not even a suggestion was put to PW1 that on the relevant day A1 was somewhere else. Even while questioned under Section 313(1)(b) Cr.P.C., A1 has no such case. Therefore, the testimony of DW1 does not in any way further the case of A1.

27. DW2, the brother of A2, deposed that on 23.06.2017, he was at his house as it was his birthday. His father, mother, elder brother and A2 were also at the house. His brother Navdeep (A2) remained at their house till 04:00-05:00 PM. On the same day, at about 08:00-08:30 PM, police officials came to their house to inquire about A2 and informed them that they were taking A2 to the Bawana Police Station for inquiry. PW1 used to play archery with his brother, Navdeep (A2). He was PW1's senior in sports and PW1 used to ask for money from him. He stopped talking to PW1 and thereafter, PW1 started talking to his brother Navdeep (A2). A2 told him that PW1 had taken an amount of ₹1500 from



him. He told his brother to stay away from PW1. Krishan (A1) told him that PW1 had quarrelled with him and A2 while playing kabaddi once or twice. In the cross-examination, DW2 admitted that A2 had never complained regarding the loan of ₹1500/- taken by PW1 to any person or forum.

27.1 DW2 has developed a new case which even A2 does not seem to have. PW1 when in the box was never asked regarding the alleged money transaction between the former and A2. Hence, DW2 cannot also be believed.

28. Further, according to A1 and A2, the complaint was lodged by PW1 due to a prior quarrel that occurred between them during a *kabaddi* practice session. Both the accused persons have submitted this version in their statements recorded under Section 313 Cr.P.C., contending that PW1 had falsely implicated them out of revenge due to the quarrel. In support of this contention, the defence examined DW3, a fellow *kabaddi* player, who deposed that in the months of May–June 2017, a quarrel had occurred



2026:DHC:2424



between PW1 and the accused persons regarding playing *kabaddi* at the Rajiv Gandhi Stadium. According to DW3, PW1 left the practice session in anger and said that he would teach the accused persons a lesson. DW1, in his cross-examination, admitted that he had never informed the coach about the quarrel in the stadium.

28.1 Here again, A1 and A2 never had such a case when PW1 was cross examined. According to A1 and A2, they had a quarrel with PW1. But they never had a case that PW1 had threatened to teach them a lesson or that the threat had been overheard by others. On the other hand, from the line of cross-examination of PW1, their case seems to be that there were several other players as well as two coaches during the practice sessions; that there are CCTV cameras in the stadium and therefore the case of PW1 is improbable. If that be so, the same factors are applicable to A1 and A2 also. Further, even assuming that there was in fact a quarrel during a *kabaddi* practice the same cannot, by itself, be treated as sufficient to discard the prosecution case. It is still



necessary for A1 and A2 to show that PW1 had a strong motive to falsely implicate them.

29. Another argument advanced was that A1 and A2 are national level *kabbadi* players and so to spoil their chances or future, the false implication has been made. There is never a case for A1 and A2 during trial that PW1 due to jealousy and to see that their future in the game was destroyed had given such a false complaint.

30. It was further argued that PW10, the IO had manipulated the biological samples of A1 and A2 and planted evidence at the instance of PW2, the mother of PW1. PW2 had previously worked in the MV Hospital and had used her influence there to fabricate the medical evidence. In support of this version, DW4 was examined, who deposed that PW2 had worked in the aforesaid hospital in the security department. Even assuming that PW2 was employed at the said hospital at the relevant time, it is difficult to believe that she could have influenced the medical examination or



2026:DHC:2424



the preparation of the medical records. Moreover, it appears highly improbable that the medical experts, namely, PW7 and PW11, would fabricate or manipulate evidence at the behest of PW2. A1 and A2 have not shown what benefit the doctors would achieve by falsely implicating them. In the absence of any such reason or material, the allegation that the evidence was fabricated at the instance of PW2 appears to be unsustainable.

31. According to the defence, the perianal and anal swabs of PW1 were taken on 23.06.2017, yet the samples were not deposited till much later. A1 and A2 were initially treated as Children in Conflict with Law. *Vide* order dated 06.09.2017 of the JJB, A1 and A2 were declared to be major persons. Pursuant to the same, A1 and A2 were arrested on 27.03.2018 and 13.03.2018, respectively. Thereafter, their semen was taken and the results manipulated. As per Ext. PW4/A the FSL report, the DNA found on the clothes of PW1 matched the DNA of both the accused persons. This is against the version of PW1 because his case is that



on 23.06.2017, only A2 had committed penetrative sexual assault. In such circumstances, the DNA traces of A1 could not have been present in the swabs of PW1 taken on 23.06.2017. This itself, according to the defence, is sufficient to throw out the prosecution case.

32. The defence is certainly justified in this argument. According to PW1, on 23.06.2017, A1 had not committed any act on him and had remained outside the room. Therefore, the presence of A1's DNA in the swabs taken from PW1 is certainly inconsistent with or against the version given by PW1. No satisfactory explanation has been offered by the prosecution in this regard. In such circumstances, the argument that the possibility of manipulation of the case property by the IO is quite justified. But, for every wrong or illegality committed by the IO the accused is not liable to be acquitted, if the evidence produced *de hors* the defective investigation is sufficient to bring home the guilt of the accused beyond all reasonable doubt. In such cases, the accused



2026:DHC:2424



cannot take any advantage of the defective investigation, unless the same casts reasonable doubt about the prosecution case. **Hema v. State, (2013) 10 SCC 192.** In **C. Muniappan v. State of T.N., (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402** :Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence *dehors* such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth.

33. In the case on hand, there appears to be clear dereliction of duty by the IO. In his anxiety to prove the case, the IO seems to have manipulated the samples. But, even if Ext. PW4/A FSL report is discarded or ignored, I find no reason to disbelieve the consistent testimony of PW1. Though the trial court finds the testimony of PW1 to be credible and trustworthy, without giving any reasons, disbelieved the case of abuse that took place before



2026:DHC:2424



23.06.2017. A1 and A2 have been convicted only for the offences contemplated under Section 5(g) of the PoCSO Act and Section 377 IPC. Apparently, A1 and A2 have been acquitted for the offence punishable under Section 5(l) of the PoCSO Act though the same is not specifically stated so in the impugned judgment. Section 5(g) of the PoCSO Act says that whoever commits gang penetrative sexual assault on a child commits aggravated penetrative sexual assault. The materials on record show that on 23.06.2017, only A2 committed penetrative sexual assault. But Explanation to Section 5(g) of the PoCSO Act says when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone. Therefore, even if A1 did not commit any penetrative sexual assault on 23.06.2017, he would still be liable under the



2026:DHC:2424



Explanation in the light of the testimony of PW1, that on the relevant day A1 was waiting outside for his turn when A2 was in the act of assaulting him. It was only because PW1 started crying out of pain, A1 left him alone. I have already referred to this aspect of the testimony of PW1. The conviction of A1 and A2 for the offence as contemplated under Section 5(g) of the PoCSO Act, punishable under Section 6 of the PoCSO Act is, therefore, correct.

34. The trial court has found A1 and A2 guilty of the offence punishable under Section 377 IPC also. Section 377 IPC says that whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. In the case on hand, PW1 has consistently deposed that A2 committed anal penetration upon him on 26.03.2017 while A1 facilitated the act by remaining present and acting in concert with A2. Therefore, the ingredients of the offence punishable under



Section 377 IPC read with Section 34 IPC also stands proved.

35. The trial court has imposed separate sentences under Section 377 IPC and Section 6 of the PoCSO Act. As per Section 3(a) of the PoCSO Act, a person is said to commit “penetrative sexual assault” if he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person. The act punishable under Section 377 IPC also falls within Section 3(a) of the PoCSO Act. Section 377 IPC is not included in Section 42 of the PoCSO Act. But in the light of Section 71 IPC and Section 26 of the General Clauses Act, 1897, punishment/sentence can be awarded under one enactment only. (See **Vinod Thankarajan v. State of Kerala, 2019 SCC OnLine Ker 7769 : 2020 (1) KHC 852, Sheikh Rahman v. State of Chhattisgarh, 2025 SCC OnLine Chh 7343, Manoj v. State of Maharashtra, (2023) 2 HCC (Bom) 472 and Lalhlimpuia v. State of Mizoram, (2025:GAU-MZ:70-D)**)

36. The trial court has imposed a sentence of rigorous



imprisonment of 15 years for the offence punishable under Section 6 of the PoCSO Act. This could not have been done in the light of the dictum in **Ravinder Singh v. The State Govt. of NCT of Delhi, (2024) 2 SCC 323**. The maximum that could have been imposed by the trial court was imprisonment for life or for a term not exceeding 14 years. Furthermore, the appellants/ A1 and A2 were only aged 19-20 years at the time of the incident. Hence in the said circumstances, I find that the substantive sentence of rigorous imprisonment for a period of 10 years would serve the ends of justice.

37. In the result, the appeals are partly allowed. The conviction of the accused persons for the offences punishable under Section 377 read with Section 34 IPC and Section 6 of the PoCSO Act are confirmed. However, the sentence of rigorous imprisonment for 15 years imposed for the offence punishable under Section 6 of the PoCSO Act is modified to a period of 10 years.



2026:DHC:2424



38. Applications, if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MARCH 24, 2026

kd