



2026:DHC:5514



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

%

Judgment reserved on: 07.07.2026

Judgment pronounced on: 10.07.2026

+

CRL.A. 208/2017

STATE OF NCT OF DELHI

.....Appellant

Through: Mr. Satinder Singh Bawa, APP for
the State.

versus

VIKAS KUMAR @ VICKY

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

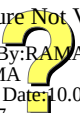
1. This appeal under Section 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the respondent/State in Sessions Case No. 160/2013 on the file of Additional Sessions Judge-01, Patiala House Courts, New Delhi, assailing the judgment dated 28.11.2014 as per which the sole accused has been acquitted of the offences punishable under

CRL.A. 208/2017

Page 1 of 15

Signature Not Verified

Signed By: RAMAN
SHARMA
Signing Date: 10.07.2026
15:12:47





Sections 363, 366 and 506 of the Indian Penal Code, 1860 (the IPC) and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 31.07.2013, the accused kidnapped PW3, aged about 17 years, with the intention to compel her to marry him. PW3 was compelled to join the accused as he threatened to defame her by posting her photographs on the internet. Thereafter, during the period between 31.07.2013 and 02.08.2013, the accused sexually assaulted PW3 by threatening to upload her photographs on the internet. Thus, as per the chargesheet/ final report the accused is alleged to have committed the offences punishable under Sections 363, 366, 506 IPC and 12 of the PoCSO Act.

3. On the basis of Ext. PW2/A FIS/FIR of PW2, given on 31.07.2013, Crime no. 234/2013, Sarojini Nagar Police Station, i.e., Ext. PW1/A FIR was registered by PW1, Head Constable



(HC). PW5 Sub Inspector conducted investigation into the crime and oncompletion 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 18.02.2014, framed a Charge under Sections 363, 366 and 506 IPC and Section 12 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 5 were examined and Ext. PW1/A, Ext. PW2/A-D, Ext. PW3/A-B, Ext. PW4/A-B, Ext. PW5/A-C, Ext. PW5/D1-D3 and Ext. A1-A4 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 he has been falsely implicated in the present case.

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. No oral or documentary evidence was adduced by the accused.

9. Upon consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 28.11.2014, acquitted the accused under Section 235(1) Cr.P.C. of the offences punishable under Sections 363, 366, 506 IPC and Section 12 of the PoCSO Act. Aggrieved, the respondent/State has preferred this appeal.

10. The learned Additional Public Prosecutor appearing for the State contended that the trial court erred in acquitting the accused based on the consent of a minor, which is immaterial. It was further submitted the trial court erred in concluding that PW3, had voluntarily accompanied the accused. This conclusion was erroneously arrived at by ignoring her Section 164 Statement wherein she had clearly stated that she was coerced to join the



accused as he had blackmailed and threatened that he would upload her pictures on the internet.

11. It was submitted by the learned counsel for the respondent/accused that there is no infirmity in the judgment calling for an interference by this Court.

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

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

14. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW2/A, the FIS/FIR given by PW2, the father of PW3 is a missing complaint. According to PW2, his 17 year-old-daughter (PW3), who had left for school at around 07:00 AM on 31.07.2013, had not returned home. On inquiry, her friend Shobhana informed him that the school was dispersed at 11:00 AM, pursuant to which PW3



had left the school. The accused, living in his neighbourhood, had once harassed/molested his daughter on an earlier occasion. The accused was also missing. The accused had lured/enticed his daughter and taken her away. Hence, appropriate legal action may be taken.

15. PW3, the victim, in Ext. PW3/B Section 164 Statement recorded on 05.08.2013 has stated thus:- the accused, who is her brother's friend, living in the neighbourhood, threatened to defame her by uploading her photographs on the internet if she did not accede to his request of joining him. He also slapped her. Thereafter, he made her sit in an auto rickshaw and took her to Anand Vihar on the pretext of introducing her to his mother who was sick. However, no such person was present there. From Anand Vihar, the accused took her by bus to Garhwal and thereafter to the house of his paternal grandmother at Pauri. The accused introduced her to his grandmother as his friend, but did not



disclose that he had brought her along. They stayed there for two days, during which time the accused repeatedly insisted on marriage. However, she refused his demand as she did not like him. While they were staying at the residence of the grandmother of the accused, the latter compelled her to sleep with him, but she refused.

15.1. PW2 when examined before the trial court, stood by her version given in Ext. PW3/B Section 164 Statement. PW2 in her cross-examination, admitted that the accused neither had sexual intercourse with her nor sexually assaulted, abused, or touched her in any manner. PW3 further admitted that although several members of the public and police officials were present at the Anand Vihar Bus Terminal and the Haridwar Bus Stand, she did not inform anyone that the accused was forcibly taking her under threat. PW3 further deposed that she did not raise any alarm or seek help from anyone while travelling in the auto or in the two



buses from Delhi to Haridwar and thereafter to Pauri Garhwal. PW3 admitted that the accused had been known to her for about five to six months prior to the incident as he was a friend of her brother, and denied that the accused had ever slapped her. PW3 further admitted that she had never given the accused any of her photographs and that the accused had merely claimed to have been in possession of some photographs, though she was unaware whether he actually had any. PW3 denied the suggestion that, she had voluntarily accompanied the accused as she wanted to marry him.

16. PW2, father of PW3, supported the prosecution story.

17. PW3, Assistant Teacher, NPCo-Ed Secondary School, produced the original birth certificate of PW3 and the same was marked as Ext. PW4/A. As per the same, the date of birth of PW3 is 27.09.1996.



18. Section 361 IPC, which defines kidnapping from lawful guardianship, says that whoever takes or entices any minor under sixteen years of age, if a male, or under eighteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, commits the offence of kidnapping from lawful guardianship. Section 366 IPC deals with kidnapping, abducting or inducing woman to compel her marriage. As per this Section, any person who kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, is liable to be punished with imprisonment and fine. The Section also says that whoever by means of criminal intimidation as defined in the Code or of abuse of authority or any other method of



compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person is also liable to be punished. In the case on hand, although PW3 stated in her Section 164 Statement that the accused threatened to upload her photographs on the internet and slapped her before taking her from her house, her own testimony before the trial court fails to prove the allegation that she was taken away by force or inducement. In her cross examination, PW3 denied that the accused had ever slapped her. She further admitted that she had never given any photographs to the accused and that she was unaware whether he actually possessed any photographs of her, thereby rendering the alleged threat speculative and unsubstantiated. Further, PW3 admitted that throughout the journey from Delhi to Pauri Garhwal, they travelled in public places, including Anand Vihar Bus Terminal, Haridwar Bus Stand, and public buses, where numerous



passengers and police officials were present. Despite having several opportunities to escape or seek assistance, she also admitted that she did not seek help even while travelling in the autorickshaw or during the bus journey. Such conduct is inconsistent with that of a person who is being taken away under coercion or threat. Although PW3 stated that the accused repeatedly requested her to marry him and asked her to sleep with him, she refused both requests. She has no case that the accused used force to make her accede to his alleged demands. She further admitted that the accused neither had sexual intercourse with her nor had sexually assaulted or abused her in any manner.

19. As held in **S. Varadarajan v. State of Madras, 1964 SCC OnLine SC 36 : (1965) 1 SCR 243**, there is a distinction between “taking” and merely allowing a minor to accompany a person. Where a minor, having sufficient understanding, voluntarily leaves the protection of her guardian and joins the



accused, it cannot be said that the accused has “taken” her, unless there is clear evidence of inducement or active participation in forming such intention. In the case on hand, taking the above said circumstances into consideration, it creates a serious doubt as to whether the accused had in fact "taken" or "enticed" PW3 away from the lawful guardianship of her parents by force, deceit, or inducement. The prosecution has also failed to produce any independent evidence corroborating the alleged threats or coercion. In the absence of such evidence, and having regard to PW3's conduct during the journey and her material admissions during cross examination, it cannot be concluded beyond reasonable doubt that the accused removed PW3 from the custody of her lawful guardians against her free will. Consequently, the essential ingredient of "taking" or "enticing" required to constitute the offence under Section 363 IPC have not been satisfactorily established.



20. Coming to the offence punishable under Section 12PoCSO Act. The essential ingredient of the offence is that the accused must have committed sexual harassment as defined under Section 11 of PoCSO Act. In the present case, PW3 deposed in her testimony before the trial court that the accused neither had sexual intercourse with her nor sexually assaulted, abused, or touched her in any manner. PW3 further admitted that she had never given any photographs to the accused and was unaware whether he actually possessed any photographs of her, thereby rendering the alleged threat to upload her photographs on the internet doubtful. In the absence of reliable evidence establishing the alleged threat or any act constituting sexual harassment within the meaning of Section 11 of the POCSO Act, the offence punishable under Section 12 of the Act is also not made out beyond reasonable doubt.

21. On an overall appreciation of the oral and documentary evidence on record, this Court is of the considered view that the



2026:DHC:5514



appreciation of evidence undertaken by the trial court cannot be said to be perverse or wholly unsustainable. Hence, no interference is called for.

22. In the result, the appeal *sans* merit is dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 10, 2026

rs