



2026:DHC:5590



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment reserved on: 09.07.2026*
Judgment pronounced on: 14.07.2026

+ **CRL.A. 617/2018**

GULFAM @ IMRAN

.....Appellant

Through: Mr. Sanjay Kumar, Mr. Uma Shankar
and Mr. Harsh Nath Tiwari,
Advocates

versus

NCT DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State
Mr. Shah Rukh Khan and Ms. Tanya
Verma, Advocates for Victim

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 read with 482 of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the sole accused in Sessions Case No. 145/2016 on the file of the Additional Sessions Judge, North East District, Karkardooma Court, Delhi, assails the judgement dated 07.03.2018 and order

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on sentence dated 12.03.2018, as per which he has been convicted and sentenced for the offence punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act) and Section 354D of the Indian Penal Code, 1872 (the IPC).

2. The prosecution case is that on 28.08.2014 at 07:00 P.M., at Gali No. 2A, Shriram Colony, Delhi, the accused stalked and sexually harassed PW2, a minor girl, aged 17 years. Hence, as per the chargesheet/final report, the accused is alleged to have committed the offences punishable under Sections 354D, 506 IPC, 8 and 12PoCSO Act.

3. On the basis of Ext. PW1/A FIS/FIR of PW1 given on 29.08.2014, Crime no. 918/2014, Khajuri Khas Police Station, i.e., Ext. PW1/A FIR was registered by PW1 Head Constable. PW10, Assistant Sub Inspector, conducted investigation into the crime and on completion of the same, filed the chargesheet/final



report alleging commission of the offences punishable under the aforementioned Sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him, as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court, *vide* order dated 08.05.2014, framed a Charge under Sections 12 of the PoCSO Act, 354D IPC and 506 (Part I) IPC against the accused. The Charge was read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 11 were examined and Ext. PW1/A-C, Ext. PW2/2-4, Ext. PW10/2-5, Ext. PW3/1-3, Ext. PW3/1-3, Ext. PW4/1, Ext. PW4/A, Ext. PW5/D1, Ext. PW6/1-5, Ext. PW7/1 and Ext. PW9/1 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 at the behest of the family of PW 2. The accused also submitted that on the day of the incident, he approached PW2 to tell her not to contact Amir because Amir's family had come to know about PW2's friendship with Amir.

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 on record, and after hearing both sides, the trial court, *vide* the impugned judgement dated 07.03.2018 held the accused guilty of the offence punishable under Sections 12 of the PoCSO Act and 354D IPC. *Vide* order on sentence dated 12.03.2018, sentenced him to undergo rigorous imprisonment for a period of 1 year and to fine of ₹30,000/-, and in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 12 of the PoCSO Act. In view of Section 42 PoCSO Act, no separate sentence has been awarded for the offence punishable under Section 354D IPC.



10. The learned counsel for the appellant/accused submitted that the impugned judgment is contrary to the facts and circumstances of the case, is bad in law as the trial court has failed to appreciate the materials on record and, therefore, liable to be set aside. It was submitted that there are inconsistencies between the testimonies of PW2 and PW5 and that there are contradictions in the testimony of the PW5. It was also submitted that the incident is not a case of stalking or sexual harassment rather the accused was merely communicating a message to PW2 without any sexual intent on the date of the incident. Only if the prosecution succeeds in establishing the foundational facts, the presumption under Sections 29 and 30 PoCSO Act would be attracted, which in this case has not been done. In support of the arguments, reference was made to the dictums in **State vs. Subhash 2025:DHC:8911** and **State vs. Anil 2019 SCC Online Del 10995**.



11. *Per contra*, it was submitted by the learned Additional Public Prosecutor that there is no infirmity in the judgment of the trial court 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 judgement warranting an interference by this Court.

14. I will first briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW2/1, the FIS/FIR of PW2, the minor victim, recorded a day after the date of the incident, i.e., on 28.08.2014, reads thus: *“On the 28.08.2014, I was going to my school from my house at around 7:00 A.M. When I reached Gali No. 2, A, C Block, Shriram Colony, a boy (the accused) who belongs to our colony itself, came on his motorcycle, stopped me, and said, “You do not stop when I tell you to.” I ignored his words and kept walking.*



While leaving, the boy from my colony, Gulfam, (the accused) went away saying, “If you do not listen to what I say, I will throw acid on you one day.” Gulfam had been following me daily for about 3-4 days while I am on my way to school. Yesterday, a settlement had also been reached regarding the matter, but today he came again and threatened me.”

14.1. PW2, in her 164 statement marked as Ext.PW2/4 recorded on 30.08.2014, has stated thus: *“When I go to school, a boy (the accused) has been stalking me for the past 3-4 days. I did not know him before. When I forbade him, he did not listen. The day before yesterday, he came on a bike and was standing at the corner of the street. I did not take the route I usually take to school; instead, I turned into a street. When I crossed the street, he was standing at the corner of that street. Wherever I was going, he was following right behind me. I entered a dead-end street, A-Block, Gali No. 2. I am not sure whether that street is a*



dead-end or not. He parked his bike at the corner of the street and came into the street. As I started to leave the street, he said, “Stop, otherwise I will throw acid on you. When you return from school, I will throw acid. When I screamed, two-three aunties were sitting there. An uncle (PW5) came and started beating him. He started threatening the uncle as well, saying that he would kill him. I went to school. My mother came to pick me up from school. Ammi had found out everything. Earlier, we had settled everything at the police station, but while leaving the police station, he threatened us again, saying that now he will definitely throw acid on me. Then, the next morning, we initiated the legal proceedings again. I feel that if he is released, I will not be safe.”

14.2. PW2, when examined before the trial court more or less stood by the version given by her in Ext. PW1/A FIS/FIR and Ext.PW2/4 Section 164 Statement. PW2 deposed that at the time of incident, she was studying in Class 12. She deposed that 2



to 3 days before the date of the incident, whenever she was on her way to the school, the accused used to follow her. On 28.08.2014 at around 06:45-07:00 A.M., while on her way to school, she changed her usual route, but the accused kept following her. So in order to avoid the accused, she entered a narrow street. An uncle (PW5) was watching all this. The said uncle (PW5) caught hold of the accused and slapped him while she proceeded to her school. While she was in school, her mother came and picked her up from the school and they both went to Khajuri Khas police station where they reached about 09:30 A.M. She narrated the incident to one policeman. At that time, the accused and PW5 were also present. She came to know the name of the accused to be Gulfam or Imran. On the said day, the matter was sorted out by the elders, the details of which she is unaware. She then returned home. The next day while on her way to school, the accused met her again and told her that he would throw acid on her. The



accused thereafter left immediately and she proceeded to school. When returned from school, she narrated the incident to her mother. Thereafter she along with her mother went to a police station where they met a senior officer who ordered action to be taken. PW2 further deposed that the accused was brought to the police station and beaten.

14.3. PW2 in her cross-examination, admitted that the sister of the accused was her classmate and that the accused is a friend of Amir. She further deposed that Amir though resides in front of her house, she is not acquainted with him. She denied the suggestion that Amir was her friend and that they used to communicate through mobile phone. She denied the suggestion that the accused had approached her only for telling her that she should not contact Amir as his parents had come to know of her friendship with Amir. The accused had been following her for 2 to 3 days before 28.08.2014. She admitted that she had not informed



anyone about the incident, however her friend Gulistan knew about it.

15. PW5, when examined, deposed that on the date of the incident at 07:00 A.M., when he was standing outside his residence, he saw the accused had caught hold of PW 2. The accused was trying to assault her and the girl looked quite scared. On hearing the commotion, he approached them and tried to release PW2 from the accused. When he attempted to intervene, the accused threatened him by saying – “*tere ko bhi dekh loonga*”. PW2 told him that the accused was threatening to throw acid on her and had been following her for a long time. He saved the girl from the accused, pursuant to which the girl went to her school. In the meantime, the accused started to scuffle with him. At this time, a passerby arrived and with the help of the said passerby, he took the accused to the police station and handed the custody of the accused to the duty officer. At the police station



also the accused abused and threatened him thus – “*tujhe nahi chhodoonga*”. PW5 stood by his version in the cross-examination.

16. The trial court has found the accused guilty of the commission of the offence of sexual harassment as contemplated under Section 11 of the PoCSO Act, punishable under Section 12 of the said Act and Section 354D IPC. Section 354D IPC contemplates the offence of stalking. The essential ingredients are: (i) the accused must follow or contact a woman repeatedly; (ii) such contact must be despite a clear indication of disinterest by the woman; or (iii) the accused monitors her use of the internet or electronic communication. Section 11 of the PoCSO Act deals with the offence of sexual harassment. Going by the prosecution case, the offence committed comes under Clause (iv) of Section 11, which says that if a person with sexual intent repeatedly or constantly follows or watches a child directly or through



electronic, digital or other means, commits the offence of sexual harassment.

17. The prosecution case primarily rests on the testimony of PW2, the victim, and PW5, an eyewitness. The testimony of PW2 is clear, cogent, natural and consistent. She has described the sequence of events leading up to the incident, the act itself, including her immediate reaction thereafter. In a nutshell, she stood by her case from her first version in the FIR/FIS to her testimony before the trial court. It is a settled position of law that conviction can be based on the sole testimony of the victim if it is of sterling quality, and the same does not require any corroboration (See **Ganesan v. State, (2020) 10 SCC 573**). In the present case, nothing has been elicited to discredit PW2, during her cross examination. The testimony of PW5 further corroborates her version.



18. The attempt of the learned counsel for the appellant/accused was to highlight the inconsistencies in the testimonies of PW2 and PW5, specifically with respect to the testimony of PW5 that the accused had physically restrained PW2. However, PW2 has no such case. Therefore, referring to this inconsistency, the argument advanced is that this is a major inconsistency which has adversely affected the prosecution case.

19. The question is whether the aforesaid inconsistency alleged between the statements of PW2 and PW5 is a ground to disbelieve the case of the prosecution. As is evident from a reading of Ext.PW2/1 FIS/FIR, Ext.PW2/4 164 statement and the testimony of PW2, she has been consistent regarding the case that the accused had been repeatedly following her. She had tried avoiding him and had even changed her route to the school so as not to cross path with him. But, the accused still persisted with his act of following her despite her clear indication of disinterest. It is



well settled that there is no requirement of corroboration if the testimony of a child witness inspires confidence; such testimony can form the sole basis of conviction. Corroboration may be sought as a matter of prudence where the evidence appears to be tutored or suffers from material contradictions. The competency of a child witness depends on the satisfaction of the court as to the child's understanding and ability to depose. Though courts must remain alive to the possibility of tutoring, there is no bar in law to base conviction solely on the testimony of a child witness who withstands cross-examination. (**State of Rajasthan v. Chatra, 2025 SCC OnLine SC 566**).

20. PW2 has withstood the cross-examination and nothing was brought out to discredit her testimony. Therefore, the ingredient contemplated under Clause (i) of Section 354D IPC stands satisfied. The attempt of the defence is to bring the conduct of the accused within the ambit of Clause (iii) to the proviso to



Section 354D IPC. As per the said clause, the conduct of the accused coming under Clause (i) of Sub-section (1) of Section 354D would not amount to stalking if the man who pursues proves that in the particular circumstances, such conduct was reasonable and justified. The explanation of the accused in approaching PW2 is supposed to be to warn PW2 from keeping away from his friend Amir. Apart from a mere suggestions put to PW2, there is no material to prove such defence. It is true that in a criminal case, the accused has the right to remain silent. However, if he takes up a specific defence then the onus would be on him to establish the same, though the degree of proof required is only on the basis of preponderance of probabilities. (See **Harbhajan Singh v. State of Punjab**, AIR 1966 SC 97; **V.D. Jhingan v. State of U.P.**, AIR 1966 SC 1762; and **Munshi Ram v. Delhi Administration**, AIR 1968 SC 702). The accused is neither the parent nor guardian of the said Amir. The accused has no case that



Amir had asked him to approach PW2 and forbade her from contacting the latter. Therefore, there are no cogent materials to substantiate the contention of the accused that his conduct in the circumstances was just and reasonable. That being the position, the ingredients contemplated under Section 354D(1) IPC stands fully established despite the inconsistency pointed out between the testimony of PW2 and PW5.

21. Now coming to the offence punishable under Section 11 of the PoCSO Act. As noticed earlier, the prosecution has to prove that the conduct of the accused in repeatedly or constantly following the victim should be with sexual intent. The sexual intent can be established only by the conduct of the accused. What was the reason for the accused, a male aged about 18 years, to repeatedly following a young girl aged 17 years, despite the latter showing a clear disinterest in him. The explanation furnished by the accused has been disbelieved for the reasons



aforesaid. Hence, the conduct of the accused in approaching PW2 could only have been with sexual intent. Even assuming for argument sake, the sexual intent is not established, the offence under Section 354D IPC is clearly made out.

22. It was further argued by the learned counsel for the accused that there is a material contradiction between the 161 Cr.P.C. statement of PW5 and his testimony before the court. PW5 in his 161 statement stated that he took the accused directly to police station but in his testimony, PW5 deposed regarding taking help of another passerby to take the accused to the police station. The statements made under Section 161 are statements made to the police during the course of investigation and the same cannot be used except for the purpose stated in the proviso to Section 162 (1) Cr.P.C. Under the proviso to Section 162 (1) Cr.P.C., such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in



Section 145 of the Evidence Act and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance for the testimony of the witness in Court. (See **Tahsildar Singh v. State of U.P., AIR 1959 SC 1012; Satpal v. Delhi Administration, 1976 (1) SCC 727 and Delhi Administration. v. Lakshman Kumar 1985 KHC 741: (1985) 4 SCC 476**).

23. In the case on hand, the procedure contemplated under Section 145 of the Evidence Act, 1872 was never resorted to and hence the defence cannot take advantage of the same. As noticed earlier, I do not find any reason(s) to reject or discard the testimony of PW2. The offences are clearly established from her testimony which has not been discredited in any way. A reading of the testimony of PW5 also does not raise any doubts in the mind of the Court. There is no reason(s) whatsoever for PW5 to have falsely deposed against the accused. Even if for argument



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sake, the testimony of PW5 is ignored, there is still the testimony of PW2 to establish the offences charged against the accused. In such circumstances, the finding of guilt of the accused by the trial court for the offences punishable Section 12 of the PoCSO Act and Section 354D IPC suffers from no infirmity calling for an interference by this Court.

24. The appeal, *sans* merit, is thus dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 14, 2026

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