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

% *Judgment Reserved on: 21.07.2026*
Judgment pronounced on: 24.07.2026

+ **CRL.A. 962/2018**

THE STATE GOVT OF NCT OF DELHI Appellant

Through: Mr. Utkarsh, APP for State with SI
Monika, P.S. Alipur.

versus

AJEET Respondent

Through: Mr. Nitin Saluja and Mr. K.S. Jaggi,
Advocates (DHCLSC).

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the respondent/State in Sessions Case No. 57576/2016 on the file of the Additional Sessions Judge – 01/Special Court: PoCSO Act (North), Rohini Courts, Delhi, assails the judgment dated 08.11.2017 as per which the sole accused has been acquitted of the offences punishable



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under Sections 363 and 354 of the Indian Penal Code, 1860 (the IPC) as well as Section 9(m) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012(the PoCSO Act).

2. The prosecution case is that at about 10:15 PM on 07.03.2014, the accused kidnapped PW2, aged about 8 years, from outside the house of Jagdish at Swaran Jyanti Vihar, Tikri Khurd, Delhi, and took her to the 1st floor of Jagdish's house and in the gallery, started touching her inappropriately and kissing her. Hence, as per the chargesheet/final report, the accused is alleged to have committed the offences punishable under Sections 363, 354 IPC and Section 9(m) read with Section 10 of the PoCSO Act.

3. On the basis of Ext. PW9/A FIS/FIR of PW2, given on 08.03.2014, crime no. 214/2014, Alipur Police Station, i.e., Ext. PW1/A FIR was registered by PW1, Head Constable (HC). PW9, Sub-Inspector (SI), conducted the investigation into the crime and on completion of the same, filed the chargesheet/final report



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alleging the 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 the sides, the trial court, *vide* order dated 27.08.2014, framed a Charge under Sections 363, 354 IPC and Section 9(m) read with Section 10 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 9 were examined and Exts. PW1/A-C, PW2/D, PW5/A-D, PW6/A, PW7/A-B, PW8/A-B, and PW9/A-D 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



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maintained his innocence. He claimed that on the day of the incident, PW4, the brother of PW2, was drunk and creating a scene on the DJ floor, which resulted in a quarrel between them. This has led to his false implication in this 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. On behalf of the defence, DW1 was examined. No documentary evidence was adduced by the accused.



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9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, *vide* the impugned judgment dated 08.11.2017, acquitted the accused for the offences punishable under Sections 363, 354 IPC and Section 9(m) read with Section 10 of the PoCSO Act. Aggrieved, the respondent/State has come up in appeal.

10. It was submitted by the learned Additional Public Prosecutor that PW2, the victim, has remained consistent. Her testimony has also been duly corroborated by PW4, her brother. Minor discrepancies in the testimony of the prosecution witnesses do not vitiate the case when the core of the prosecution story stands proved. Therefore, he submitted that the impugned judgment of acquittal be set aside, and the accused be convicted in accordance with law.

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



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12. Heard both sides and perused the records.

13. The only point that arises for consideration in the present 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. PW9/A, the FIS/FIR of PW2, recorded on 08.03.2014, reads thus:-
“...I study in 3rd ‘A’ class at Sarvodaya Vidyalaya, Tikri Kalan. On 07.03.2014, there was a didi’s wedding in our neighbourhood. The wedding tent was set up on the road between B & C Block. Many children from the colony were playing there. I was also playing there when suddenly around 10:15 PM, a man named Ajeet (the accused) whose house falls on the way to my school, who is Gorilla’s brother and I know him, came, picked me up in his arms, and started taking me away. I tried to raise an alarm (scream), but he threatened and silenced me. He took me to the first floor of Jagdish’s house, into the gallery, and started touching and kissing



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me. When I started crying, he put the latch of the staircase from outside and fled. I called out to the children from the gallery window; then the children opened the door and I came out. Just then, my family members also arrived. My brother Deepak (PW4) called the police... ”

14.1. PW2, in Ext. PW2/A Section 164 Statement recorded on 08.03.2014 has stated thus:- *“Yesterday, I went to the tent where our neighbour sister's wedding was taking place. There in the tent, I was drinking water. Just then, Faizu/Ajeet (the accused) came there. He blindfolded me, picked me up in his arms, and started taking me away. When I started screaming, he told me, "Shut up, otherwise I will kill you." Then he took me to Jagdish's house. There, he laid me down on the floor in the gallery and started kissing me. Then I started crying a lot, so he locked the door leaving me inside the gallery and went away.”*

14.2. PW2 when examined before the trial court deposed that on the night of the incident, Annu *didid* and Soniya



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*did*i were getting married. When she had gone to take dinner near the tent, the accused came, took her in his lap and closed her mouth. He took her to the 1st floor of Jagdish's house and threatened her not to shout or he would kill her. He then started kissing her on her face, hands and legs. She raised an alarm and some children saw them. Thereafter, the accused ran away from the spot after bolting the door of the staircase.

14.3. PW2, in her cross examination, deposed that on the date of the incident, two marriages were to take place in venues situated adjacent to each other. Disc Jockey (DJ) were there in both the venues. Her brother (PW4) was dancing on the venue. Jagdish's house to which the accused had taken her is situated near the place of the marriages. PW2 further deposed that when she came out of the house and narrated the incident to her brother (PW4), the latter caught the accused and beat him. Her mother (PW3) also slapped the accused. At this point a request was made on behalf of the defence counsel to put certain suggestions to PW2,



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to the effect that she was deposing falsely and to confront her with her previous statements. The trial court disallowed the request taking into account the tender age of PW2.

15. PW4, the brother of PW2, when examined deposed that on 07.03.2014 while he was home watching TV, some children came running and informed him that the accused had taken away his younger sister (PW2). He immediately rushed to the spot and found his sister in a perplexed state. His sister disclosed the incident to him. He informed the police. PW4 in his cross examination deposed that the accused ran away from the scene and hence he did not get an opportunity to meet the latter. According to PW4, there was no DJ playing at the marriage venue and denied having beaten the accused.

16. One witness was examined on behalf of the accused. DW1, when examined, deposed that on 07.03.2014 his sister Nagma was getting married. At about 10:00 PM – 10:30 PM the guests were dancing on the DJ floor, when suddenly a quarrel took



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place between the accused and the rival party as both were drunk. He intervened in the quarrel, pacified both the parties. Thereafter, he was busy with the marriage rituals.

17. The trial court found the aforesaid materials on record unsatisfactory to hold the accused guilty of the offences charged against him. The Appellate Court under Section 386(1) Cr.P.C, may in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused may be retried or committed for trial, as the case may be, or find the accused guilty and pass sentence on him according to law. The general principles regarding the powers of the appellate court while dealing with an appeal against acquittal are:- firstly, the appellate court has the power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. Secondly, the Code puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it, may reach its own conclusion, both on



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questions of fact and of law. Thirdly, various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. Fourthly, an appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused, that is, (i) the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law, (ii) the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. Lastly, if two



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reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. (See **Babu Sahebogouda Rudragoudar and others vs. State of Karnataka (2024) 8 SCC 149**, **Rajesh Prasad vs. State of Bihar (2022) 3 SCC 471**, **Chandrappa vs. State of Karnataka, (2007) 4 SCC 415**).

18. As observed by the Apex court in **Ram Kumar vs. State of Haryana, 1995 Supp (1) SCC 248**, the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in reversing a finding of fact arrived at by a judge who had



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the advantage of seeing the witness. If the main grounds on which the trial court has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.

19. The Charge against the appellant/accused is that he has committed the offences punishable under Sections 363, 354 IPC and Section 9(m) read with Section 10 PoCSO. Section 363 IPC deals with punishment for kidnapping. 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. The materials on record, as already referred to, do show inconsistency in the statements given by PW2. In Ext. PW9/A FIS/FIR recorded



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during the early hours of 08.03.2014, PW2 says that while she was playing along with other children outside the tent, where the marriage function was taking place, the accused came there and picked her up. However, in Ext. PW2/A Section 164 Statement, also recorded on 08.03.2014, PW2 states that she was inside the tent drinking water when the accused, blind-folded her and picked her up. PW2 in the box has a different case. She deposed that while she had gone to the tent for taking dinner, the accused came, made her sit in his lap, shut her mouth and took her away. Therefore, there appears no consistency in the statements given by PW2.

20. Further, PW2 has a case that her brother (PW4) was very much present at the marriage venue and that her brother on being informed of the incident, had in fact beaten the accused. But PW4 has an entirely different version. According to him, on the said day while he was at home watching TV, he was informed of the incident. He has no case that when he reached the scene of occurrence, the accused was present there or that he had beaten the



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latter. But, according to PW2, her brother, on being informed of the incident apprehended the accused and beat him. However, PW4 deposed that he never met the accused on the said day.

21. Further, PW2 admitted that DJs were there in the venue of both the weddings. PW4, however, denied the same and deposed that there were no DJs for the functions. According to PW2, her brother was dancing on the floor of the DJ. But according to PW4, he was at home watching TV.

22. In an appeal against acquittal, interference is warranted only when the view taken by the trial court is perverse or wholly unreasonable. On an overall appreciation of the oral and documentary evidence on record, this Court is of the considered view that the appreciation of evidence undertaken by the trial court cannot be said to be perverse or wholly unsustainable. Hence, no interference is called for.

23. Before I conclude, I need to refer to an apparently incorrect procedure that is seen adopted by the trial court during



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the course of the examination of PW2, the prosecutrix. The last portion of the testimony of PW2 reads thus:-

“Court Observation:- Ld. Defence counsel states that, he intends to give certain suggestions to the witness, to the effect that she is deposing falsely and certain other such suggestions and he wants to confront her with her previous statement. Heard. Looking at the tender age of the child, same is disallowed. However, the defence is at liberty to point out the same at the time of final arguments.”

24. Here, it would be apposite to refer to Section 33 of the PoCSO Act which reads thus:-

“(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.



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(4) *The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.*

(5) *The Special Court shall ensure that the child is not called repeatedly to testify in the court.*

(6) *The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.*

(7) x x x x x x x x x
 (8) x x x x x x x x x
 (9) x x x x x x x x x”

(emphasis supplied)

25. Therefore, the Act has clearly provided for provisions to protect the child from aggressive questioning or character assassination and to see that the dignity of the child is maintained at all times during the trial. This does not mean that the defence cannot or need not put questions to the child witness. The procedure contemplated under Sub-section (2) of Section 33 ought to have been adopted by the trial court and not prevented the defence from asking questions that was necessary to establish their



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defence. Without asking questions during the cross-examination, it would be impossible for the defence to bring out that a witness is deposing falsehood. The contradictions, if any, in the statements of the witness can be brought out only by confronting her with such statements and following the procedure contemplated under Section 145 of the Evidence Act. Without resorting to the same, it would be impossible for the defence to bring out the omissions, contradictions or inconsistencies and the same cannot be done during the course of the final hearing, as recorded by the trial court.

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

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 24, 2026

p'ma/kd