

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

% Decided on: 26th July, 2018

+ **CRL.A. 967/2016**

STATE

..... Appellant

Represented by: Ms. Meenakshi Chauhan, APP
for the State.

versus

DEEPAK

..... Respondent

Represented by: Mr. Harsh Prabhakar, Advocate
(Amicus Curiae).

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 17th January, 2015, whereby the learned Additional Sessions Judge acquitted the respondent Deepak for the offence punishable under Section 354A IPC read with Section 8 Protection of Children from Sexual Offence Act, 2012 (in short 'POCSO Act'), the State has preferred the present appeal.

2. Sequence of events leading to the prosecution case are that Ct. Amit informed the PCR that one boy was following a girl and ran away after teasing the girl from House No. 6127, Jhandewalan Road, Nabi Karim. Aforesaid information was recorded vide DD No. 25A (Ex.PW-4/A) and assigned to SI Ravi Shankar (PW-7). He along with Ct. Purushottam (PW6) reached the place of occurrence where they met HC Inderpal. Respondent Deepak was produced. They also met the victim aged 15 years. However, she refused to give her statement as her parents were not at home and stated she would give the statement after consulting her parents.

3. It is the case of the prosecution that in the evening, SI Ravi Shankar again visited the house of the victim when she gave a written complaint

(Ex.PW-5/A). As per the complaint, on 21st May 2013 at about 1:15 P.M. when the victim was returning home after attending her coaching at Multani Dhanda and reached near Mother dairy, she saw one person, that is, Deepak, in an inebriated condition, following her. When she reached Gali No.4, Bachichee, Allauddin, Delhi, Deepak caught hold of her arm, however, she escaped and rushed towards her house but Deepak followed her. Consequently, she raised alarm due to which public persons from the neighbourhood gathered and started beating Deepak. On the basis of the aforesaid complaint, FIR No. 105/2013 was registered at PS Nabi Karim for the offences punishable under section 354B IPC read with Section 12 of POCSO Act. During the course of investigation, the statement of the victim was recorded under Section 164 of the Cr.P.C., documents relating to her age proof were collected and Deepak was arrested. After completion of investigation, charge sheet was filed. Charge was framed for the offences punishable under Section 354A IPC and Section 8 of POCSO Act against the respondent.

4. Though the version of the victim is that Deepak was apprehended at the spot, however, as per the DD entry No.25A (Ex.PW-4/A), it is noted that the boy who teased the girl had run away. During investigation SI Ravi Shankar did not make any effort to ascertain from Ct.Amit the basis on which he informed that the boy had fled away. Further, HC Inder Pal who was in-charge of the PCR was also not examined to corroborate the above fact. SI Ravi Shankar in his cross examination stated that he was not aware that he had to collect the PCR form during the investigation.

5. Victim who was examined as PW-5 in Court during her cross-examination stated that her elder sister aged above 18 years was also taking

coaching from the same coaching centre and their timings were the same i.e. 12:30 P.M. to 1:30 P.M. She admitted that her elder sister had come home after 5 minutes of the incident but no attempt was made to inquire about the incident from her elder sister nor was she cited as a witness.

6. SI Ravi Shankar in his cross-examination also stated that he called Shyam Sunder, Keshav and Aunt (Tai) of the victim at the house of the victim and recorded their statements. Admittedly, the victim did not disclose that the alleged incident had been witnessed by any of the above mentioned persons or that they had gathered there.

7. SI Ravi Shankar tried to establish that Shyam Sunder (PW-1) who was running a tea shop at a distance of 6 meters from the place of incident was in a position to witness the incident and reached the spot immediately. However, Shyam Sunder clarified in his testimony that he reached the spot later after hearing hue and cry and failed to identify the respondent. Furthermore, the version of SI Ravi Shankar is also demolished by the fact that the shop of Shyam Sunder was closed for the last 3 years ago. Thus it is doubtful whether Shyam Sunder witnessed the incident.

8. Victim (PW-5) has stated that she was close to her Tai, however, she did not disclose about the incident to her and the explanation rendered was that the victim was weeping. Victim also stated that she did not disclose the incident to her Tai because the relations between both the families were not good. Tai would not have come forward to get her statement recorded before the police if that was the case. Thus, the explanation given by the victim does not inspire confidence.

9. Further it is the case of the victim that Deepak was in inebriated condition, which fact is fortified by his MLC done on 21st May, 2013 at 4.40

P.M. However, as per the MLC there is no injury on his body though it is the case of the victim that public persons had beaten Deepak. Moreover the victim does not say that when Deepak caught hold of her hand it was with a sexual overture or because he could not control himself.

10. From the evidence of the prosecutrix and the immediate apprehension of the respondent, the case made out by the prosecution is that the respondent followed the prosecutrix in an inebriated condition and caught hold of her hand. There is no evidence that the respondent caught hold of the prosecutrix with an intention to receive sexual favour or with a sexual intent. Hence, at best the offence made out against the respondent proved by the prosecution beyond reasonable doubt is punishable under Section 352 IPC and offence of stalking punishable under Section 354D IPC.

11. Considering that from the facts the prosecution has been able to prove that the respondent caught hold of the hand of the victim and had followed her though the learned Trial Court committed no error in acquitting the respondent for offence punishable under Section 354A IPC, he ought to have convicted the respondent for the lesser offences, that is, offences punishable under Section 352 and Section 354D IPC.

12. Leave was granted to the State on 30th September, 2016 when appeal was admitted. Thereafter when the respondent did not furnish personal bond and surety bond, bailable warrants were issued, executed and respondent appeared on 12th April, 2017. Respondent thereafter did not furnish the personal bond and the surety and also failed to appear before this Court. Hence non-bailable warrants were issued against the respondent, which were finally served in July, 2018. The reports of non-service of the non-bailable warrants showed that the respondent was into addiction and thus the family

had no control over him. Pursuant to the execution of non-bailable warrants the respondent is in custody. As earlier Amicus Curiae for the respondent was not appearing, Mr. Harsh Prabhakar, Advocate was appointed as Amicus Curiae who has assisted this Court.

13. Impugned judgment of acquittal is thus set aside. Respondent is convicted for offence punishable under Section 352 IPC and Section 354D IPC. Punishment for offence punishable under Section 352 IPC extends to three months or fine and for offence punishable under Section 354D IPC extends to three years and fine.

14. A perusal of the record reveals that the respondent has been in custody for over five months including the period undergone during the course of trial. Respondent is thus awarded the sentence of imprisonment already undergone.

15. Appeal is disposed of. Superintendent, Tihar, Central Jail No.III, is directed to release the respondent forthwith if not required in any other case.

16. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

JULY 26, 2018
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