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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 784/2018**
STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP
SI Rohit, PS Rajouri Garden

versus

MUKESH KUMAR CHHABRA

.....Respondent

Through: Mr. Shyam Manohar, Ms. Kiran
Dubey, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

24.02.2025

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1. This is a petition seeking grant of leave to appeal against acquittal of the respondent *vide* the judgment dated 28.08.2018 passed by the learned ASJ-02 (West), Delhi, in Crl. Appeal No. 361/2017 filed by the respondent against the judgment of conviction dated 07.11.2017 and the order of sentence dated 28.11.2017 passed by the learned MM-04 (Mahila Court), Tis Hazari, Delhi arising out of FIR No. 236/2010 registered at PS Rajouri Garden under Sections 354 and 509 of Indian Penal Code, 1860 (“IPC”).
2. The brief facts of the case are that on 01.08.2010, the complainant was posted at HAX Branch, West District, Delhi on mobile numbers feeding duty, the respondent called her in the branch, though her duty was not there on that day, and told her that she would have to come on the duty as per directions received by him from the concerned DCP.
3. Thereafter, the complainant reached at 10 a.m. and did mobile numbers feeding work till 12 noon and when she reached the office, she saw that the respondent was already present in the office. After 12 noon, he



came to her chair and started showing her a porn clipping. The complainant refused to see the same and told the respondent that she was not interested in watching the movie as it was annoying her. However, he tried to show the same to her and also started misbehaving with her by touching her body parts. Thereafter, she left the computer seat and went to her own dealing seat and started working from there.

4. At about 5:35 p.m., the respondent called the complainant outside by gesture which she refused and subsequently at 5:45 p.m., when she was leaving, he again called her by gesture. When she went to him, he caught hold of her and started kissing her on the face and stated that he loves her and would not cross the limits.
5. Thereafter, on 02.08.2010, the FIR was registered against the respondent.
6. After completion of investigation, a charge sheet was filed on 24.05.2012 and a charge for offences punishable under Sections 354 and 509 of IPC were framed against the respondent on 21.11.2012, to which the respondent pleaded not guilty and claimed trial.
7. The prosecution examined a total of 9 witnesses and 1 court witness was also examined. The statement of respondent/accused under Section 313 of CrPC was recorded on 08.02.2017 wherein the respondent denied the case of prosecution and pleaded innocence. The respondent examined a total of 2 witnesses in his defence.
8. The learned MM *vide* the judgement dated 07.11.2017 convicted the respondent of the offence punishable under Section 354 of IPC and acquitted under Section 509 of IPC.
9. Thereafter, the respondent filed an appeal in the learned Sessions



Court, wherein *vide* the impugned judgement dated 28.08.2018, the judgment dated 07.11.2017 and the order of conviction dated 28.11.2017 passed by the learned MM were set aside.

10. Aggrieved by the impugned judgement of acquittal dated 28.08.2018, the State filed the present petition.
11. Mr. Singh, learned APP appearing on behalf of the petitioner challenges the impugned judgement and states that in the present case, the testimony of the complainant is of sterling quality and the findings of the learned Sessions Court are based on incorrect appreciation of evidence.
12. He further states that the testimony of PW-8 i.e. the Nodal Officer from Bharti Airtel is not conclusive to return a finding that the respondent did not have an internet connection on his mobile phone.
13. Learned counsel appearing on behalf of the respondent supports the impugned judgement and submits that the prosecution has not been able to prove the allegations against the respondent beyond reasonable doubt.
14. I have heard learned counsel for the parties and perused the material on record.
15. The operative paragraphs of the impugned judgement read as under:-
“8. Having considered the submission of Ld Counsel for the parties and perused the record. I would like to mention the relevant para of the impugned order vide which the Ld Trial Court has come to the conclusion that testimony of PW1 ie complainant is trustworthy "The testimony of PW1 is consistent, coherent and does not give any reason for disbelieving her.



During cross examination of complainant Ld Defence counsel has also failed to cull out any motive on the part of the complainant by falsely implicating the accused in this case. This reasoning has been given by the Ld Trial Court on the basis of evidence of complainant. While giving this observation the Ld Trial Court has not reasonably appreciated the evidence of the complainant/ PW1. As PW1 has stated in her complaint as well as in her testimony that the appellant/accused has shown her the porn clipping on Internet. But in the testimony of PW8 Chanker Shekhar, Nodal Officer, Bharti Airtel Ltd, who is service provider of mobile network of which number the appellant was using.

9. The witness has deposed that connection bearing No.9810664895 was not having Internet facility. In that circumstances, it is not believable that the appellant/accused could have shown the porn clipping on internet. There may be situation that the porn clipping could have been stored in phone of the appellant but this situation has also not been proved on record by the prosecution because the said phone was not examined whether it was containing any probe clipping, If this version of complainant is not trustworthy then cloud is also casted upon the other testimony of complainant/PW1 with respect to the fact that the appellant/accused has kissed her and caught hold of her. Particularly where the complainant herself admitted in her cross examination that on the date of incident Ct Sudhir was also present.



10. One another factor which could have been considered by the Ld Trial Court is that the complainant/PW1 is a police official but she has not made any complaint just after the commission of offence and she went to her home and narrated all these facts to her husband and thereafter complaint was made on the next day. There is no probable justification for lodging the FIR delayed. The explanation as given by complainant/PW1 cannot be accepted that the delay in lodging the FIR was that as she become nervous. Admittedly the complainant/PW1 is the police official and it is probably cannot be expected that she become nervous. So all these factors has not been considered by the Ld Trial Court. The Ld . Trial Court has just convicted the appellant by considering her statement as consistent, The Ld Trial Court has not given any reason while believing the testimony of PW1. There is one another fact which has come on record in the present case that once a incident had happened with the complainant at about 12.00 Noon and second incident had happened at about 5.45 PM. It has come on record that at about 5.45 P.M the appellant has called the complainant by giving a gesture to her which has been complied with by the complainant. This version of the complainant is not believable because once in the noon she was molested then why she will go again on calling by the appellant by indicating a gesture.

11. The other witnesses examined by the prosecution are police officials. And PW3 Sh Anil Bansal, husband of PW1, is not having first hand knowledge of the facts. So his testimony is



based on the information given by the complainant to him. The complainant/PW1 has not called upon her husband immediately after the incident which also creates doubts regarding the testimony of PW1 and PW3. Because generally a married women would tell such type of incident to her husband immediately.”

16. On perusal, there exists no doubt that in cases under Sections 354 and 509 of IPC, the testimony of the complainant is enough to convict the accused/respondent, provided the same is of sterling quality.
17. Though I am in agreement that it is not conclusive that the mobile number being 9810664895 was not having internet facility, the fact remains that PW-1 has categorically stated that the complainant started misbehaving with her by touching her body parts.
18. Thereafter, in view of the alleged incident as well as keeping in mind that the complainant is a police officer, there was no reason for her to go again to the respondent when he gestured to her. The same has not been satisfactorily explained. In this view, the said inconsistency raises doubt of the sterling quality of the testimony of the complainant.
19. The fact that weighs with me is that the complainant is a constable with Delhi Police for a considerable period of time and it cannot appeal to logic that she became nervous at showing of a porn clipping by the respondent.
20. In view of the matter, the judgment dated 28.08.2018 passed by the learned ASJ-02 (West), Delhi, in CrI. Appeal No. 361/2017, to my mind, is well-reasoned and does not require any interference. The learned ASJ has correctly concluded that the testimony of PW-1



(prosecutrix) is not trustworthy or of sterling quality and accordingly correctly given the benefit of doubt to the respondent in the present case.

21. The leave to appeal is dismissed.
22. Consequently, the appeal has become infructuous and is disposed of accordingly.

JASMEET SINGH, J

FEBRUARY 24, 2025 / (MS)

[Click here to check corrigendum, if any](#)