



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

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Date of Decision: 15.12.2025

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CRL.A. 1134/2017

JITENDER

.....Appellant

Through: Mr. Mohd. Anas and Mr. Vinit Bhati,
Advocate with appellant in person.

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Sharmila Yadav PS Gulabi
Bagh, Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 14.11.2017 and the order on sentence dated 15.11.2017, passed by the learned ASJ-05(Central), Tis Hazari Courts, Delhi in Sessions Case No. 27627/16, arising out of FIR No. 22/2014, P.S. Gulabi Bagh, Delhi. By the impugned judgment, the appellant was convicted for the offences punishable under Sections 354/451 IPC and acquitted under Section 8 POCSO Act.

2. Vide the order on sentence, the appellant was sentenced to Rigorous Imprisonment (RI) for a period of one year alongwith fine of Rs.1,500/-, in default Simple Imprisonment (SI) for two months for the offence punishable under Section 354 IPC. He was further sentenced to undergo RI for a period



of one year alongwith fine of Rs.1,500/-, in default SI for two months for the offence punishable under Section 451 IPC. All sentences were directed to run concurrently, with benefit of Section 428 Cr.P.C.

During the pendency of the appeal, the sentence imposed upon the appellant was suspended vide order dated 08.12.2017.

3. Briefly put, the case of the prosecution is that on 13.02.2014, DD No.31PP was received, pursuant to which SI Satender reached the place of incident at *Andha Mugal*, where he met ASI Sanjay Kumar, the complainant, and her relatives. The complainant recorded her statement stating that she is illiterate and had been residing along with her family for the past six months in *jhuggis* near Nala Road No. 40, Metro Pillar No. 137, and that they worked as labourers. She stated that on the day of the incident, at about 9:15 PM, when her parents had gone to their native village, she went to her father's nearby *jhuggi* to collect a blanket on the asking of her *bhabhi*. At that time, the appellant, who used to work as a labourer with them and resided nearby, came there, pushed her while she was lifting the blanket, and with malafide intention pressed her mouth. Upon her raising an alarm, her brother came from a nearby *jhuggi* and grappled with the appellant. Thereafter, the appellant's *chacha*, Din Dayal, intervened and separated them, and also informed the police by dialling the 100 number. The complainant further alleged that the appellant had caught hold of her with malafide intention on finding her alone. On the basis of the complainant's statement, the present FIR came to be registered.

4. In support of its case, the prosecution examined 13 witnesses. The most material witness being the complainant, who was examined as PW-12. The *Bhabhi* of the victim, was examined as PW-1. The elder brother of the



victim, was examined as PW-2. Dr. Kritya Dubey, medically examined the victim and prepared her MLC, was examined as PW-10. The doctors who deposed regarding the age determination report of the prosecutrix, was examined as PW-4 and PW-5. The rest of the witnesses were formal in nature and deposed as to various aspects of the investigation.

The appellant was examined under Section 313 Cr.P.C., wherein he denied all incriminating circumstances and claimed false implication.

5. A perusal of the record indicates that the testimony of the prosecutrix is cogent, credible, and inspires confidence. She correctly identified the appellant before the Court, and her version remained unimpeached despite detailed cross-examination. Her testimony stands duly corroborated by PW-1 and PW-2, who reached the spot immediately upon hearing her cries and found the appellant inside the *jhuggi* holding the prosecutrix, thereby establishing that the appellant had trespassed into the *jhuggi* belonging to the parents of the prosecutrix. The defence plea of false implication remained unsubstantiated, as no evidence was led in support thereof.

Having considered the material placed on record, this Court concurs with the findings of the trial court and finds no grounds to interfere with the same are made out. Consequently, the conviction of the appellant is upheld qua the offence under Sections 354 and 451 IPC beyond reasonable doubt.

6. Learned counsel for the appellant, on instructions from the appellant, submits that the appellant does not wish to press the present appeal on merits and confine his prayer to be released on probation. Reliance is placed on the decision in Kanwar Pal Singh Gill Vs. State, reported as **(2005) 6 SCC 161**, wherein the Supreme Court upheld the grant of probation to an individual convicted under Section 354 IPC. It is submitted that the appellants has



clean antecedents, has remained on bail and has not misused the liberty so granted. It is further submitted that the fine amount imposed by the Trial Court is deposited, and the receipt has already been placed on record.

7. Learned APP for the State, on instructions, submits that the appellant is not involved in any other case.

8. Pursuant to this Court's directions, the Social Investigation Report is received from Probation Officer, Tis Hazari Courts has been handed over today in the Court, which is taken on record. As per the report, the appellant is a 35-year-old married man, residing with his wife and three children in a rented 1bhk room, at H.no. 173, E Block, Bharat Vihar, Palam, Delhi. The SIR indicates that the appellant has been working as a *beldar* and is the sole bread earner of the family and earns approximately Rs.18,000/- per month. His home environment is stated to be stable with his children studying in school, family and neighbours have a positive attitude towards the appellant. The SIR also notes that the appellant has studied till 5th class and is physically and mentally fit. As per the SIR, the appellant kept a socially normal behaviour and spoke politely, during interactions his temperament was normal. The report records he denies all the charges in the present case and wants to live a normal life, he is worried about the possible punishment for this act and is pleased to release him on probation. The SIR further notes that the appellant has economically satisfactory condition. The Probation Officer concludes that the appellant has no criminal antecedents, possesses positive social support, and shows good prospects of rehabilitation, and therefore finds him suitable for release on probation under supervision.

9. The underlying object of releasing offenders on probation is to facilitate their reintegration into society as law-abiding citizens, fostering



self-reliance and aiding in their reformation. A testament to the importance of this provision is that the Supreme Court in Lakhvir Singh & Ors. Vs. State of Punjab & Anr., reported as (2021) 2 SCC 763, has extended the benefits of the Probation Act even to convicts who had not completed the mandatory minimum sentence of seven years as prescribed in Section 397 IPC, since IPC was enacted before the Probation Act came into being. The relevant extract is reproduced hereunder:-

“16. ... A more nuanced interpretation on this aspect was given in CCE v. Bahubali¹⁵. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act.¹⁶ It is in this context, it was observed in State of M.P. v. Vikram Das⁶ that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 IPC, the offence in the present case. In fact, the observation made in Joginder Singh v. State of Punjab¹⁷ are in the same context.

...
18. We, thus, release the appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence.”

10. In the present case, the offence is under Section 354/451 IPC. It is pertinent to note that Section 451 IPC does not prescribe any minimum sentence. Though, Section 354 IPC prescribes a minimum sentence of one year. Nevertheless, it is well-settled that the provisions of the Probation of Offenders Act, 1958 are to be read harmoniously with the provisions of the Indian Penal Code, and that the benefit of probation can be extended



wherever the statute does not specifically exclude its operation or prescribe a compulsory minimum punishment. The bar on the application of the Act arises only where a special statute enacted after 1958 prescribes a mandatory minimum sentence coupled with a non obstante clause and hence, this Court retains discretion to extend the benefit of probation to the appellant, provided the circumstances justify such relief.

11. Having regard to the nature of the offence, the case has been pending since 2014 and the overall findings of the Social Investigation Report, as well as the legal position *qua* the applicability of Probation of Offenders Act as iterated above, this Court is persuaded to adopt a reformatory approach. The appellant has been living peacefully in society, has maintained a stable occupation, and is the sole breadwinners of his family. The Probation Officer's report further affirms their good conduct, normal social behaviour, and positive inclination towards reformation.

12. Accordingly, while upholding the judgment of conviction and order on sentence passed by the learned Trial Court, the substantive sentence of imprisonment imposed upon the appellant is modified to the extent that he shall be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, upon furnishing a probation bond in the sum of Rs.10,000/- alongwith one surety in the like amount to be satisfaction of the Trial Court within one week from today.

13. The present appeal and all pending applications, if any, stand disposed of in the above terms.

14. A copy of this judgment be communicated to the Trial Court which shall communicate a copy of this order to the concerned Probation Officer, through the concerned IO/SHO for necessary compliance.



2025:DHC:11620



15. A copy shall also be communicated to the concerned Jail Superintendent for information and necessary compliance.

**MANOJ KUMAR OHRI
(JUDGE)**

DECEMBER 15, 2025/dh

Signature Not Verified

Digitally Signed
By:NIJAMUDDIN ANSARI
Signing Date:19.12.2025
13:14:57

CRL.A. 1134/2017

Page 7 of 7