



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

% *Judgment Reserved on: 23.04.2026*
Judgment pronounced on: 28.04.2026

+ **CRL.A. 265/2018**

STATE

.....Appellant

Through: Mr. Utkarsh, APP for the State

Versus

NITU SINGH

.....Respondent

Through: Mr. Ravinder Mehandra, Advocate

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 378(1)(b) of the Code of Criminal Procedure, 1973, (the Cr.P.C.), the State in Sessions Case No. 81 of 2013 on the file of the Additional Sessions Judge-01, New Delhi District, Patiala House Courts, New Delhi, assails the judgment dated 29.01.2015 as per which the sole accused has been acquitted of the offences punishable under Sections 354A,



354D of the Indian Penal Code, 1860 (the IPC) and Section 12 of the Protection of Children from Sexual Offences, 2012 (the PoCSO Act).

2. The prosecution case is that on 20.03.2013, at about 10:00 PM at 572D, Naraina Village, New Delhi, the accused used criminal force upon PW2, aged about 17 years, with the intention to outrage her modesty and followed her with sexual intention to foster personal interaction repeatedly despite clear indication of disinterest by PW2. Hence, as per the charge-sheet/final report, the accused was alleged to have committed the offences punishable under Sections 354, 354A(i), (v), 354D, 509 IPC and Section 12 of the PoCSO Act.

3. On the basis of Ext. PW2/A FIS of PW2, given on 20.03.2013, crime no. 71/2013, Naraina Police Station, i.e., Ext. PW1/B FIR was registered by PW1, Sub-Inspector. PW3, Sub Inspector (SI), was entrusted with the investigation of the case.



PW3 conducted investigation into the crime and on completion of the same, filed the charge-sheet/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 11.09.2013, framed a charge under Sections 354A, 354D IPC and Section 12 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 3 were examined and Exts. PW1/A-C, PW2/A-F, PW3/A-D, and PX1 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. He claimed that he had been falsely implicated in the 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. 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 29.01.2015, acquitted the accused under Section 235(1) Cr.P.C. of the offences punishable under Sections 354A, 354D IPC and Section 12 of the PoCSO Act. Aggrieved, the respondent/State has come up in appeal.

10. It was submitted by the learned Additional Public Prosecutor that the impugned judgment is contrary to the facts and circumstances of the case. The version of PW2 has remained consistent. Her testimony has not been discredited in any way. Minor discrepancies in the testimony of the prosecution witnesses do not vitiate the case when the core of the prosecution story stands proved. The incident occurred at about 10:00 PM when PW2 was alone, clearly demonstrating the intent of the accused. Further, the conduct of the accused immediately after the incident, wherein PW2 rushed to her room, bolted the door from inside, and the accused followed her and repeatedly knocked on the door also needs to be taken into account. The burden shifted upon the



accused to prove his innocence as per the statutory presumption contemplated under Section 29 of the PoCSO Act, which he failed to discharge. Therefore, he submitted that the impugned judgment of acquittal be set aside, and the accused be convicted in accordance with the 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.

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. PW2/A, the FIS/FIR of PW1 reads thus:-“... *On 20.03.2013, I was studying in my room. At approximately 10:00 PM, I went to the*



bathroom. While I was returning from the bathroom to my room, a man came up from behind me and grabbed my hand. I later learned his name and address as Neetu, son of Raj Singh, resident of Village Bannikheda, Muzaffarnagar, Uttar Pradesh. I managed to free my hand, ran toward my room, and locked it from the inside. Following this, the man came to my door, started banging on it, and began shouting filthy abuses. Upon hearing the noise, other people arrived at the scene and caught Neetu, son of Raj Singh (the accused), and called the PCR. Legal action be taken against Neetu, son of Raj Singh...”

15. PW2, in her 164 statement, deposed that on 20.03.2013, she was studying in her room. At about 09:30 PM, she went to use the bathroom. When returning to her room, a man started following her. He grabbed her hand and molested her. (उसने मेरे हाथ पकड़ा व मेरे साथ छेड़खानी की). Out of fear, she ran into her room and bolted the door from inside. The man remained outside



and continued to use obscene words. He knocked on the door, but she did not open the latch. She raised an alarm and called her parents. Thereafter, persons gathered at the spot, and her brother called the police. The police arrived and took that man away.

16. PW2 when examined before the trial court, broadly supported the version given by her in Ext. PW2/A FIS/FIR and her statement under Section 164 Cr.P.C. PW2 deposed that her date of birth is 10.05.1995. She along with her family comprising her parents, brother, and younger sister were residing in a rented room on the fourth floor of the building. There were six rooms in a row on the fourth floor, where the other tenants were residing. Two common bathrooms on the same floor were used by all the tenants. At the time of the incident, her younger sister was also in the room, but her father had not yet returned from work. During that time, her mother had gone to their village, and her brother had gone to work. When the accused caught hold of her hand, he was using abusive and vulgar language. After she bolted the door of her



room from inside, the accused started banging on the door and continued to use abusive language. She immediately called her father. In the meantime, other persons gathered at the spot and apprehended the accused. Her father reached the spot shortly thereafter. The matter was then reported to the police. The police arrived at the spot and recorded her Ext. PW2/A statement. The police later arrested the accused vide Ext. PW2/B arrest memo and conducted his personal search vide Ext. PW2/C memo. Ext. PW2/D site plan of the scene of the incident was also prepared. On 05.06.2013, she was taken to the trial court, where the Magistrate concerned recorded Ext. PW2/F, her statement under Section 164 Cr.P.C. She had seen the accused earlier as he used to visit one of his friends residing in the same building. On the day of the incident, the accused was under the influence of alcohol.

16.1 PW2 in her cross-examination, deposed that her brother was working in a private company. She had never seen her brother in the company of the accused. Her brother used to return home by



09:00 PM, but on that date of the incident, he returned late. She denied the suggestion that her brother had a quarrel with the accused. She was unaware of the place of residence of the accused. She denied the suggestion that no such incident had taken place or that the accused had any quarrel with her brother. She further denied the suggestion that she was deposing falsely.

17. As per Section 386(1) Cr.P.C, the Appellate Court 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 re-tried 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, reappraise 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 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 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 v. State of Karnataka (2024) 8 SCC 149, Rajesh Prasad v. State of Bihar (2022) 3 SCC 471, Chandrappa vs. State of Karnataka, (2007) 4 SCC 415**). In **Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248**, the Apex Court observed that 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 CrPC 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 justifying a finding of fact arrived at by a judge who had the



advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below 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.

18. This Court shall, therefore, examine the evidence and the materials on record to see whether the conclusion recorded by the trial court in acquitting the appellant is reasonable and plausible or whether the same is vitiated by manifest illegality or the conclusions recorded by the trial court are such which could not have been possibly arrived at by any court acting reasonably and judiciously which may in other words be characterised as perverse.

19. Though the appellant/accused has been chargesheeted for having committed offences punishable under Sections 354, 354A(i), (v), 354D, 509 IPC and Section 10 of the PoCSO Act,



the trial court framed Charge only for the offences punishable under Sections 354A, 354D, IPC and 12 of the PoCSO Act. Therefore, I will consider whether the materials on record establish the said offences. Section 354A IPC defines the offence of sexual harassment. The essential ingredients are: (i) the victim must be a woman; (ii) there must be unwelcome and explicit sexual conduct; and (iii) such conduct may include physical contact and advances involving sexual intent, a demand or request for sexual favours, showing pornography against her will, or making sexually coloured remarks. The prerequisite of the offence is in the unwelcome nature of the act coupled with sexual intent. Section 354D IPC, on the other hand, 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 12 of the PoCSO Act provides punishment for sexual



harassment of a child. The essential ingredients are: (i) the victim must be a child below 18 years of age; (ii) the accused must engage in sexual harassment without physical contact; and (iii) such conduct may include making sexual remarks, gestures, showing pornography, or repeatedly communicating with sexual intent.

20. The materials on record or the alleged overt acts of the accused apparently do not fall under Sections 354A IPC, 354D IPC or Section 12 of the PoCSO Act.

21. If criminal force or assault on a woman or attempt to outrage the modesty is proved, the act can fall under Section 354 IPC. Section 354 IPC requires the use of criminal force or assault against a woman, and such an act being done with the intent to outrage, or knowing it to be likely that it would outrage, her modesty. Section 350 IPC defines criminal force as when any person intentionally uses force to any person without that person's



consent, in order to commit an offence or intending by the use of such force to cause or knowing it to be likely that by the use of such force, he will cause injury, fear or annoyance to the person to whom the force used. Section 349 IPC defines force as any person causing motion, change of motion, or cessation of motion to other or causing any substance such motion, or change of motion, or cessation of motion as bringing that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: provided the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the following three ways: (i) by his own bodily power (ii) by disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person. (iii) by inducing any animal to move, to change its motion, or to cease to move. Assault has been



defined under Section 351 IPC to mean any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person to apprehend that he who makes that gesture or preparation is about to use criminal force on that person.

22. In the case on hand, the conduct of the accused a stranger, in approaching PW2 at night while she was going to use the common washroom on their floor and further, catching hold of her hand without her consent certainly amounts to use of criminal force. PW2 became frightened, ran inside her room and bolted the door. Such conduct of the accused, by its very nature, is sexually coloured, and with the intention of the accused was to outrage the modesty of PW2. The absence of any relationship between the accused and PW2, and the sudden act by the accused as a stranger, demonstrates his intent. Accordingly, even if the offence under Section 354A IPC is not made out, the proved facts clearly constitute an offence under Section 354 IPC. But, no Charge under



Section 354 IPC has been framed against the appellant/accused.

23. Here it would be appropriate to refer to Section 222 Cr.P.C. Section 222(1) Cr.P.C deals with a case, “when a person is charged with an offence consisting of several particulars”. The Section permits the Court to convict the accused “of the minor offence, though he was not charged with it”. Sub-section (2) deals with a similar, but slightly different situation. Under Section 222(2) Cr.P.C., when a person is charged with an offence, and facts are proved, it is reduced to a minor offence; he may be convicted of a minor offence, although he is not charged with it. The meaning of a “minor offence” for the purpose of Section 222 Cr.P.C. was dealt with by the Apex Court in **S.M. Multtani v. State of Karnataka, 2001 (2) SCC 577**, in which it has been held that, although the said expression is not defined in Cr.P.C, it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the Section would bring



the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as a minor offence, vis- a-vis the other offence.

24. I have already referred in detail to the essential ingredients of Section 354 IPC and Section 354A IPC. It is apparent that the ingredients contemplated under Section 354 and Section 354A IPC are different. The punishment contemplated under Sub section (2) and (3) of Section 354A is lesser than the sentence contemplated under Section 354 IPC. Therefore Section 354 IPC cannot be termed as a minor offence as contemplated under Section 222(1) or (2) Cr.P.C. when compared to Section 354 IPC. In these circumstances, neither sub-section (1) or (2) of Section 222 Cr.P.C. can be invoked in this case. Hence, I find no ground for interference.

25. In the result, the appeal sans merit is dismissed.



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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

APRIL 28, 2026

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