



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

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Judgment Reserved on: 02.02.2026
Judgment pronounced on: 06.02.2026

+ **CRL.A. 424/2017**

AJAY PRASAD

.....Appellant

Through: Mr. Madan Lal Kalkal, Advocate

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State with SI
Chempat Singh, P.S. Gazipur
Mr. Moksh Arora, Advocate (*Amicus Curiae*) for Victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the sole accused in Sessions Case No. 147/2014 on the file of the Additional Sessions Judge-01 (East), Karkardooma Court, Delhi assails the judgment dated 28.02.2017 and order on sentence dated 21.03.2017 as per which he has been convicted and sentenced for the offences punishable under Section 354A and 354D of the Indian Penal



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

2. The prosecution case, in brief, is that the appellant/accused repeatedly stalked and harassed PW2 for several months and, on 14.02.2014, abused and threatened her near her house. Hence, as per the final report/ chargesheet, the accused is alleged to have committed the offences punishable under Sections 354A, 354D IPC and Section 12 of the PoCSO Act.

3. On the basis of Ext. PW2/A FIS of PW2, given on 14.02.2014, Crime No. 123/2014, Ghazipur Police Station, i.e., Ex. PW1/A FIR was registered by PW6, ASI. PW6 conducted investigation into the crime and on the completion of the same, filed the charge-sheet/final report dated 29.07.2014, alleging commission of the offences punishable under the aforementioned offences.

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.PC. As per order dated 16.12.2014, a Charge under Sections 354A, 354D IPC and Section 12 of the PoCSO Act was framed, read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs.1 to 6 were examined, and Exhibits PW1/A, PW1/C, PW1/D, PW1/DA, PW2/A-D, P1, PW4/A, PW5/A-C and PW6/A-F 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 with regard to the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence.

7. After questioning the accused under Section 313 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



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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. versus State of Kerala, 2009 (3) KHC 89; 2009 SCC OnLine Ker 2888**). In the case on hand, the accused has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him. No oral or documentary evidence was marked on behalf of the appellant.

8. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment and order on sentence, found the accused guilty of the offences punishable under Sections 354A and 354D IPC and Section 12 of the PoCSO Act and accordingly, sentenced him to undergo rigorous imprisonment for a period of six months along with fine of ₹1,000/- for offence punishable under Section 354A IPC, and in default of payment of fine, to undergo simple imprisonment for one month and to rigorous imprisonment for a



period of 2 years and fine of ₹5,000/-and in default of payment of fine, to undergo simple imprisonment of 3 months for the offence punishable under Section 354D IPC. No separate sentence has been awarded under Section 12 of the PoCSO Act in light of Section 42 of the PoCSO Act. The sentences have been directed to run concurrently. Benefit under Section 428 Cr.P.C has also been granted. Aggrieved, the accused has come up in appeal.

9.The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellant/accused by the trial court are sustainable or not.

10. It was submitted by the learned counsel for the appellant that the complaint was made only to escape the liability of repaying the money owed by PW4, father of PW2, to the mother of the accused. It was further submitted that there are material contradictions in the testimony of PW2. Further, PW3 and PW4 do not support the prosecution case. It was also submitted that PW2 was not a minor at the time of the incident. In this regard, reliance



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was placed on the testimony of PW5, the Principal, who deposed that no birth certificate or other documentary proof of age was produced at the time of PW2's admission to the school. PW2 was also unable to state her date of birth. It was further submitted that on the date of the incident, there was a quarrel between the PW2's family and one Rakesh in which the accused intervened. Hence, the present crime has been registered against him by avoiding Rakesh, the real culprit.

11. *Per contra*, it was submitted by the learned Additional Public Prosecutor that there is no infirmity in the impugned judgment. It was contended that the testimony of PW2, PW3 and PW4 are consistent and corroborates each other's version. The prosecution case stands proved and hence no interference is called for.

12. Heard both sides.

13. Before I address the arguments advanced, I make a brief reference to the testimony of PW2, PW3 and PW4. In Ext. PW2/A



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FIS of PW2, recorded on the date of incident, she has stated thus:-

“For the last 5 months, a person named Ajay Prasad, son of Uma Shankar, resident of F-46B, Harijan Basti, Delhi, has been following me while I travel to and from my office. I told him several times not to follow me. On several occasions, we even had confrontations on the road, but I used to let it go after warning him. However, he kept threatening me, saying that if I didn't talk to me, he would kill me. Today, at around 8:30 PM, when I was returning from my office, Ajay Prasad met me near Street No. 5. He stopped me and asked where I was coming from. He then started using abusive language and insisted that I talk to him. When I told him to move out of my way and let me go home, he did not move. I somehow managed to reach home and narrated the whole incident to my father. Meanwhile, Ajay arrived at our doorstep and stood there. My elder sister dialled the number 100. As Ajay was creating a scene at our door, a crowd gathered, and they caught him. Ajay stalks me and tries to force me to talk to



him.”

13.1. Ext. PW2/D, the 164 statement of PW2, is seen recorded on 17.02.2014. In the said statement, PW2 states thus:-
“On 14.02.2014, I was returning home from the office in the evening. There is a boy named Ajay Prasad who has been stalking me for many months. I had told him many times not to try to talk to me and not to follow me. My family members also spoke to him and his mother, giving them a warning that he should stop following and looking at me. But he did not listen. On 14.02.2014, he came to Street No. 5 and stopped me. He told me to talk to him and used abusive language. Then he came below my house. I called my father from upstairs, my uncle (chacha) was already downstairs. He had been harassing me continuously for five months. On that day (14.02.2014), people from the street also gathered, and everyone beat him up. My sister dialled number 100. That boy had also consumed alcohol.”

13.2. PW2, when examined before the trial court on



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13.03.2015 deposed thus: *“In the evening I was returning from office for home the accused met me. It was not the first time that I had seen him but he used to keep standing on the way almost every other day when I used to return home from my office. That day he stopped me on the way and asked me to listen to what he had to say but I refused. When he persisted and remained there only, I told him that I would call my father but even then the accused did not listen. I went to home and told my father about the incident after which he along with my uncle Ajay came to the spot where accused was still standing. There a quarrel took place between them and public also collected there. My father and uncle brought accused near our house and there also argument continued. Ultimately, my sister namely Shital called the Police....”*

13.3. In the cross-examination, PW2 admitted that there was a monetary dispute between her father and the mother of the accused prior to the incident in question. She denied the suggestion that due to the said previous enmity, the accused had been



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implicated in the case or that her father had threatened the accused and his mother that they would be implicated in a false case. PW2 admitted that a boy named Rakesh might have been there at the time of the incident. She denied the suggestion that on the day of the incident, there had been a quarrel between her uncle and Rakesh, and when the accused intervened in the same, he was beaten by her uncle and other persons. She denied the suggestion that the main culprit, named Rakesh, was left out and the present accused has been implicated due to the previous enmity between the family of the accused and her family. She deposed that her father had accompanied her to the Court for recording her statement U/s. 164 Cr.PC. The trial court has recorded thus:- *At this stage, it is being observed at the witness is under some impression of fear and it appears that she has been made frightened.* The next question reads- *“Q. I put it to you when you had come to depose u/s 164 Cr.PC, whether you were taught by your father or any police official to depose in the Court in a*



particular manner? A. I had been told by several persons as to what was to be stated.” Then the trial court has recorded: “*The witness is somewhat confused on this question and on being explained again in simple and plain language, she uttered that she does not remember as to in what context she was being asked and also as to what she had stated earlier.*”

14. PW3, sister of PW2, deposed that on 14.02.2014, between 7.00-8.00 pm while she was coming back home from office, she saw the accused having a fight with some residents of her locality. Lot of people gathered at the spot. Thereafter, she made a call to the Police.

15. PW4, the father of PW2 deposed that in February 2014, PW2 was aged about 17 years and was doing a private job. On the date of incident, he had left for work. At about 8.00 pm while he was in his office, his elder daughter (PW3) informed him over phone that a quarrel had taken place in the lane and she had called the police. By about 9.00 pm he returned home and then PW3 told



him that he had been called at police station Gazipur. Thereafter, he went to the police station. The police asked him regarding the call made by PW3 and thereafter he returned home. He does not know anything else about the case. At this juncture, the prosecutor sought the permission of the Court to “cross examine” the witness, which request was allowed by the trial court.

15.1. The further examination of PW4 by the prosecutor reads:

“... It is incorrect that on 14.02.14 at about 8.30 pm when I along with my daughter Sheetal and victim was present in the house we heard noise from outside and after coming out at the door of the house we saw accused present in the court standing outside our house and giving filthy abuses. Prior to 14.02.14 once the victim told me that one boy used to follow her while going to her office and returning back from her office however the victim was not knowing the name of



that boy and for this reason she had not told any name to me. It is incorrect that on 14.02.14 my daughter Sheetal and the victim told me that accused Ajay used to follow the victim and used to stop her on the way and forced the victim to talk to him. It is incorrect that after seeing this incident my daughter Sheetal made a call at 100 no. and persons of the locality apprehended the accused and gave beatings to him. It is incorrect that we produced the accused before the police and thereafter accused was arrested from outside our house. At this stage statement mark Y is read over to the witness from point A to A who denies having made any such statement to the police. It is incorrect that we have entered into a compromise with the accused. It is incorrect to suggest that I am deposing falsely before the court at the instance of accused as I want to save him.



(Emphasis supplied)

15.2 PW4 in the cross-examination deposed that he could not recall when PW2 was born or the documents he had furnished at the time of PW2's admission in the school. He had obtained the birth certificate of PW2 from the MCD, but the same is missing. He cannot recall the date of birth of PW2.

16. When the matter was taken up for hearing, it was submitted by the learned counsel appearing for PW2, the victim, that the latter does not want to prosecute the appeal as she wants to move forward in life and does not want further quarrels to take place between her family and the family of the accused. It was submitted by the learned prosecutor that the plight of PW2 may be taken note of by this Court. PW2, while giving her 164 statement as well as in her testimony before the trial court, has stated that she is afraid and frightened because still there is a threat from the accused, who has been threatening her all throughout.

17. The appeal has been preferred by the accused and,



therefore, on the submission of PW2 that she does not want to prosecute the appeal, the matter cannot be disposed of. Moreover, once an appeal is admitted, the Court will have to necessarily dispose off the same on merits and there cannot be a dismissal or disposal of the appeal for non-prosecution or for default. The parties do not have a case that the matter has been settled or that they have moved for quashing the case. In such circumstances, this Court has no other option, other than to consider the materials on record before this Court and dispose the matter on merits.

18. According to the prosecution, PW2 was 17 years old at the time of the incident. Neither PW2 nor her father, PW4, was able to give her date of birth. PW5, Principal, Nigam Pratibha Vidyalaya, Mayur Vihar Phase-III, Pocket A1, Delhi-96 deposed that as per records maintained in the school, PW2 was admitted in the first standard in the aforementioned school on 16.07.2001 and that her date of birth is 13.05.1996. A copy of the admission form including the affidavit given by the parents of PW2 at the time of



admission was marked as Ext. PW5/A. The zerox copy of the admission and withdrawal register containing entry made at serial no. 992 dated 16.07.2001 regarding the admission of PW2 has been marked as Ext. PW5/B. Both these records are seen marked subject to the objections raised by the defence. According to PW5, Ext. PW5/C is a certificate dated 01.07.2014 issued regarding the date of birth of PW2. PW5 in her cross-examination admitted that no birth certificate issued from the MCD or from any other Government authority or any other proof of date of birth of PW2 had been submitted by the parents at the time of her admission in the school. PW5 also admitted that she had not verified the date of birth of PW2 and the same was recorded as told by the parents at the time of admission. PW5 also admitted that she has no personal knowledge regarding the matter and whatever she has stated before the Court is on the basis of the records available in the school.

19. As noticed earlier, neither PW2 nor PW4 was able to recollect the date of birth of the former. It has come out in



evidence that PW2 at the time of the incident was working in a private concern. The materials on record are not satisfactory to prove the age of PW2. In such circumstances, the argument advanced that the prosecution has failed to prove that PW2 was a minor at the time of the incident is justified.

20. I have already referred to the testimony of PW2, the victim; PW3, her elder sister, and her father, PW4. It is quite interesting to note that the prosecutor had sought the permission of the Court to “cross-examine” PW4 on the ground that he had resiled from his previous statement. Permission is seen granted by the trial court and the further examination by the prosecutor of the witnesses is stated to be cross-examination. The Evidence Act does not contain the terms “*hostile*” witness “*adverse*” witness, or “*unfavourable*” witness. But as held by the Apex Court in **Tamil Maran. K.P v. State by Deputy Superintendent of Police, 2025 KHC 6400: 2025 SCC Online SC958**, - “*the phrase 'hostile witness' is commonly used in criminal jurisprudence and court*



proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future." But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase 'hostile witness' has come to be used for a witness who gives a statement contrary to the story of the side for which he / she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'.

20.1 In **Sat Paul v. Delhi Administration, 1976 KHC 675: (1976) 1 SCC 727**, it has been held the grant of permission to cross examine his own witness by a party is not conditional on the witness being declared "*adverse*" or "*hostile*". Whether it be the grant of permission under S.142 to put leading question, or the



leave under S.154 to ask questions which might be put in cross examination by the adverse party, the Evidence Act leaves the matter entirely to the discretion of the court. The discretion conferred by S.154 on the court is unqualified and untrammelled, and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witness's, demeanour temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, think that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness.

20.2 Further, whatever be the form and nature of the questions put to the witness, examination of a witness by the person who calls him is 'examination-in-chief' if it is before the examination of that witness by the adversary, and re-examination' if the same is after the adversary examines him. 'Cross-



examination' means examination of the witness by the adverse party. (See Sections 137 and 138 of the Evidence Act). To say that one may cross-examine his own witness is, in the face of the definition of the word 'cross-examination' as aforesaid, a contradiction in terms. S.142 of the Evidence Act bars leading questions or questions suggestive of answers in examination-in-chief and re-examination. Under S.154 Evidence Act, however, the court may allow a person to put to his own witness such questions as might be put in cross-examination by the adverse party. With permission granted under S.154, such questions, that is, leading questions can be put in examination-in-chief also. On grant of such request, the party who sought the permission would still continue to conduct examination-in-chief of the witness with liberty to put questions as put in cross-examination, namely, leading questions. The said examination is not cross-examination. The cross examination of the witness will only be by the adverse party and not by the party who calls the witness. The only object of putting



in examination-in-chief with the permission of the court questions of the kind allowed only in cross-examination, is not to discredit the witness but to bring out evidence which would advance the case of the cross-examiner or the person calling the witness, as the case may be.

21. Further, the testimony of PW2, PW3 and PW4 does not satisfy the ingredients of Sections 354A or Section 12 of the PoCSO Act. Sections 354A(1) IPC reads thus:-

“354A. Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman;

or



*(iv) making sexually coloured remarks,
shall be guilty of the offence of sexual harassment.*

22. The materials on record or the alleged overt acts of the accused apparently do not fall under clauses (i) to (iv) of Section 354A IPC.

23. Section 12 of the PoCSO Act deals with punishment for sexual harassment. Sexual harassment is defined in Section 11 as:-

“11. Sexual harassment.—*A person is said to commit sexual harassment upon a child when such person with sexual intent,*—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his



body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves “sexual intent” shall be a question of fact.”

24. Therefore, to attract an offence under Section 11 of the



PoCSO Act, the accused must have done any of the acts under clauses (i) to (vi) with sexual intent. That is absent in the acts of the accused. Hence, the offence under Section 11 of the PoCSO Act is also not made out.

25. Now coming to Section 354D IPC:-

“354D. Stalking.—(1) Any man who—

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or



detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”

26. I have already referred to the testimony of PW2 and



PW4, which are inconsistent in material particulars. Going by the version of PW4, he was never present in his home when the incident occurred. However, according to PW2, when the accused kept following and abusing her on the date of the incident, she called her father who came down from her house and then a quarrel ensued. If PW4 is to be believed, he was never present at home at the relevant time and that he was at his office. He was informed by his elder daughter, namely, PW3, that a quarrel had happened in the lane situated near their residence and that PW3 had informed the police about the same. Further, the testimony of PW2, PW3 and PW4 will have to be read in the background of the admission made by PW2 that there was a monetary dispute between her father and the mother of the accused.

27. Further, PW4, who is none other than the father of the victim does not support the prosecution case despite the prosecutor examining him by putting leading question pursuant to the permission granted by the Court under Section 154 of the Indian



Evidence Act, 1872. It appears that some incident did happen. The accused might have threatened and used abusive language. But this does not satisfy the ingredients of the offences charged. The alleged intimidation is not a minor offence when compared to the offences under Sections 354A, 354D IPC or Section 12 PoCSO Act. Therefore, taking recourse to Section 222(2) Cr.P.C. also, the appellant/ accused cannot be found to have criminally intimidated PW2 or committed an offence coming under Section 506 IPC as he has not been charged for the said offence. That being the position, it can only be held that the prosecution has failed to establish the offences charged against the accused. Hence, the trial court apparently went wrong in convicting the accused for the offences punishable under Sections 354A, 354D IPC and Section 12 of the PoCSO Act.

28. In the result, the appeal is allowed. The impugned judgment convicting and sentencing the accused for the offences punishable under Sections 354A, 354D IPC and Section 12 of the



PoCSO Act is set aside. The accused is acquitted under Section 235(1) Cr.P.C. He is set at liberty and his bail bond shall stand cancelled.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 06, 2026/kd/er