



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

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Judgment Reserved on: 07.04.2026
Judgment pronounced on: 16.04.2026

+ **CRL.A. 1036/2016**

ROHIT

.....Appellant

Through: None.

Versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Akash Deep, PS Gulabi Bagh.

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 SC No. 22/2014 (New Case No. 27704/2016) on the file of the Additional Sessions Judge-01, Central District, Tis Hazari Courts, Delhi, assails the judgment dated 30.07.2016 and the order on sentence dated 16.08.2016 by which he has been convicted and



sentenced for the offences punishable under Sections 354 and 354A of the Indian Penal Code, 1860 (the IPC) and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 06.02.2014 at about 8:45 PM, near House No. 48, Pratap Nagar, Delhi, the accused sexually assaulted PW5, a minor aged about 14 years, by catching hold of her, gagging her mouth and pulling her. It was further alleged that by using criminal force against PW5, the accused outraged her modesty. Accordingly, as per the charge-sheet/final report dated 25.02.2014, the accused was alleged to have committed offences punishable under Sections 341, 354, 354A, 323 IPC and Section 8 of the PoCSO Act.

3. On the basis of Exhibit PW5/A FIS/FIR dated 06.02.2014 of PW5, given on 06.02.2014, crime no. 20/2014, Gulabi Bagh Police Station, i.e., Exhibit PW6/C FIR was registered by PW6, Head Constable. PW11, Sub Inspector (SI) was



entrusted with the investigation of the case. PW11 conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report dated 25.02.2014 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 19.03.2014, framed a Charge under Sections 354 IPC and Section 8 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 11 were examined and Exhibits PW1/D1, PW2/A, PW3/A-D, PW4/A-B, PW5/A-B, PW6/A-E, PW11/A-B 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 stated that he had been falsely implicated as he had a quarrel with PW10, who had caused injuries to him, and in order to save PW10 from prosecution, PW5 lodged a false complaint against him.

7. After questioning the accused under Section. 313(1)(b) Cr.PC, compliance of Section 232 Cr.PC was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.PC 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 30.07.2016 held the accused guilty of the offences punishable under Sections 354 and 354A IPC and Section 8 PoCSO Act. *Vide* order on sentence dated 16.08.2016, sentenced him to undergo rigorous imprisonment for a period of 3 years along with fine of ₹5,000/-, and in default of payment of fine, to simple imprisonment for a period of one month for the offence punishable under Section 8 of the PoCSO Act. No separate sentence was awarded for the offences punishable under Sections 354 and 354A IPC. Aggrieved, the accused has preferred this appeal.

10. The order dated 13.02.2026 of this Court reads thus:

“1. On 01.12.2025, none appeared on behalf of the appellant and therefore, bailable warrant was issued against the appellant.



2. Today, Advocate Mr. Amit Rao appears on behalf of the appellant, along with the appellant, and submits that he shall ensure his own presence as well as the presence of the appellant on all hearing dates.

3. List the matter for final hearing on 07.04.2026.”

But when the appeal was taken up for hearing on 07.04.2026, none appeared. As the appeal is of the year 2016, this Court was not inclined to adjourn the case. Hence, relying on the dictum of the Apex Court in **Bani Singh & Ors. v. State of U.P., (1996) 4 SCC 720**, this Court is proceeding to consider the appeal on merits after going through the entire records in the case.

11. In the appeal memorandum, it is alleged that the trial court erred in convicting the appellant under Section 354 and 354A IPC and Section 8 of the PoCSO Act despite the prosecution having failed to prove its case beyond reasonable doubt. It is contended that the impugned judgment is based on conjectures and surmises and that the testimony of PW5 is unreliable, suffering from material contradictions and improvements at different stages,



including her statements to the police under Section 161 Cr.PC, Section 164 Cr.PC statement, and the testimony before the Court.

11.1. It is further alleged that there are serious inconsistencies regarding the place and manner of the incident, including whether it occurred on the staircase or downstairs. There are material inconsistencies between the testimony of PW5 and PW10, the alleged eye witness. It is also contended that there are material contradictions regarding the identity and role of PW10, who has been described at different stages as a cousin and as a neighbour, along with discrepancies in his testimony regarding the date and timing of the incident, thereby rendering the prosecution version unreliable.

11.2. It is also contended that PW1, the mother of PW5 is not an eyewitness and her testimony is hearsay in nature, yet undue reliance has been placed upon it. The appellant has further raised a defence that a quarrel had taken place between him and PW10, in which he sustained injuries, and that the present case is a false



implication engineered to shield PW10, which defence finds support from the prosecution evidence but has not been properly appreciated. It is further alleged that no independent public witnesses were examined despite their admitted presence at the spot.

11.3. It is also alleged that the medical evidence suffers from material discrepancies, including overwriting in the MLC and absence of any history of sexual assault disclosed to the doctor, thereby creating doubt regarding the prosecution case. It is also contended that the essential ingredients of Sections 7 and 8 of the PoCSO Act are not made out, as there is no specific allegation establishing sexual intent or acts falling within the statutory definition of sexual assault. On these grounds, it is alleged that the prosecution case lacks credibility and that the conviction and sentence are unsustainable in law and liable to be set aside.

12. *Per contra*, the learned Additional Public Prosecutor submitted that the impugned judgment does not suffer from any



illegality or infirmity, as the conviction of the appellant is based on the cogent, consistent and trustworthy testimony of PW5, who has stood by her version throughout the trial. It is contended that PW5 has consistently deposed that the appellant had caught hold of her, gagged her mouth and pulled her, which clearly attracts the offences under Section 354 IPC as well as Section 8 of the PoCSO Act. It was further submitted that her testimony stands duly corroborated by the testimony of PW1 and PW10, as well as the medical evidence on record. Minor inconsistencies, if any, are stated to be natural and do not go to the root of the case.

13. The learned *Amicus Curiae* for the victim has further submitted that the appellant is a complete stranger to PW5 and resides several lanes (*galis*) away from her house, and therefore, there was no reason or occasion for PW5 or her family to falsely implicate him in the present case. It is contended that the absence of any prior acquaintance or enmity lends credibility to the prosecution case and strengthens the version of PW5.



14. Heard and perused the records.

15. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgement calling for an interference by this court.

16. I shall make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case Exhibit PW5/A, the FIS/FIR of PW5 reads thus:-On 06.02.2014, she was returning home from tuition at O-Block and at about 08:45 PM. When she reached near the bottom of the stairs of her house, a boy (the accused) came there, gagged her mouth and started molesting her (छेड़ छाड़ करने लगा) . At that very time, her cousin Amit Bholra (PW10), reached there and, on seeing the incident, apprehended the accused. Thereafter, a scuffle ensued between the accused and PW10. Hearing the commotion, several persons from the neighbourhood gathered at the spot, who also caught hold of the accused and started beating him. Thereafter her mother Simran (PW1) called the police, pursuant to which a PCR



van reached the spot shortly thereafter. The PCR officials took the accused into custody. Thereafter, she went to the police station along with her mother (PW1) and father, where her statement was recorded.

16.1. In Exhibit PW5/B Section 164 statement seen recorded by the Magistrate on 07.02.2014 and in her testimony before the court, PW5 stood by her version in the Exhibit PW5/A FIS/FIR.

17. PW1, the mother of PW5, deposed that her daughter was aged about 14 years at the time of the incident. On 06.02.2014, at about 08:00PM - 8:30 PM, while at home, she heard a commotion. When she came out from her house, she saw that PW10 had caught the accused, as the latter was teasing her daughter. She was informed of this by PW10 and her daughter. PW1 identified the accused in court.

17.1. PW1, in her cross examination, deposed that PW10 is not her relative. However, PW10 had cordial relations with her family and her daughter used to treat him like her brother. PW1



denied the suggestion that her daughter was in habit of roaming around in the area with PW10. PW1 further deposed that the accused had been beaten up by PW10 and the other neighbours. PW1 admitted that a quarrel had taken place between PW10 and the accused. However, PW1 denied the suggestion that in order to save PW10, her daughter, had made a false statement against the accused.

18. PW10 deposed that on 06.02.2015, at about 08:30 – 08:45 p.m., while he was going down the stairs of his house to take a walk with his dog after dinner, he saw the accused teasing PW5. Seeing this, he caught hold of the accused, and a fight ensued between him and the accused. The accused tried to flee from the spot, however, on raising alarm by him, many people gathered there and the accused was apprehended. At this juncture, the prosecutor sought permission of the trial court to declare PW10 as hostile on the ground that he is resiling from his previous statement given to the police. The request sought was allowed. On



further examination by the prosecutor, PW10 deposed that the incident had taken place on 06.02.2014 and not on 06.02.2015. PW10 deposed that he could not recollect the exact date due to lapse of time.

18.1. PW10, in his cross examination, denied the suggestion that a fight had taken place in the park between him and accused or that he had inflicted an injury on the accused and in order to save him, PW5 had lodged a false complaint against the accused. PW10 also denied the suggestion that he had friendly relations with the family of PW5. According to PW10, he being a neighbour of PW5, had normal relations with her family.

19. As noticed earlier, the trial court has framed Charge only under Section 354 IPC and Section 8 of the PoCSO Act. Hence, the trial court could not have convicted the accused for the offence punishable under Section 354A IPC also, in the absence of a specific Charge to the said effect. The offence under Section 354 and 354A IPC are distinct offences and hence without a charge



having been framed under Section 354A IPC, the trial court went wrong in finding the accused guilty under Section 354A IPC. There is yet another mistake committed by the trial court. After having found the accused guilty of the offence punishable under Section 354 IPC also, the trial court was bound to pass a sentence for the same. Section 42 of the PoCSO Act is not applicable to Section 354 IPC and so, the trial court was bound to award a sentence for the said offence also. But no sentence is seen awarded. There is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. (See **Chetram v. Ranjeet, 2024 SCC OnLine SC 5922024:2024 KHC 8194**). However, no appeal has been filed by the state challenging this illegality committed by the trial court. Therefore, in an appeal under Section 374 Cr.PC filed by the accused against the conviction, this court cannot pass a sentence as the said provision is not contemplated under Sub-clauses (i), (ii) or (iii) of clause (b) of Section 386.



20. In order to determine whether the conviction recorded by the learned trial court is sustainable, it is necessary to examine whether the essential ingredients of the offence under Section 8 of the PoCSO Act have been made out from the evidence on record. Section 7 of the PoCSO Act (punishable under Section 8 of the PoCSO Act) requires that the accused, with sexual intent, touches the private parts of the child or makes the child touch him, or does any other act involving physical contact with sexual intent without penetration. Thus, the element of "sexual intent" is essential.

21. Applying the above legal position to the facts of the present case, the testimony of PW5 establishes that the accused caught hold of her from behind, gagged her mouth and pulled her while she was climbing the stairs. PW5 also deposed that the accused had - “छेड़ छाड़ करने लगा” . The conduct of the accused, being a stranger, in catching hold of a minor girl forcibly at night, and molesting her certainly comes within the expression “or does any other act involving physical contact with sexual intent” as



contemplated under the latter part of Section 7 of the PoCSO Act. His act of grabbing the girl, a complete stranger, could only have been “*with sexual intent*” as the accused has no explanation for the same. Therefore, the ingredients of Section 8 PoCSO act have been clearly established.

22. Section 354 IPC for which the accused has been found guilty contemplates assault or use of criminal force against a woman with the intent to outrage, or knowing it to be likely that the modesty of such woman will be outraged. The essential ingredients are: (i) assault or criminal force; and (ii) intention or knowledge to outrage modesty. The accused by his act of grabbing PW5, a young girl and a complete stranger to him could have been only with the intention or knowledge to outrage her modesty. The evidence does make out the said offence. But for the aforesaid reasons, this Court cannot now impose a sentence for the offence punishable under Section 354 IPC.



23. The minor contradictions pointed out by the defence, such as variation regarding the exact location (staircase or downstairs) or the description of PW10 as a cousin or neighbour, do not go to the root of the prosecution case. The core substratum of the prosecution version remains intact. The testimony of PW5 is reliable and finds corroboration from PW10 and surrounding circumstances.

24. Before concluding, it is necessary to note an irregularity in the manner in which PW10 was declared hostile. It is evident that the witness was sought to be treated as hostile merely on account of a discrepancy in stating the date of incident. Section 154 of the Evidence Act vests discretion in the Court to permit a party to put questions in the nature of cross-examination to its own witness; however, such discretion is to be exercised judiciously and only when the witness is shown to be adverse or resiling from his previous statement. Mere inconsistency or lapse of memory, particularly with respect to dates, does not *ipso facto*



render a witness hostile (see **Sat Paul v. Delhi Administration, AIR 1976 SC 294; Akhil Das v. State of Tripura, 1998 Cri LJ 1156**). No proper foundation appears to have been laid by the prosecutor before seeking such permission in the present case. In the absence of any material contradiction on core aspects, the invocation of Section 154 was unwarranted. Nevertheless, this irregularity does not affect the substratum of the prosecution case.

25. In the light of these circumstances, this Court holds that the conviction and sentencing of the appellant/accused for the offence punishable under Section 354A IPC is unsustainable and so is liable to be set aside. However, the conviction and sentence of the appellant for the offence punishable under Section 8 of the PoCSO Act is based on reliable evidence.

26. In the result, the appeal is partly allowed. The appellant/accused is acquitted under Section 235(1) Cr.P.C. for the offence punishable under Section 354A IPC. The conviction and



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sentence for the offence punishable under Section 8 PoCSO Act is confirmed.

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

CHANDRASEKHARAN SUDHA
(JUDGE)

APRIL 16, 2026
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