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

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Judgment Reserved on: 15.04.2026
Judgment pronounced on: 17.04.2026

+ **CRL.A. 48/2017**

AJAY KUMAR

.....Appellant

Through: Mr. Ravi Tikania, Advocate.

Versus

STATE (NCT OF DELHI)

.....Respondent

Through:

Mr. Utkarsh, APP for the State with
SI Monika, PS Alipur.

Mr. B. Badrinath, Advocate for
DSLSA.

Ms. Devika Mohan, Mr. Karan and
Mr. Dhruv Negi, Advocates.

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.PC), the sole accused in SC No. 57840/2016 on the file of the Additional Sessions Judge-01, North



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District, Rohini Courts, Delhi, assails the judgment dated 19.12.2016 and the order on sentence dated 22.12.2016 by which he has been convicted and sentenced for the offences punishable under Section 354 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 is that on 23.02.2014 at 10:15 AM, on the main road, near BDO Office, Alipur, the accused assaulted PW1, a minor girl, aged about 13 years, by showing his private part to her with an intention to outrage her modesty. Accordingly, as per the charge-sheet/final report dated 18.03.2014, the accused was alleged to have committed offences punishable under Sections 354 and 354AIPC and Section 12 of the PoCSO Act.

3. On the basis of Exhibit PW1/A FIS/FIR dated 23.02.2014 of PW1, crime no. 164/2014, Alipur Police Station,



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i.e., Exhibit PW6/A FIR was registered by PW6, Assistant Sub Inspector. PW14, Sub Inspector (SI) was entrusted with the investigation of the case. PW14 conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report dated 18.03.2014 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.PC. After hearing both sides, the trial court, *vide* order dated 28.07.2014, framed a Charge under Sections 354 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 14 were examined and Exhibits PW1/A-B, PW6/A-B, PW7/A-B, PW8/A-



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B, PW8/D1, P1, PW10/A, PW11/A-B, PW12/A-D, PW13/A 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.PC 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 PW2, father of PW1, was engaged as a van driver for school children and that he had borrowed ₹5,000/- from the former. He further stated that he had repaid the loan after some delay, at which time, he had a quarrel with PW2, who managed to get his services terminated from the school, and later on falsely implicated him in the present case.

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



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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.PC 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 19.12.2016 held the accused guilty of the offences punishable under Section 354 IPC and Section 12 PoCSO Act. *Vide* order on sentence dated 22.12.2016, sentenced him to undergo rigorous imprisonment for a period of 1 year along with fine of ₹2,500/-, in default of payment of fine, to simple imprisonment for 30 days for the offence punishable under



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Section 354 IPC, and to rigorous imprisonment for a period of 1 year along with fine of ₹2,500/-, in default of payment of fine, to simple imprisonment for 30 days for the offence punishable under Section 12 of the POCSO Act. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.

10. It was submitted by the learned counsel for the appellant/accused that the prosecution case suffers from serious infirmities and assailed the impugned judgement by stating that the prosecution witnesses, particularly PW3, PW4 and PW8 have failed to corroborate the testimony of PW1 on the material aspects of the alleged incident. It was further argued by the learned counsel that in the absence of such corroboration, the testimony of PW1 becomes doubtful and unsafe to be relied upon. Emphasis was on the settled principle of law that the testimony of the victim



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must be of sterling quality to be relied upon by the trial court, while convicting the accused.

11. *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 PW1, who has stood by her version throughout the trial.

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 judgement calling for an interference by this court.

14. I shall make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Exhibit PW1/A, the FIS/FIR dated 23.02.2014, of PW1 reads thus:- On 23.02.2014, at 10:15 AM, a medical camp was organized at PW1's school, which required her presence. Since the



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school buses were not operating on that day, she was standing near the Chaupal at Jindpur Chowk to take a rickshaw, when suddenly a white coloured van approached from the front and stopped near her. The driver of the van (the accused Ajay), who was already known to PW1, offered to drop her at school, for which she agreed and entered the van. Upon reaching Alipur, she requested the accused to drop her off, but the accused did not stop the van. The accused thereafter unzipped his pants, exposed his private parts, and began moving it (“शूशू बाहर निकालकर हिलाने लगा”). Witnessing this, PW1 got frightened and jumped out of the moving van. After falling, PW1 noted down the vehicle registration number, which is DL-8CP-9085, before the accused sped away in the van. She further stated that she narrated the entire incident to her father (PW2), who then reported the incident to the police.

14.1. In Exhibit PW1/B Section164 statement seen recorded by the Magistrate on 24.02.2014, PW1 made a few minor



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improvements in her version. PW1 stated that while she was on her way to school at about 9:30 AM, a man (the accused) came in a van and stopped the van in front of her. She further stated that the accused was known to her who had earlier driven school bus, and she later came to know that his name was Ajay. When the accused stopped the van near her, she asked him as to where he was going to which the accused replied that he was going towards Alipur, after which the accused offered PW1 to drop her at Alipur. Thereafter, when PW1 again asked the accused as to where he was going, he replied that since it was a Sunday, he was roaming around aimlessly, after which the accused started taking the vehicle through the godown route, upon which PW1 questioned the accused as to why he was taking that route instead of the usual route to which the accused replied that the usual route was crowded and therefore he was taking this alternative route. PW1 further stated that at this point, the accused opened the zip of his



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pants and exposed his private parts and started moving it. On seeing this, PW1 jumped out of the moving van, as a result of which she sustained injuries on her hands and legs. She further stated that, she was carrying a paper and a pen, and hence she was able to note down the registration number of the vehicle. Thereafter, PW3 an acquaintance of PW1, who was running an electronics and vehicle repair shop, who reached there, picked her up from the road. According to PW1, PW3 also shouted at the accused, but the latter fled away from the spot in the van. PW1 further stated that she narrated the entire incident to PW3 who called PW2, the father of PW1. She also stated that PW4, the wife of PW3, washed her face and gave her tea. Thereafter, PW3 called PW8, the principal of her school who took her to the school. PW1 further stated that she had an ASL examination in her school and when she reached there, her paternal uncle and other family members arrived there and took her back home. Thereafter, the



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police was called after her father also returned home to whom she narrated the entire incident. PW1 also stated that the accused had called her father and stated that he would apologise and requested that the matter not be reported to the police and that when the accused was coming to her house to apologise, he was apprehended by the police on the way.

15. PW1, when examined before the trial court, stood by her case in the FIS/FIR and Section 164 statement.

15.1. PW1, in her cross examination, deposed that when she was in Class VI, the accused used to drive the school bus and that she used to go by the said bus. PW1 also admitted that her father was also engaged as a bus driver in the same school, however, he had left the services of the school long back. PW1 also deposed that she was not aware about the name of the accused and that she came to know the name of the accused only after PW8, her school principal informed her. PW1 further deposed that after the incident



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she went to the house of PW3 and that she informed PW3 about the incident. Thereafter she had gone to her school. PW3 was the first person to be told about the incident. However, she clarified that she had not fully explained the entire incident to PW3.

16. PW2, the father of PW1, deposed that at the time of incident, his daughter was studying in Gyanodaya Model Public School in class 8th. On 23.02.2014, his daughter went to school as usual. At about 09:00 - 09:30 AM, he received a call from PW3, who informed him that his daughter was sexually assaulted. Thereafter, he immediately returned to his house from duty. PW1 told him about the incident, after which he reported the incident to the police. Subsequently, police came to his residence and recorded the statement of his daughter. PW2 further deposed that the police took her daughter for medical examination and that he had refused internal medical examination. PW2 stood by his case in the cross examination.



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17. PW3 deposed that on 22.02.2014, at about 9:30 - 10:00 AM, he opened his shop situated at Plot No. 100, Nehru Enclave, Alipur. According to PW3, within 10 minutes of opening his shop, a girl (PW1) aged about 12 to 13 years came weeping into his shop and requested him to call her father. On her request, he called PW2, the father of PW1. PW3 further deposed that PW2, father asked him to drop PW1 at her School. PW4, his wife came and enquired about the incident. His wife offered PW1 a glass of water. Thereafter he dropped PW1 at her school. At this juncture, the prosecutor sought permission of the court to put some leading questions on the ground that the witness had not supported the prosecution case. The request sought was allowed. On further examination by the prosecutor, PW3 deposed that as far as he can recall, the incident occurred on 22.02.2014 and not on 23.02.2014. PW3 admitted that he knew the father of PW1. PW3 denied the suggestion that he had seen PW1 falling down from the Maruti Car



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or that he tried to stop the driver of the car or that the driver without heeding his request had sped away. PW3 in his cross-examination deposed that he did not see any car on the date of the incident.

18. PW4, the wife of PW3, deposed that she could not recollect the date of incident. According to her, on the date of incident, PW3, her husband, brought a girl aged about 11-12 years (PW1) with him to drop her at her school. As the girl was weeping, she helped the former wash her face and also offered a glass of water to her. Thereafter, the girl went inside her school. The prosecutor sought permission of the trial court to put some leading question as the witness had not supported the prosecution version. The permission sought was allowed. On further examination by the prosecutor, PW4 deposed that she could not recollect the date of the incident. PW4 further deposed that she remembers it to be a Sunday and that she was not aware about the parentage of the said



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girl. PW4, in her cross examination, deposed that she did not notice any injuries on the person of PW3

19. PW8, the Principal, Gyanodya Model Public School, Alipur, Delhi, deposed that PW1 was admitted in the school on 09.04.2007 and as per records, her date of birth is 22.11.2000. PW8 further deposed that on 23.02.2014, the school was open on account of a community medical check-up camp and the parents of the students were invited along with their children. On the date of incident, PW3, one of her neighbours informed her that one of her students was in distress. Thereafter she met PW1, who told her that when she was coming to the school in a van, the driver of the van was talking to somebody on the phone in an agitated manner, due to which she got frightened and she jumped out from the van. The prosecutor sought the permission of the trial court to “*cross-examine*” the witness on the ground that she was resiling from her previous statement. The request sought was allowed. During



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further examination by the prosecutor, PW8 denied having stated to the Police that the accused had misbehaved with PW1. PW8 denied the suggestion that PW1 had informed her regarding the misbehaviour of the accused. PW8 denied the suggestion that she had been won over by the accused.

20. The appellant/accused stands convicted for the offences punishable under Section 354 IPC and Section 12 of the PoCSO Act. To bring home an offence under the aforementioned Sections, it is necessary to examine whether the materials on record satisfies the ingredients of these Sections. Section 354 IPC requires use of criminal force or assault against a woman and such act being done with the intent to outrage, or knowing it to be likely that it would outrage, her modesty. 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



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is about to use criminal force to that person. Section 12 of the PoCSO Act, read with Section 11, thereof contemplates “sexual harassment” which includes showing of any object or part of the body with sexual intent or making a child witness a sexually coloured act. In the case on hand, the consistent version of PW1 is that the accused while driving the vehicle, unzipped his pants, exposed his private parts, and performed a lewd act in her presence, to which act I have already referred to. Seeing this act of the accused, she became frightened and jumped out of the moving car. Such conduct of the accused, by its very nature, is sexually coloured, and the intention of the accused to outrage the modesty of PW1, a minor girl. The act also created a reasonable apprehension in the mind of the girl as contemplated under Section 351 IPC. The act squarely falls within the ambit of both the aforementioned Sections.



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21. The prosecution case primarily rests on the sole testimony of PW1, on the basis of which the trial court proceeded to convict the accused. It is a settled position of law that conviction can be based on the sole testimony of the victim if it is of sterling quality, and the same does not require any corroboration [See **Rai Sandeep @ Deepu v. State (NCT of Delhi), AIR 2012 SC 157**]. In the present case PW1 has consistently supported the prosecution version in her FIS/FIR, her statement in Section 164 Cr.PC and her testimony before the trial court. The core substratum of her testimony, i.e., the identity of the accused, the act attributed to him and the manner in which the incident occurred, has remained unshaken. The inconsistencies, pointed out by the defence such as the route taken, conversation between the parties, or post-incident events are minor in nature, and they do not go to the root of the prosecution case. Such minor discrepancies are natural, particularly when the witness is a child, a minor, and the same



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does not affect the credibility. Rather, they lend assurance to the testimony, as they indicate the absence of tutoring. The testimony of PW1, when read in its entirety, inspires the confidence of this Court and that it is of sterling quality because the core allegation, that the accused exposed himself and indulged in a sexually coloured act remains intact throughout.

22. Further, as held in **Rai Sandeep** (*supra*), it is well settled law that even if a witness turns hostile, it cannot be disregarded in *toto* and the conviction can be sustained solely on the basis of the testimony of the victim/the prosecutrix alone. In the present case, even though PW3 and PW4 did not fully support the prosecution case, they do corroborate the fact that PW1 was found in a distressed condition immediately after the incident. PW8 also confirms that PW1 was in distress on that day. The hostility of these witnesses does not go to the root of the prosecution case.



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23. It is also seen that the defence has sought to rely upon the statement of PW8 made in Exhibit PW8/D1 Section 161 Cr.PC statement. The statements made under Section 161 Cr.P.C. are statements made to the police during the course of investigation and the same cannot be used except for the purpose stated in the proviso to Section 162(1) Cr.P.C. Under the proviso to Section 162(1) Cr.PC such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in Section 145 of the Indian Evidence Act, 1872 and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance for the testimony of a witness in court. [See **Tahasildar Singh v. State of U.P.**, AIR 1959 SC 1012; **Sat Paul v. Delhi Admn.**, (1976) 1 SCC 727 and **Delhi Administration v. Lakshman Kumar**, 1985 KHC 741: (1985) 4 SCC 476].



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24. I find no infirmity in the impugned judgement calling for interference by this Court.

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

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

APRIL 17, 2026
kd/p'ma/rs