



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

% Date of Decision:17.11.2025

+ **CRL.A. 165/2016**

ASHISH KUMAR @ VISHNU DEV Appellant
Through: Mr. Amardeep Singh, Advocate with
appellant in person (M:9811111144)

Versus

STATE Respondent
Through: Ms. Shubhi Gupta, APP for State
Mr. Nishant Datta, Advocate (Amicus
Curiae, pro bono) for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present appeal, the appellant seeks to assail the judgement of conviction and order on sentence 11.12.2015 passed by ASJ, SFTC-2(Central), Tis Hazari, Delhi in SC No. 31/2015 arising out of FIR No.153/15 under Sections 354/323/341 IPC registered at P.S. Kashmiri Gate, Delhi.
2. Vide the order on sentence, the appellant has been directed to undergo RI for a period of 6 months and fine of Rs.500/- and in default of payment of fine, to undergo SI for 1 month for the offence punishable under Section 323 IPC. He was further sentenced to undergo RI for 1 month for the offence punishable under Section 341 IPC. He was further sentenced to undergo RI for 3 years with fine of Rs.1,000/- and in default of payment of fine to



undergo SI for 3 months for the offence punishable under Section 354 IPC. He was further sentenced to undergo RI for 5 years and payment of fine of Rs.1,000/-, and in default of payment of fine, to undergo SI for 3 months for the offence punishable under Section 354B IPC. The benefit of Section 428 Cr.P.C. has also been provided to the appellant, and all the sentences have been directed to run concurrently.

Sentence of the appellant was suspended by this Court vide order dated 16.05.2016.

3. Briefly put, as per case of the prosecution it was alleged that on 15.02.2015 at about 08:30 PM, while the complainant was waiting to board the metro train at Platform No.2 Metro Station, Model Town, the appellant came from behind and molested her. As per the complaint, the victim was dragged by the appellant due to which she suffered injuries. Upon registration of FIR, the investigation commenced in which statement of prosecutrix came to be recorded. She was medically examined. The CCTV footage of the place of the incident was seized and the charge-sheet came to be filed. Upon framing of charge, the appellant pleaded not guilty and claimed trial.

4. The prosecution examined a total of 8 witnesses in support of its case. The material witnesses included the complainant, who was examined as PW-2; *Sanjay Sharma*, Controller at Model Town Metro Station, was examined as PW-3; and SI *Ranbir Singh*, who received DD No. 13A, recorded the complainant's statement, prepared the *rukka* and site plan, was examined as PW-4. The MLCs of both the complainant and the appellant was prepared by Dr. *Valvi Kuldeep Tapsing*, Medical Officer at Aruna Asif Ali Hospital, examined as PW-5. Insp. Narender Singh Baghel, who



produced the CD containing CCTV footage of Model Town Metro Station and the certificate under Section 65B of the Evidence Act, was examined as PW-6. The remaining witnesses were formal in nature and deposed to various aspects of the investigation.

5. Mr. Amardeep Singh, learned counsel appearing for the appellant contends that a reading of the court deposition of the complainant would show that the identity of the appellant could not be conclusively established. He submits that there are many flaws in the investigation as the I.O. had not explained as to how and when the first information about the incident was received at 11.30 PM, nor how the site plan came to be prepared one and a half hour before the incident, at about 10, as admitted by him during his court deposition.

6. Learned counsel for the appellant further submits that the reading of the statements and the court deposition of the prosecutrix would show that the victim was not consistent about the incident and thus her testimony fails to inspire confidence.

7. The submissions made on behalf of the appellant are repelled by Mr. Nishant Datta, learned *Amicus Curiae* appointed for the victim, as well as the learned APP for the State. It is submitted that there is no infirmity or inconsistency in the statement of the victim and that the appellant's identity also stands proved in terms of the CCTV footage of the incident, which was seized. The testimony of SI Ranbir Singh and Sanjay Sharma, who were examined as PW-4 and PW-3 respectively has been relied upon. Mr. Datta contends that a holistic reading of the aforesaid two witnesses would show that it was the appellant who was apprehended at the spot by the public persons and then handed over to the I.O.



8. It is next submitted that the appellant has not denied his presence at the spot. In his statement under Section 313 Cr.PC, while answering Q.No.17, he stated that though he was present somewhere outside in a park with his friends, however neither any suggestion in this regard nor any defence witness to establish the same was produced during trial.

9. The learned APP for the State also draws the attention of the Court to the testimony of the victim to submit that though the victim has been uncertain, however, an overall reading of her statement would make the identity of the appellant not doubtful.

10. I have heard learned counsel for the parties and perused the record including the statement of the victim.

11. The complainant, examined as PW-2, deposed that on the date of the incident, while she was waiting for the metro train, one person caught her from behind. The said accused closed her mouth with his hand and started dragging her towards a corner. The said accused threw her on the floor and started '*Badtmizi*'. On a Court question, she explained as to what she meant by '*Badtmizi*', she stated that the person put her face between his knees and she was unable to shout or use her phone, which was in her hand at that time. She further deposed that he also tried to disrobe her, and at that moment, a metro train reached the platform, he fled away. The passenger who had deboarded from the train came to her rescue and caught hold of him.

12. Coming to the main plank of appellant's challenge to the impugned judgment i.e. on the point of identification, it is noted that when clarification was asked for, the victim stated that she was not certain, if the appellant was the same boy or not. She further stated that she could be able to identify the



appellant on seeing the CCTV footage of the incident of the metro station. During her subsequent examination, the said CCTV footage was played in the Court, however the victim was still unable to identify the appellant stating that his face was not clearly visible in the said recording. As she did not support the prosecution case, she was cross-examined by the learned APP for State in which she admitted that she made her statement under Section 164 Cr.PC as per the events that had taken place.

13. At this stage, this Court also takes note of the fact that while in her initial statement, she had stated that the appellant had also touched her private parts, in her statement recorded under Section 164 Cr.PC, no such allegations were made. She had rather stated that she had noticed the same person on earlier dates at the metro station watching her.

14. A reading of testimony of victim would further reveal that a Court Questions were put to her to which she had stated that the said boy was apprehended by the police was the same boy who had also watched her for last 2/3 days and he was the same boy who had attached her on 15.02.2015 to which she later stated that she could not say the same with certainty. A reading of her testimony would reveal that she not only failed to identify the appellant with certainty but also failed to identify him even after she watched the CCTV footage.

15. The testimony of PW-3 Sanjay Sharma is also of no help, as he was not the one who has witnessed the incident. He only claims that he reached the platform after a report was made.

16. Thus on a holistic appreciation of the evidence, this Court is of the opinion that the benefit of doubt goes to the appellant and he is accordingly acquitted of the charge.



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17. In view of the aforesaid discussion, the appeal succeeds and the impugned judgment of conviction and order on sentence are set aside. The appellant is acquitted of the offence for which he was charged. His bail bonds are cancelled and sureties discharged.

18. The appeal stands disposed of in above terms.

19. A copy of this order be communicated to the concerned Trial Court and to the concerned Jail Superintendent for information and necessary compliance.

**MANOJ KUMAR OHRI
(JUDGE)**

NOVEMBER 17, 2025/rd