



2025:DHC:2702



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

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*Date of decision: 4<sup>th</sup> April, 2025*

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**CRL.L.P. 110/2021**

STATE (NCT. of Delhi)

.....Petitioner

Through: Mr. Yudhvir Singh Chauhan, APP for  
the State with SI Deepak Sahu,  
P.S.Pul Prahladpur.

Versus

AKIB  
s/o. Sh. Akil  
r/o. H.No.T-21,  
Pul Prahlad Pur  
New Delhi.

.....Respondent

Through: Mr. Rizwan Ahmad, Mr. Himanshu  
Gupta and Mr. Mohd. Tauheed,  
Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

1. Criminal Leave Petition under Section 378(4) of Cr.P.C. has been filed on behalf of the Petitioner seeking *Leave to Appeal* against the Judgment dated 19.01.2021 passed by the learned ASJ, Saket Courts in FIR No.449/2014, under Section 354/506 IPC and Section 12 POSCO Act, P.S. Pul Prahladpur.
2. Considering the grounds sought for seeking Leave to Appeal, the Leave Petition is allowed.
3. Leave granted and Appeal be registered.



**CRL.A. ....../2025 (to be numbered)**

1. The present Appeal under Section 378(1) of Criminal Procedure Code, 1973 has been filed against the Judgment dated 19.01.2021 *vide* which the Ld. ASJ has ***acquitted the Respondent*** of all Charges in FIR No. 449/2014 under Sections 356/506 IPC & 12 POCSO Act, registered at Police Station Pul Prahladpur, Delhi.

2. The case of the Prosecution is that the father of the Prosecutrix, who owns a readymade Garments shop in HR-15 Sharma Market, had gone out of Delhi for some work and the Prosecutrix along with her mother, and was at the shop. At about 7:30 PM, there were two boys standing outside the shop and the accused/Akib (respondent) passed lewd remarks while staring at the Prosecutrix. When the Prosecutrix along with her mother interjected and asked them to leave, the accused entered the shop and held the hand of Prosecutrix and threw her on the ground and hurled abuses at her. The accused further threatened her with her life. The mother of Prosecutrix intervened, but the respondent threatened her as well and said that he is nephew of *Nanhe* and if anyone uttered anything, they will destroy them. In the meanwhile, Police arrived and caught hold of the accused.

3. ***The prosecutrix*** gave the Complaint on which FIR No. 449/2014 was registered under Sections 354-A/354/506/509 IPC and 12 POCSO. ASI Jagbir, IO recorded statement of Smt. *Kamlesh*, mother of Prosecutrix and other witnesses under Section 161 Cr.P.C. The accused/Akib was arrested and was sent to Judicial Custody on 22.11.2014. Thereafter, the statement of Prosecutrix and her mother was recorded under Section 164 Cr.P.C.

4. Subsequently, the ASI verified the age of Prosecutrix from her school records, which mentioned her date of birth as 22.12.1998 and thus, a minor.



After investigation, Charge-sheet was filed against accused u/s 354-A/354/506/509 IPC and 12 POCSO.

5. ***Charges u/s 354/506 IPC and 12 POCSO were framed on 10.08.2015.***

6. Prosecution examined five witnesses and recorded statement of the accused u/s 313 on 04.03.2020, wherein he stated that he was innocent and has been falsely implicated. He further claimed that no such incident happened and that it was merely a scuffle which was later given a criminal colour.

7. *The learned Trial Court vide judgment dated 19.01.2021 acquitted the Accused/Akib on the ground that the prosecution failed to prove the case beyond reasonable doubt.*

8. ***Appellant/State has challenged the impugned Judgment*** on the ground that the learned Trial Court has failed to appreciate that the victim girl, who had deposed as PW-1, was a competent witness and her testimony could be the sole basis of conviction and does not require any corroboration.

9. Reliance is placed on *Omprakash vs. State* 1997 (1) Crime 645 (Delhi) to submit that corroboration of the evidence given by a child witness should not be insisted upon in each and every case. Reliance is also placed on *Gagan Kanojia & ors. vs. State of Punjab* 2006 13 SCC 516 and *State of U.P. Vs. Krishna Master* AIR 2010 SC 307.

10. Furthermore, learned Trial Court has misread the evidence and passed the Order in contravention of guidelines laid by the Apex Court in *Ghurelal vs. State of UP* (2008) 10 SCC 450. Reliance has also been placed on *Dastta Ra, Rao Sakhre Vs. Stae of Maharashtra* (1997) 2 SCJ 80.

11. Moreover, the Apex Court in the case of *State of Punjab vs. Gurmit*



*Singh (1996) 2 SCC 384 has held that “in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of the Prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration”.*

12. Therefore, the Ld. Trial Court fell in error in discrediting the testimony of the prosecutrix which is fully corroborated by her mother. The acquittal is therefore, liable to be set aside.

13. ***The Respondent has contested the present Appeal*** and contended that the impugned Judgment is well reasoned and does not suffer from any infirmity. The testimony of the Prosecutrix and the witnesses were contradictory to the prosecution story and were at variance with each other. Therefore, a serious shadow of doubt was created, clearly indicating the innocence of the Respondent.

14. It is submitted that the learned Trial Court has meticulously examined each and every fact in the light of evidence. The contradictions have been rightly appreciated and the benefit has rightly been extended to the Respondent, who has been acquitted.

**Submission heard and record perused.**

15. The Respondent/Akib was charged for the offences under Sections 356/506 IPC & 12 POCSO Act.

16. The Prosecutrix in her statement EX PW1/A made to the Police on 22.12.1998. She had deposed that at about 07:30 PM two boys were standing outside the shop and making “gande comments” and she and her



mother told them not to do so and leave, on which the accused entered into the shop and caught hold of her hand and forcibly pushed her on the floor and started abusing by using “*maa behn language*” and also threatened to kill them. He stated “*tujhe phad duga*”. When her mother tried to intervene, that boy misbehaved and abused her mother by saying “*main Nanhe ka bhanja hoon. Agar hmare khilaf boli to ghar walon ko bi tabah kar duga*”.

17. The statement of the Prosecutrix was recorded under Section 164 Cr.P.C. on 22.11.2014 Ex PW1/B wherein she stated that the Respondent was making comments and giving abuses. They were talking about “*underwear kharid lete hain*” “*bra kharid lete hain*” and that similar kind of *gandi* talks were being made by them. They were also passing comments on her. When her mother confronted the Respondent, as to why he was making such dirty remarks, Akib tried to catch her neck on which the mother caught hold of his hand and she fell on the ground and all the articles in the shop got scattered. Her mother called the police and her Nana also came from the adjoining shop. The accused gave beatings to her Nana and said that he was the bhanja of *Nanhe* and that they cannot cause any harm to them. He also gave *gandi gandi galiyan* and said *tujhe phad duga, jaan se maar duga*.

18. This Statement under Section 164 Cr.P.C., as noted above, in fact gave a different version wherein she asserted that she had tried to catch her by the neck and when the mother intervened and caught her hand, she fell to the ground.

19. This statement Ex PW-1/A made by the Complainant to the Police is in complete variance to the testimony recorded before the Court as PW-1.



She deposed that since her father who runs a shop, was out of station for 4-5 days, she along with her mother, was taking care of the business. On 21.11.2015 at about 07:30 PM, while she and her mother were sitting in the shop, she noticed that two boys who were sitting on the motor cycle outside the shop, were making indecent gestures and making lewd comments towards her that *they should purchase the underwear*. She told her mother about the same, who called the boys inside the shop. While one of them left on the motorcycle, the other boy i.e. the Respondent came inside the shop. When the mother confronted him, he started using filthy “*maa behn*” language and threatened that he was nephew of Nanhe. He assaulted her and she fell on the back side. They called the Police. Her maternal Grandfather also reached the shop and took them to the Police Station, where her statement was recorded which is Ex.PW1/A.

She had claimed in her complaint Ex.PW1/A that Respondent had entered into the shop and pushed her to the ground and also misbehaved with her mother, who had intervened and threatened to kill them. No such assertion has been made in the testimony. Rather she has admitted that she was not touched by the Respondent.

20. She explained in her testimony that *the accused had come to counter*. She further admitted that “*it is correct that I was behind the counter on the shop at the time of the incident.... It is correct that I did not inquire or talk to the boys and it was my mother who inquired from the accused. It is correct that my mother asked him to come inside the shop and asked him as why he was speaking loudly outside the shop with her.*”

21. PW-1 in her cross-examination admitted that *the accused did not catch her hand and did not throw her on the floor*. She voluntarily stated



*that he raised his hand to beat her and she fell down. He tried to beat her but he was not able to touch her. Admittedly, Respondent did not touch her.*

22. The *second material witness is PW-3/Kamlesh*, mother of the Prosecutrix. She also admitted that the accused Respondent did not hit her daughter with his fist blow and volunteered that her daughter fell due to fear of the accused. Admittedly, the Respondent did not touch her daughter.

23. The version of the mother as PW-3 further proves that the alleged comments, which according to her were addressed to the Complainant, were not heard by her but was told about them by the daughter. As already mentioned above, no such comment has been stated by the Complainant.

24. Therefore, from the testimony of the Complainant and her mother, what emerges is that the Respondent was standing outside the shop and was having conversation with his friends, which was not acceptable to the Complainant and her mother. When they called him inside the shop, he made a threatening gesture to hit the Complainant, who fell. Nothing more than this has got established about the incident. There is not an iota of evidence from where it can be concluded that the respondent had any intent or that her modesty was outraged and thus, no offence under S.354 IPC was proved..

25. PW-1 Prosecutrix/ Complainant further deposed that accused persons were present outside the shop and they were making a conversation, which though not palatable, but no such comments have been explained by PW-1 in her testimony which can be termed as *lewd remarks*. The only statement that the Prosecutrix is deposed is that they were talking of purchasing underwear. By no stretch of imagination, can this one remark be termed as *lewd or intended to malign the modesty of a girl*. No other comment has



been stated by the Complainant/ Prosecutrix from where any inference of lewd remark could be inferred.

26. PW-3/Kamlesh also deposed that on the date of the incident at about 07-07:15 PM two persons were standing outside the shop and she was told by the daughter that they were abusing her. Once she confronted them, one of them went away while the Respondent entered into the shop and terrified the daughter by making gesture of beating to her, because of which her daughter fell.

27. Further, *she in her cross-examination* admitted that she had not heard the abuses being given to her daughter by the Respondent, but she was told about them by her daughter. The learned Trial Court has rightly concluded that neither the lewd comments nor the abuses extended to the daughter are proved, from the testimony of the prosecution witnesses. No offence under S.509 IPC or S.12 POCSO Act is also proved, as held by Ld. ASJ.

Pertinently, the Prosecutrix had deposed that a threat had been given by the Respondent who asserted that he was nephew of *Nanhe Pehlwan*. But in her cross-examination she was confronted on this aspect, she stated that she had told the Police about being threatened by the Respondent.

28. PW-3 also deposed that the respondent had abused and threatened them that “*main Nanhe ka bhanja hun. Main kuch bi kar sakta hun. Tum mera kuch nai bigad paoge*”.

29. The other charge against the Accused pertains to **Section 506** of IPC. The same is reproduced as under:

**“Section 506: Punishment for Criminal Intimidation-**  
*Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with*



*both;*

*If threat be to cause death or grievous hurt, etc — and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”*

30. The essential ingredients to make out an offence punishable under Section 506 have been discussed by the Apex Court in Manik Taneja Vs. State of Karnataka, (2015) 7 SCC 423 wherein the Court had observed as under:

*“11. ... A reading of the definition of “criminal intimidation” would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.”*

31. However, nothing significant in regard to the alleged threat to the Complainant has emerged in the testimony of the prosecution witnesses, to prove the offence under Section 506 IPC.

32. The three statements made by the Complainant as reproduced above, coupled with the testimony of her mother PW-3 Smt. Kamlesh, clearly establish the inherent contradictions about the incident. It emerges from her testimony that neither was she nor the mother assaulted, and there is no proof of the alleged lewd remarks made towards her. Even the allegation of threat is not established from their testimony.



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33. While it is a settled position of law, which does not require reiteration that the sole testimony of the Prosecutrix is sufficient for conviction of the Respondent, but to make the testimony of the Prosecutrix as a basis of conviction, it has to be credible and consistent.

34. As has been discussed above, even if the testimony of the Complainant PW-1 as well as the mother PW-3 is accepted, no offence under Sections 354/506 IPC and Section 12 POCSO is proved. The learned ASJ has rightly appreciated the evidence of the Prosecution to acquit the Respondent.

35. There is no merit in the Appeal, which is hereby dismissed. The pending Application(s), if any, are also disposed of accordingly.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**APRIL 4, 2025**  
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