



2026:DHC:5792



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

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Judgment Reserved on: 20.07.2026

Judgment pronounced on: 22.07.2026

+ **CRL.A. 799/2016**

STATE (GOVT OF NCT OF DELHI)

.....Appellant

Through: Mr. Utkarsh, APP for the State with
SI Deepak, P.S. Bindapur.

Versus

JOGINDER KUMAR @ JINDI

.....Respondent

Through: Mr. Manmeet S. Arora, Amicus
Curiae.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the State, in Sessions Case No. 30/02/2013 on the file of the Additional Sessions Judge-01, Dwarka Courts, New Delhi, assailing the



2026:DHC:5792



judgment dated 28.02.2015, as per which the sole accused has been acquitted of the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 22.03.2013 at 12.30p.m at AP-II DDA Flat, Bindapur, New Delhi, the accused sexually assaulted PW1, aged about 15 years old, by touching her breast. Thus, as per the chargesheet/ final report the accused is alleged to have committed the offences punishable under Sections 354A of the Indian Penal Code, 1860 (the IPC) and 12 of the PoCSO Act.

3. On the basis of Ext. PW1/A FIS/FIR of PW1 given on 23.03.2013, Crime no. 137/2013, Binda Pur Police Station, i.e., Ext. PW5/A FIR was registered by PW5, Head Constable (HC). PW8 Sub Inspector conducted investigation into the crime and on completion of the same, filed the chargesheet/final report alleging commission of the offences punishable under the aforementioned



2026:DHC:5792



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 30.08.2013, framed a Charge under 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 8 were examined and Ext. PW1/A-B, Ext. PW2/A, Ext. PW4/A-B, Ext. PW5A-B, Ext. PW6/A-B, Ext. PW8/A-B and 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. The accused submitted that he has been



2026:DHC:5792



falsely implicated at the instance of one Ranbir Singh Bali and Gangadeep, who are acquainted with PW1, to compel the accused to sell his property to them at a cheap rate.

7. After questioning the accused under Section 313(1)(b) 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 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. On behalf of the accused, DW1 and DW2 were examined. No documentary evidence was adduced.

9. Upon consideration of the oral and documentary evidence



2026:DHC:5792



and after hearing both sides, the trial court, *vide* the impugned judgment dated 28.02.2015, acquitted the accused under Section 235(1) Cr.P.C. of the offence punishable under Section 8 of the PoCSO Act. Aggrieved, the respondent/State has preferred this appeal.

10. The learned Additional Public Prosecutor for the State/ appellants submitted that the prosecution witnesses have remained substantially consistent on the material particulars of the case. It was contended that PW1, the victim, in Ext. PW1/A FIS/FIR Ext. PW1/B Section 164 Statement, and her deposition before the trial court, as well as PW7, the father of the victim, and PW3, the owner of the beauty parlour, have all consistently supported the prosecution version regarding the occurrence of the incident. It was therefore submitted that the trial court erred in discarding the prosecution case by placing emphasis on minor discrepancies and trivial inconsistencies, which do not affect the core of the



2026:DHC:5792



prosecution case.

10.1. The learned Additional Public Prosecutor further submitted that PW1 has consistently stated that the incident occurred on 23.03.2013, and the same is corroborated by PW8, the Investigating Officer, who deposed that the information/report was received on 23.03.2013 at about 07:20 PM. It was therefore submitted that the trial court erred in concluding that there was an unexplained delay of one day in lodging the FIR, as the finding is contrary to the evidence available on record.

11. *Per Contra*, the learned *Amicus Curiae* for the accused/respondent submitted that there is no infirmity in the judgment calling for an interference by this Court.

12. Heard both sides and perused the materials on record.

13. The only point that arises for consideration in this appeal is whether there is any infirmity in the impugned judgment calling for an interference by this Court.



2026:DHC:5792



14. I will first briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW1/A, the FIS/FIR of PW1, the victim, recorded on 23.03.2013, reads thus: “...*I am a student of Class 8 at Govt. Co-Ed Sr. Sec. School, Bindapur. On holidays, I go to my Anita didi's (PW3) beauty parlor, located at Shop No. AP 11, DDA Flats, Bindapur, to learn the work. My date of birth is 1998. Yesterday, around 12:30 PM, didi asked me to fetch some materials from the shop so that we could work at home. When I went to fetch the materials from the shop, Joginder Pal [Jindi] (the accused) suddenly came behind me. He started saying to me, "Why do you stay with Anita? You do dirty work. Anita(PW3) doesn't give you anything; I will give you ₹50,000/-, come with me."* He then placed his hand on my chest. About seven or eight days back also, he had misbehaved with me and Anita, but out of shame, we did not tell anyone. However, now I am scared of him; he could commit a wrongful act against me at



2026:DHC:5792



any time. Legal action should be taken against him..."

14.1. PW1, in Ext. PW1/B Section 164 Statement recorded on 25.03.2013 has stated thus:- *"My name is -----. Anita didi has a beauty parlour. On 22.03.2013, the beauty parlour was closed. Didi asked me to fetch some items, such as thread and other materials, from the parlour because some customers had come over to the house. As soon as I opened the shutter and went inside the parlour, Joginder Pal also followed me inside and said, "Hey girl, listen." I told him, "First of all, you go outside because I am alone in the parlour." He then started saying, "Why are you with Anita? She doesn't give you anything." He forcibly started handing me fifty thousand rupees and said, "Come with me," and he also placed his hand on my chest. Seven or eight days earlier also, he had misbehaved with me and Anita didi. I have nothing more to say."*

14.2. PW1 when examined before the trial court more or less,



2026:DHC:5792



stood by her version given in Ext. PW1/B Section 164 Statement. According to her, on the date of the incident at about 12:30 PM, she took the keys and went alone to the shop. As soon as she opened the shutter and was about to enter the shop after unlocking the glass door, the accused came from behind, offered her ₹50,000/-, and asked her to accompany him, saying that PW3 was not paying her adequately. The accused thereafter touched her breast while inside the shop. She pushed the accused and raised an alarm, whereupon the accused fled from the spot on his motorcycle. Thereafter, she returned to PW3's house and informed the latter about the incident. At about 06:30 PM - 07:00 PM, when her father (PW7) returned from work, she narrated the incident to him, following which she along with her father and PW3 went to Bindapur Police Station, where she lodged Ext. PW1/A written complaint.

14.3. PW1 in her cross examination admitted that PW3 had



2026:DHC:5792



lodged an FIR against the owner of the building in which the beauty parlour was functioning, i.e., Arun Bali, though she was unaware of the details. She also admitted that PW3 had thereafter vacated the rented premises. PW1 further deposed that she is unaware whether PW3 had lodged an FIR against a person named Rawat, with whom the latter was in a live-in relationship. PW1 further admitted that 23.03.2013 was not a school holiday; that her school timings is from 07:00 AM to 01:30 PM, and that she had not attended school on that day, which fact was not disclosed either in Ext. PW1/A FIS/FIR or in Ext. PW1/B 164 Statement.

15. PW3, the owner of the beauty parlour, when examined, supported the prosecution story. PW3 admitted that after she was told of the incident by PW1, she did not inform the police as she was not a relative of PW1 and thought it appropriate to first inform and consult PW1's father. She further deposed that at about 09:00 PM, when PW1's father returned from work, she informed him of



2026:DHC:5792



the entire incident. Thereafter, on the following day, i.e., on 23.03.2013, she accompanied PW1 and her father to Bindapur Police Station (P.S.), on which day Ext. PW1/A was recorded.

15.1. PW3, in her cross examination, deposed that the beauty parlour was functioning in a rented premises owned by one R.S. Bali, whom she used to address as uncle. PW3 admitted that FIR No. 108/2013, PS Bindapur was registered against R.S. Bali and one Deepak at her instance for molestation, and that the said crime had subsequently been compounded. PW3 denied the suggestion that she had earlier made a PCR call on 20.08.2012 *vide* DD No. 49B, PS Bindapur, regarding a quarrel with her neighbour Rajkumar. PW3 further admitted that after registration of the present crime, she had lodged another FIR at PS Dabri against one Dhyan Singh Rawat, with whom she had been in a live-in-relationship, alleging rape. PW3 deposed that she vacated the premises in which the beauty parlour was functioning about 2 to 3



2026:DHC:5792



months after the incident. PW3 denied the suggestion that she was deposing falsely at the instance of R.S. Bali because of his pending dispute with the accused before this Court or that the accused had been falsely implicated at the behest of R.S. Bali.

16. PW7, the father of PW1, when examined, deposed that PW1, his daughter occasionally visited PW1's beauty parlour after school to learn the work. On 23.03.2013, when he returned home in the evening, he found PW1 weeping. On enquiring the reason, she informed him that the accused had misbehaved with her at the beauty parlour. He immediately took PW1 to the police station on the same day, where a report was lodged against the accused regarding the incident of molestation.

17. PW2, Trained Graduate Teacher, Government Co-Education, Senior Secondary School, Bindapur Extension, Delhi, produced the admission and withdrawal register for the period from 03.06.2009 till 20.04.2010, which was marked as Ext.



2026:DHC:5792



PW2/A. As per the same, the date of birth of PW1 is 25.02.2000.

18. PW6, Constable, Bindapur, PS deposed that on 23.03.2013, while he was on emergency duty, PW1 accompanied by another girl, came to the police station at about 12:30 PM and submitted a written complaint to the SHO alleging that the accused had misbehaved with her. Thereafter, he, along with PW8, the IO and PW1, proceeded to the place of occurrence, where PW8 prepared the site plan at the instance of PW1. After returning to the police station, at about 07:00-07:15 PM, PW8 received information that the accused was present at B Block, DDA Flats, Bindapur. Accordingly, they reached the said location, and PW1 was also called there to identify the accused. Upon her identification, the accused was arrested *vide* Ext. PW6/A arrest memo and his personal search was conducted *vide* Ex. PW6/B.

19. PW8, Sub Inspector, Bindapur P.S., the Investigating Officer (IO), supported the version of PW6. PW8 deposed that on



2026:DHC:5792



23.03.2013, while he was on emergency duty, a written complaint submitted by PW1 was marked to him by the SHO, Bindapur PS, around 07:00 PM, based on which he prepared Ext.PW8/A rukka.

20. Now coming to the evidence let in by the accused DW1, one of his neighbours, when examined, deposed that during January-February 2013, one Bali used to send persons to the house of the accused and threaten him in connection with a pending property dispute. DW1, in her cross examination, deposed that she had been residing adjacent to the accused's house for the last 7 to 8 years and was on visiting terms with the accused as the accused's wife was her friend. DW1 admitted that despite witnessing such threats, she had never made any PCR call or made any complaint to the police and also admitted that she did not personally know Bali.

21. DW2, when examined, deposed that she had known the accused for about 25 years, as he had earlier been her neighbour



2026:DHC:5792



and continued to visit her house. DW2 deposed that that the accused has been falsely implicated at the instance of Bali and PW3. According to her, PW3, had earlier lodged criminal cases against Bali and 2 to 3 other persons also. DW2 deposed that one Raja, an acquaintance of Bali, had taken the flat of the accused on rent, and when the premise was not vacated, a dispute arose between the accused and Bali. Bali had been pressuring the accused to sell the flat to the former at a low price, and when the accused refused, he was falsely implicated in the present case.

22. As observed by the Apex Court in **Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248**, the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court



2026:DHC:5792



with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in reversing a finding of fact arrived at by a judge who had the advantage of seeing the witness. If the main grounds on which the trial court has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.

23. *Vide* the Court Charge dated 30.08.2013, the accused has been charged for having committed the offence of sexual assault contemplated under Section 7 and punishable under Section 8 of the PoCSO Act. Sexual assault defined in Section 7 PoCSO Act, says that whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch such parts of that person or any other person, or does any other act with sexual



2026:DHC:5792



intent involving physical contact without penetration, is said to have committed sexual assault. Coming to the case on hand, it is the version of the prosecution that on, 22.03.2013 at 12.30p.m at AP-II DDA Flat, Bindapur, New Delhi, the accused sexually assaulted PW1, a minor girl by touching her breast.

24. The question that arises for consideration is whether the version of PW1 has remained substantially consistent from the inception of the prosecution case, namely, in Ext. PW1/A FIS/FIR, Ext. PW1/B Section 164 statement, and her deposition before the trial court, and whether the same finds due corroboration from the testimony of the other prosecution witnesses and the documentary evidence brought on record. A careful perusal of the materials on record manifests multiple inconsistencies regarding both the date of the alleged incident and the time at which the information/report was lodged, thereby casting serious doubt on the very genesis of the prosecution story. At the outset, Ext. PW1/A, FIS/FIR, which



2026:DHC:5792



was admittedly recorded on 23.03.2013, states that the alleged occurrence had taken place "*yesterday around 12:30 PM*" thereby fixing the date of the incident as 22.03.2013. This version was reiterated by PW1 in Ext. PW1/B Section 164 statement wherein she stated that on 22.03.2013, the beauty parlour remained closed and PW3 had asked her to fetch certain articles from the parlour, during which time the alleged incident occurred. However, when PW1 entered the box, she departed from her earlier versions and deposed that the incident had taken place on 23.03.2013, when the beauty parlour remained closed due to PW3's illness. This aspect was never clarified by the prosecution while PW1 was in the box. Therefore, her version regarding the date of incident being 23.03.2013 remains unchallenged. PW1 has thus furnished different versions regarding the date of occurrence and such contradiction cannot be brushed aside as a minor discrepancy, as it is related to the very date on which the alleged offence is stated to



2026:DHC:5792



have occurred.

25. Further inconsistency arises with respect to the lodging of the information/report. PW1 deposed that after the incident she informed PW3, waited until her father PW7 returned home from work at about 06:30 PM to 07:00 PM, and thereafter she, PW3 and PW7 proceeded to the police station where her complaint was lodged. PW7 supported this version by deposing that upon returning home in the evening, he found PW1 crying, learnt about the incident, and immediately took her to the police station where the information/report was registered. However, according to PW3, PW7 returned home only at about 09:00 PM, and thereafter, on the following day, namely, 23.03.2013, she accompanied PW1 and PW7 to the police station where the information/report was recorded. This version is inconsistent with the testimony of PW1 and PW7 regarding not only the time at which PW7 returned home but also whether the report was lodged on the same evening or on



2026:DHC:5792



the following day.

26. According to PW6, PW1 herself came to the police station at about 12:30 PM on 23.03.2013 accompanied by another girl and had submitted the written complaint, following which he, along with PW8, immediately visited the place of occurrence. This version is totally inconsistent to the testimony of PW1, PW3 and PW7, all of whom assert that the report was lodged only after PW7 returned home in the evening. More significantly, PW8, the IO's version goes against the version of PW6 by stating that the written complaint was marked to him by the SHO only at about 7:00 PM on 23.03.2013. If PW8 had received the complaint only at 7:00 PM, the version of PW6 that the complaint had already been submitted at 12:30 PM and that the police had immediately visited the spot becomes improbable. On the other hand, if PW6's testimony is accepted, PW8's evidence regarding the receipt of the complaint at 7:00 PM becomes wrong. Thus, the prosecution



2026:DHC:5792



witnesses have presented different versions regarding the lodging of the information/report.

27. It is no doubt true that mere delay in lodging the FIR is not by itself sufficient to discredit the prosecution case, nor is such delay necessarily fatal, particularly in cases involving sexual offences. The delay in reporting such offences has to be considered along with other aspects such as the trauma undergone by the victim, the social stigma attached to such offences, and the natural hesitation or reluctance in immediately disclosing the incident. However, in a case such as the present one, the issue is not merely one of delay but of basic inconsistency regarding the very date and time of the incident and lodging of the information/report. The prosecution witnesses have furnished totally different versions as to when the information/report was lodged, whether it was lodged on the same day or the following day, and at what point the law was set into motion.



2026:DHC:5792



28. In an appeal against acquittal, interference is warranted only when the view taken by the trial court is perverse or wholly unreasonable. On an overall appreciation of the oral and documentary evidence on record, this Court is of the considered view that the appreciation of evidence undertaken by the trial court cannot be said to be perverse or wholly unsustainable. Hence, no interference is called for.

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

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 22, 2026/mj