



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

%

Judgment Reserved on: 15.07.2026

Judgment pronounced on: 20.07.2026

+ **CRL.A. 789/2016**

STATE

.....Appellant

Through: Mr. Utkarsh, APP for the State.

Versus

RAKESH

.....Respondent

Through: Mr. J.P. Singh, Mr. Ajay Mayer and
Ms. Mehakpreet Kaur, Advocates.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973 (the Cr.P.C.), by the State, namely, the respondent, in Sessions Case No. 174/2013 on the file of the Additional Sessions Judge, Central District, Tis Hazari Court, Delhi, assails the judgement dated 02.09.2014 as per which the



sole accused has been acquitted of the offences punishable under Section 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 29.08.2013 at 04:30 P.M., at Local Shopping Centre, C-10, Vivekanand, Delhi, the accused sexually harassed and sexually assaulted PW5, a minor girl, aged 11 years. Hence, as per the chargesheet/final report, the accused is alleged to have committed the offences punishable under Sections 354A IPC, 8 and 12 of the PoCSO Act.

3. On the basis of Ext. PW4/A FIS/FIR of PW5 given on 31.08.2013, Crime no. 382/2013, Sarai Rohilla Police Station, i.e., Ext.PW2/B FIR, was registered by PW2 Head Constable. PW6, 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 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 23.01.2014, framed a Charge under Section 8 of the PoCSO Act and 354A IPC against the accused. The Charge was read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 7 were examined and Ext.PW1/A-B, Ext. PW2/A-D, Ext.PW3/A-B, Ext.PW4/A, Ext. PW4/D1, Ext. PW5/A, Ext. PW6/A, Ext. PW6/B, Ext. PW6/D and Ext. PW7/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.P.C. regarding the



2026:DHC:5728



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 PW5 had been attending his coaching centre for about 2½ years. She was taking coaching in Maths, Science and English, but later discontinued attending classes for Maths and Science. PW 4, her father, requested him to give extra attention to her and also requested him to repeatedly give tests to her as she was weak in studies. On 24.08.2013, another student by name Reena was also present. In her presence, he asked PW5 to prepare for a test in Maths, Science and English to be taken on Sunday. PW5 started arguing with him and said that she would not appear for the tests as she was not taking classes for the said subjects. She also misbehaved with him and then left the coaching centre. Thereafter, PW5 falsely implicated him in this case. On 29.08.2013, between 04:00 P.M. to 06:00 P.M., he was taking



home tuition for Vikas at Mangol Puri. Therefore, he was never present at the coaching centre during the time of the alleged incident.

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 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 02.09.2014 acquitted the accused of the offences punishable under Sections 8 of the PoCSO Act and 354A IPC. Aggrieved, the appellant/State has preferred this appeal.

10. The learned Additional Public Prosecutor appearing for the Appellant/State submitted that the impugned judgment is contrary to the facts and circumstances of the case. The version of PW5 has remained consistent. Her testimony has not been discredited in any way and is sufficient to establish the offences punishable under Sections 8 of the PoCSO Act and 354A IPC. Therefore, he submitted that the impugned judgment of acquittal



be set aside, and the accused be convicted in accordance with the law.

11. It was submitted by the learned counsel for the respondent/accused that there is no infirmity in the impugned 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 judgement warranting an interference by this Court.

14. I will first briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW4/A, the FIS/FIR, of PW5, the minor victim, recorded two days after the date of the incident, i.e., on 31.08.2013, reads thus:
“.....I study in class 7th at Manendra Shakti Vidyalaya. I go to study at a coaching centre named “Study Zone” near my house. I have been studying there for the past 3 years. The operator of the



centre is Rakesh (the accused), son of Babu Lal, resident of House No. S/9, Harijan Basti. On 29.08.2013, at around 4:30 PM, when I was about to leave for home, Rakesh (the accused) grabbed my hand and said, "I like you. Can I kiss you?" Hearing his words, I was shocked, shook off his hand, and ran down the stairs. I was so terrified that I could not even share this matter with my parents at that time. The next day, on 30.08.2013, I went to school. During the sports period, the P.T.I. teacher Neeru Madam (PW7) saw me sitting quietly, made me sit near her, and asked the reason. I burst into tears and narrated the incident. She took me to the Principal Madam. After hearing everything, the Principal Madam immediately called my father (PW4) at 11:05 AM and asked him to come to the school. Upon his arrival, she informed him about the entire incident. I narrated everything to my mother as well, but out of fear of being defamed, my mother did not report the matter to the police. Seeing me sad, my father called



the accused. When my father met Rakesh, the latter started avoiding eye contact and immediately began begging and apologizing. My mother and I were also present at “Study Zone”. While we were there, the police arrived. A large crowd gathered at the place. Rakesh has been beaten up by the public. I have written this statement voluntarily in front of my parents. Legal action should be taken against the aforementioned Rakesh, who, despite being a teacher, molested me with bad intentions.”

14.1. PW5, in her 164 statement marked as Ext.PW5/A recorded on 02.09.2013, has stated thus: *“I study in the 7th class at Manendra Shakti Vidyalaya, Keshav Puram. For the past 3 years, I have been studying at a coaching centre named “Study Zone,” which is located 100 meters away from my house. Generally, my tuition class used to be held in the afternoon. On 29.08.2013 at 4:30 in the afternoon, after finishing tuition, I was about to leave along with two other girls. Just then, the owner of*



the coaching centre, Rakesh (the accused) came there. He asked me to stop. When I stopped. He told me that he likes me very much, and at that moment, he tried to kiss me. I ran away from there. I was very scared, so I did not tell anyone anything. Then on 30.08.2013, I went to school. It was my P.T. period, and I was sitting very sadly. So the P.T. teacher (PW7) asked me the matter (the P.T. Madam's name is Neeru). I told her everything. Hearing this, Madam Neeru went to my school Principal. My Principal called my parents, and the Principal told everything to my parents. My mother and father went to look for him. They met him on the next day at 4:00 PM. The public caught him and handed him over to the police. Rakesh should be punished.”

14.2. PW5 when examined before the trial court deposed that on 29.08.2013, her English class was over at 04:30 P.M. When she was leaving the coaching centre along with her friends, the accused called her and stated that he had to talk to



her. By then, her friends had left and on his instruction, waited in a cabin. The accused came to the cabin and caught hold of her arm and said that he liked her. He then asked if he could come near her. He moved near her and asked whether his move was offensive to her, which she answered in the affirmative. He then asked her to leave. Thereafter, he asked her if he could kiss her on the cheek. According to PW5, she became perplexed and went back home. She did not disclose the incident to anybody. On the day of the incident, she disclosed the incident to her PT Teacher (PW7). She told the Principal that she had not disclosed the incident to her parents as she was scared. Thereafter, she disclosed the incident to her mother, who also became scared. On 31.08.2013, her parents accompanied her to the coaching centre and spoke to the accused. The accused tendered an apology pursuant to which her father (PW4) informed the police.



14.3. Her parents used to visit the coaching centre once a month to know about her performance. PW5 further admitted that the accused used to complain to her parents that she was not doing well, due to which she was quite angry. She further admitted that two other teachers at the coaching centre, also used to reprimand her for her poor performance and failure to complete the homework. PW5 admitted that the accused used to give tuition at Mangol Puri, but denied the suggestion that on 29.08.2013, the accused was at Mangol Puri giving tuition. PW5 also admitted that she attended the coaching classes on Tuesday, Thursday and Saturday, on which days, the accused gave tuition at Mangol Puri. But he used to reach the coaching centre at 04:00 P.M.

15. PW7, PT teacher, Manender Shakti Vidyalaya, Keshav Puram, Delhi deposed that about 6 months before August 2013, she found one of her students (PW5) weeping. On repeated



asking, PW5 told her that her tutor had harassed her. She then took PW5 to the office of the Principal, who in turn called her parents. She left PW5 in the office of the Principal and returned. At this stage, the trial court is seen to have allowed the request of the learned APP to declare PW7 hostile as she had resiled from her previous statement.

15.1. PW7 in her further examination by the prosecutor, deposed that she has never given any statement to the police. However, PW7 admitted that PW5 had told her that her tutor had caught hold of her arm and told PW5 that he liked her and that he wanted to kiss her.

16. PW4, the father of PW5 when examined, deposed that his daughter had been attending tuition classes at Study Zone for about 2½ years and that the timings of her class was 04:00 P.M. to 05:00 P.M. On 30.08.2013 he received a call from the Principal of his daughter's school. He met the Principal as well as



teacher Neeru (PW7). During the night of 30.08.2013, her daughter (PW5) told them that on 29.08.2013 at about 04:45 P.M.-05:00 P.M., the accused had caught hold of her arm and asked for a kiss. The next day, he along with his wife went to the coaching centre at about 04:15 P.M. to enquire the matter. The accused made a hue and cry. Hearing the same, passersby gathered. He then informed the police.

17. PW4 in his cross examination deposed that he was not sure whether PW5 had discontinued her Maths and Science classes. PW4 admitted that he was not sure whether the accused taught Maths to PW5. He also admitted that he was not sure whether the accused was taking Maths tuition for his daughter in August 2013.

18. I also make a reference to the testimony of DW1 and DW2. DW1 deposed that the accused used to take home tuition for his son thrice a week on Tuesday, Thursday and Saturday



2026:DHC:5728



between 04:00 P.M. to 06:00 P.M. On 29.08.2013 being a Thursday, the accused was at his home taking tuition for his son during the time from 04:00 P.M. to 06:00 P.M. On 31.08.2013, the accused came to his house for tuition, but he left in between after receiving a call. The accused left at about 04:15 P.M stating that he had to go home. DW2, a student of the accused, deposed that she used to attend the coaching class of the accused. Her tuition timings was from 10:00 A.M. to 11:00 A.M. on Monday, Wednesday and Friday. On 24.08.2013 she went to the coaching centre at about 4:00 P.M. to meet the accused as she was facing some problems in English. Before going to the coaching centre she had sought the permission of the accused. When she reached the Centre, she saw PW5 arguing with the accused as the latter had asked the former to come on Sunday for a test to be conducted in Maths, English and Science. PW5 refused on the ground that she had discontinued coaching for the said subjects.



2026:DHC:5728



PW5 then left the Centre in anger. DW2, in her cross examination deposed that there were two other girls present when the argument between the accused and PW5 was taking place. However, she is unaware of their names. On her asking, the accused had told her the name of PW5.

19. The Appellate Court under Section 386(1) Cr.P.C, may in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused may be retried or committed for trial, as the case may be, or find the accused guilty and pass sentence on him according to law. The general principles regarding the powers of the appellate court while dealing with an appeal against acquittal are:- firstly, the appellate court has the power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded. Secondly, the Code puts no limitation, restriction or condition on exercise of such power and an appellate court on the



evidence before it, may reach its own conclusion, both on questions of fact and of law. Thirdly, various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. Fourthly, an appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused, that is, (i) the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law, (ii) the accused having



secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. Lastly, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. (See **Babu Sahebogouda Rudragoudar and others v. State of Karnataka (2024) 8 SCC 149**, **Rajesh Prasad v. State of Bihar (2022) 3 SCC 471**, **Chandrappa vs. State of Karnataka, (2007) 4 SCC 415**).

19.1. 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 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.

20. The prosecution case primarily rests on the testimony of PW5, the alleged victim. It is a settled position of law that conviction can be based on the sole testimony of the prosecutrix if it is found to be of sterling quality and inspires confidence in the mind of the Court. (See **Ganesan v. State, (2020) 10 SCC 573**). However, where such testimony suffers from material



2026:DHC:5728



contradictions, inconsistencies and improvements, the Court is duty bound to seek corroboration before sustaining a conviction.

21. PW5 in the case on hand does not appear to have a consistent version. In Ext. PW4/A FIS/FIR, and in her 164 statement, the accused on the date of the incident was alleged to have grabbed her hand, told her that he likes her, and sought permission to kiss her. PW5, when examined before the trial court, has a different case. She deposed that on the date of the incident, after her tuitions, while she was leaving the coaching centre along with her friends, the accused called her back and instructed her to wait in a cabin. Her friends by that time left the coaching centre. As instructed, she waited in the cabin. The accused came to the cabin, caught hold of her arm, and told her that he likes her. He then sought permission as to whether he could approach her. Thereafter, he moved near her and asked whether his move was offensive to her, to which she answered in



the affirmative. Hearing her answer, the accused asked her to leave. Thereafter, he is alleged to have asked her whether he could kiss her on the cheek.

22. The aforesaid testimony of PW5 has to be read alongwith and appreciated in the light of the admission made by PW4 that the accused as well as the other teachers of the coaching centre used to repeatedly scold her for her poor performance and her failure to complete the homework. PW5 also admitted that the accused used to complain to her parents about her poor performance, because of which, she was angry with the accused.

23. Further, the defence version that the accused used to give home tuitions in Mangol Puri on Tuesdays, Thursdays, and Saturdays, is admitted by PW5 as well as by PW4, her father. DW1 supports the defence version that at the alleged time of the incident, the accused was very much present at his residence giving tuitions to his son. DW2, a student of the accused, deposed



that she had heard an argument taking place between PW5 and the accused relating to PW5 attending tests for few subjects on Sunday. Nothing has been brought out to discredit the testimony of DW1 and DW2. The defence therefore succeeded in creating a reasonable doubt in the mind of the trial court relating to the presence of the accused at the place of the incident. Therefore, for the reasons discussed in the impugned judgment, which I do not in any way find erroneous or perverse, found that the prosecution had failed to establish the case beyond reasonable doubt against the accused.

24. On going through the materials on record and the impugned judgment, I do not find any perversity or non-appreciation of evidence or failure to appreciate materials on record calling for an 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)**

JULY 20, 2026
p'ma