

(2025) 12 DEL CK 1779

In the Delhi High Court

Case No : Criminal Appeal No.1516 Of 2025 & Criminal Miscellaneous Application No.11346 Of 2019

State

APPELLANT

Vs

Bharat

RESPONDENT

Date of Decision : 09-12-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164, 313, 378(1)
Indian Penal Code, 1860 — Section 323, 341, 354, 354A, 354D, 506

Citation : (2025) 12 DEL CK 1779

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Utkarsh

Final Decision : Dismissed

Judgement

Neena Bansal Krishna, J

1. The present Appeal under Section 378(1) of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") has been filed challenging the Judgment of the learned M.M., Delhi dated 20.12.2018 vide which the Respondent-Accused has been acquitted in case FIR No. 883/2015 registered at P.S. Aman Vihar under Sections 354A/354D/323/341/506 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC").

2. The case of the prosecution is that on 22.07.2015, the Complainant, Ms. 'P' (Prosecutrix) came to the Police Station and stated that the Respondent-Accused who resides in her Gali, had been following her on her way to school since last 15 days. Whenever he met her, he stopped her on her way and used to threaten that he would stab her with the knife if she did not say "I love you" to him. It was further stated in the Complaint that the Respondent had threatened the Complainant that he would cut her face with blade if she did not love him and further threatened to kill her family members.

3. The Complainant stated that she was so frightened and scared that under immense pressure, she inserted the SIM card given by the respondent-accused in her Mama's mobile phone and he used to send "I love you" messages from the numbers 750300569 and 7531092039. She further stated that because of fear from the Respondent-Accused, she had concealed all these facts from her family members, but when she was extremely tortured, she disclosed everything to her family members and lodged the complaint in the Police station.
4. On her Complaint, FIR No. 883/2015 under Sections 354A/354D/341/506 IPC was registered at P.S. Aman Vihar.
5. During investigation, statement of the Prosecutrix was recorded under Section 164 CrPC. On completion of the investigation, Chargesheet was filed in the Court.
6. The Charges were framed against the respondent for the offences punishable under Sections 354A/354D/323/341/506 IPC to which he pleaded not guilty and claimed trial.
7. The Prosecution in support of its case examined four witnesses.
8. PW1 was Ms. 'P', the Prosecutrix/Complainant; PW2, SI Manisha Sharma, who was the Investigating Officer of the case proved the Rukka. PW3, HC Krishan Kumar was the Investigating Officer who conducted the investigation after registration of the FIR and proved the arrest and personal search memo of the accused, and PW4 was HC Rajkumar, MHC(M) who proved the relevant entries in respect of the deposit of the SIM handed over by the complainant to the Investigating Officer i.e. Ex.PW4/A.
9. After the conclusion of the prosecution evidence, statement of the Respondent-Accused was recorded under Section 313 CrPC wherein he pleaded his innocence and denied all the incriminating evidence.
10. The learned M.M., vide the impugned Judgment dated 20.12.2018 considered the evidence of the prosecution and concluded that the evidence of the Complainant, did not prove the offences beyond reasonable doubt. It was observed that the Complainant's brother and her uncle/Ravi Kant Pandey had not been examined by the Prosecution. Benefit of doubt was given to the Respondent-Accused who was acquitted.
11. Aggrieved by the said Acquittal of the Respondent/State has preferred the present Appeal wherein the impugned Judgment has been challenged on the ground that the testimony of the PW1, the Prosecutrix has not been appreciated in the correct perspective. She had been consistent in her testimony and there was no material contradiction in her statement and it needed no further corroboration. It was not appreciated that the Prosecutrix was a student of Class XI and was scared by the threats extended by the Respondent-Accused. Moreover, the testimony in the Court was recorded after almost two years of registration of FIR. Even if there were minor contradictions, it could not have become the basis for the acquittal of the Respondent-Accused.

12. The reliance is placed on the cases of State of Uttar Pradesh vs. Munsim, 2009 Cr.L.J.393, O.M.Baby by LRs vs. State of Kerala, 2012 Cr.L.J.3794 and Mohd. Imran Khan vs. State of Delhi, 2012 Cr.L.J. 693.

13. It is submitted that the impugned Judgment of Acquittal, is liable to be set aside and the Respondent be convicted accordingly.

14. The Respondent-Accused was duly served and he appeared in person initially, but thereafter, he failed to appear and no arguments have been addressed on his behalf.

Submissions heard and record perused.

15. The present case revolves around allegations of stalking, wrongful restraint, sexual assault and threats by the Respondent-Accused against the Complainant, Ms. 'P'. The Complainant testified that the Respondent had been following her, making threats, and forcing her to send "I love you" messages, using a SIM card he provided.

16. The Charges against the Respondent-Accused, which include offences under Sections 354A, 354D, 323, 341, and 506 IPC, must be evaluated in light of the Prosecution Evidence.

17. The Respondent has been Charged for the offences punishable under Section 354 IPC (Assault or criminal force to woman with intent to outrage her modesty) and Section 323 IPC for Voluntarily causing hurt.

18. These Sections provide that the accused who assaulted or used criminal force to the victim intending to outrage or knowing it to be likely to outrage her modesty, committed the offence of sexual assault by voluntarily causing hurt.

19. In the present case, in the entire Complaint and in the Statement recorded under Section 164 CrPC, the Prosecutrix has alleged that she was being stopped by the Respondent, but nowhere has she claimed that she was sexually assaulted by the accused. It was only in her testimony for the first time that she deposed that the accused used to tease her while going to school i.e. "mere school aate jaate waqt mujhe chedta tha, kabhi meri chunni khichte thaa kabhi meri salwar". These allegations were never mentioned in her Complaint, Ex.PW1/A or in her Statement under Section 164 Cr.P.C., Ex.PW1/B.

20. There is clearly a marked improvement in her testimony in the Court and has been rightly discarded by the learned M.M. There is no other averment made in the Complaint or the Statement under Section 164 Cr.P.C. by the Prosecutrix to show that she was ever sexually assaulted by the Respondent, who has been rightly, acquitted for the offence punishable under Section 354 IPC.

21. The other charges with which the Respondent-Accused had been booked are for Stalking under Section 354D and for Wrongful Restraint under Section 341 IPC.

22. As per her Complaint, Ms. 'P' stated that the Respondent-Accused who resided in her colony was after her and would follow her when she went to school and would stop her. She stated that the Accused would restrain her way and threaten her with dire consequences if she failed to say "I love you" to him. She stated that the accused had shown her blade and knife and threatened that he would injure her face with blade or would kill her family members. She was so scared that under his pressure, she inserted the SIM cards given by the respondent in the mobile phone of her maternal uncle/Ravi Kant Pandey and that he would send "I love you" messages on the mobile number. Because of the fear of the Accused, she did not disclose these facts to her family members but when she became extremely tortured, she along with her family members went to the police station and lodged the complaint.

23. Although the Complainant stated that the Respondent-Accused had been stopping her on her way to school for the preceding 15 days, her own testimony that the Respondent had provided her with a SIM card which she inserted into her mobile phone, enabling the exchange of messages between them, renders this assertion doubtful. The admitted communication between the parties indicates voluntary interaction on her part, thereby undermining the credibility of her allegation that she was being stopped on her way to school.

24. The first aspect which emerges from the testimony of the Complainant is that the SIM card was given by the Respondent to her which she inserted in the mobile phone of her maternal uncle/Ravi Kant Pandey, through which the Respondent used to send the messages of "I love you" regularly.

25. Further, it is difficult to comprehend how a person would compel the other person to take SIM Card and thereafter send messages to the accused. Also, it is not understandable and defies logic as to what stopped her to take any steps against the accused. The SIM card allegedly given by the accused to the Complainant and the messages exchanged between the Complainant and the accused have not been brought on record or proved. Pertinently, the mobile phone of the maternal uncle of the Prosecutrix nor Call Detail Records (CDR) have also not been seized and proved, to corroborate the testimony of the Prosecutrix. There are material gaps in the narration of the incidents by the Prosecutrix.

26. It is also not comprehensible how those messages were not detected by the maternal uncle of the Prosecutrix/Ravi Kant Pandey and why the Complaint was not made earlier, even though the said acts were continuing allegedly for the last 15 days. The most important person to corroborate these assertions was Ravi Kant Pandey, maternal uncle of the Prosecutrix, who has not been examined as a witness.

27. Furthermore, according to the Complaint, the Complainant was accompanied to the Police Station by her family members, but none of the family members have been cited as a witness.

28. No doubt that is a settled law that merely the testimony of the Prosecutrix if found be of sterling quality, can be the sole basis of the conviction of the accused.

29. However, in the present facts, considering the improvements made by the Complainant and also in view of the absence of corroborative evidence either by the way of seizure of mobile phone, CDR or by way of testimony of the maternal uncle of the Prosecutrix/Ravi Kant Pandey or any other family member, the learned M.M. has rightly held that the Prosecution has not been able to prove the case beyond reasonable doubt and the Accused is entitled to be given benefit of doubt.

30. It has been rightly held by the learned M.M. that the Prosecution has not been able to prove its case beyond reasonable doubt, resulting in Acquittal of the respondent.

Order:

31. There is no merit in the present Appeal, which is hereby dismissed along with pending Application(s), if any.