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

% Judgment reserved on: 22.09.2025
Judgment delivered on: 15.10.2025

\+ CRL.A. 1083/2017

STATE GOVT OF NCT OF DELHI .....Appellant

versus

AJAY KUMAR YADAV .....Respondent

Memo of Appearance

For the Appellant: Mr. Nawal Kishore Jha, APP for the State and SI Charu Saini, PS Aman Vihar.

For the Respondent: Mr. Jatin Rajput, Mr. Rajesh Kumar Jha, Mr. Varun Panwar and Mr. Sandeep Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

1. State takes exception to judgement dated 02.06.2016 whereby respondent has been acquitted of charges under Sections 363, 366, 376 of IPC and Section 4 of *Protection of Children from Sexual Offences Act, 2012* (*in short* POCSO).

2. Since matter pertains to a sexual assault committed, allegedly, upon a minor girl, she would be referred to as 'Miss A' in the present judgment.

3. Briefly stated, the case of the prosecution is that Miss A, aged 13 years, went missing on 30.12.2014. On the basis of report filed by her mother (PW-7), FIR was registered, same day, by PS Aman Vihar.

4. On 03.01.2015, PW7 produced her said daughter before the police and alleged that she had been kidnapped and sexually assaulted by the respondent-accused.

5. Police swung into action.

6. It recorded her statement under section 161 Cr.P.C., in which she claimed that accused had called her on 23.12.2014 on a false pretext and made forcible physical relation with her and, later, he took her to his village in a bus where they stayed there for 2-3 days. According to her, she was enticed away by the accused on the pretext that he would marry her.

7. However, when she was produced before the court, in her statement recorded under Section 164 Cr.P.C., she disclosed that *she was in love with accused and wanted to marry him*. Claiming herself to be 13 years of age, she further stated that *she had, voluntarily, accompanied accused who took her to his native village.* She also stated that accused

had made physical relations with her, earlier also i.e. on 23.12.2014. She also revealed that she was dropped back to Delhi by the elder brother of accused.

8. Accused, who was in his early twenties, was arrested and eventually charged under Section 6 of POCSO and under Sections 363, 366 and 376 (2) (n) IPC, to which he pleaded not guilty and claimed trial.

9. Prosecution examined eight witnesses in order to substantiate its case.

10. Accused, in his statement under Section 313 Cr.P.C., claimed that he had been falsely implicated at the instance of parents of Miss A because he belonged to a different caste.

11. He, however, did not lead any evidence in defence.

12. Learned Trial Court acquitted the accused while observing that there was no document with regard to the age of the prosecutrix (Miss A) and no *bone age ossification test* had either been conducted for determining her age. Since there was nothing to indicate that she was minor, she was presumed to be major. Taking note of her deposition, learned Trial Court also came to the conclusion that she had gone along

with the accused with her own sweet will and, therefore, not finding her testimony of sterling quality and on account of there being no medical evidence in support of the case of prosecution, the accused was acquitted.

13. Such order is under challenge.

14. Mr. Jha, learned APP for State submits that the findings given by learned Trial Court are contrary to law and facts and there is nothing to indicate that Miss A was major at the relevant time or that she was a consenting party. Though, in all fairness, while admitting that the investigating agency should have either collected documents related to her *date of birth* or else gone for her *bone age ossification test*, it is contended that prosecution's case could not have been discarded, merely, because of the abovesaid omission, as Miss A was, as per oral deposition, thirteen years of age when she had been enticed away. It is also emphasized that mere non-availability of MLC could not have been taken as an adverse circumstance against the prosecution. Mr. Jha also argues that question of her consent did not arise at all as she was minor and under constant threat of the accused, and, therefore, it, really, did not matter if she had not raised any alarm. Arguing that the conclusion should

be based on broad probabilities, instead of being swayed by insignificant contradictions and discrepancies, it is prayed that the appeal should be allowed and in view of the clear-cut and convincing testimony of Miss A, the accused should be convicted for commission of all the offences, with which he had been charged.

15. All such contentions have been refuted by defence.

16. We have heard learned APP for the State and learned counsel for the respondent/accused and carefully gone through the record and are unable to come to any different conclusion.

17. As regards age of the victim, learned Trial Court has analyzed the entire evidence in desired manner and is absolutely justified in holding that in view of there being no proof about her age, charges were not legally sustainable.

18. The procedure prescribed for determining age of a *child in conflict with law*, is equally applicable for determining age of a victim of a crime and thus whenever any child is brought before *Child Welfare Committee or Juvenile Justice Board* or any Court, it is obligated to undertake process of age determination by seeking evidence and as per procedure,

first preference has to be given to school record; and in absence whereof to birth certificate given by a corporation or a municipal authority or a panchayat. If no such birth certificate is available either, medical opinion is required to be sought from a duly constituted Medical Board.

19. Undeniably, in the case in hand, there is no proof with respect to her age.

20. It is really intriguing and baffling as to why no effort was made in this regard by the Investigating Agency.

21. A careful perusal of the charge-sheet would indicate that no importance was given to the abovesaid critical and imperative aspect of the case and in a very cursory manner, it was mentioned therein that *age proof of the victim would be filed subsequently.*

22. Unfortunately, nothing was collected or filed at later stage.

23. Nothing was shown during the trial, either.

24. Age cannot be presumed on the verbal utterances alone, particularly when the victim is, admittedly, a teenager.

25. Of course, as per oral deposition of Miss A (PW-3) and her mother (PW-7), she was thirteen years of age at the relevant time but fact remains

that there is no documentary proof to the abovesaid effect. There are specific suggestions to both of them that such age had been deliberately understated and that she was major at the time of alleged incident. Though, such suggestions were denied by them, fact remains that this Court cannot find any fault in the impugned judgement and quite clearly, prosecution, itself, is to be blamed as for the reasons best known to it, no effort of any kind was made to collect any documentary proof with respect to her age.

26. The investigating officer (PW-6) also admitted in her cross-examination that no document regarding her age was on record and that no bone age X-ray was conducted. It was suggested to her also that the victim was more than eighteen years of age and for the abovesaid reason only, the police had not collected any document with respect to her age.

27. Fact remains that in absence of any documentary proof, the age could not have been presumed merely on the basis of oral statements. The omission, in this regard, cannot be brushed aside unconcernedly and rather adverse inference thereto, against the prosecution, needs to be drawn.

28. In *State of Karnataka Vs. Sureshbabu*: 1993 SCC Online SC 295, Supreme Court has observed that when age is in doubt, the question of taking away from lawful guardianship does not arise

29. To make thing worse, when Miss A was produced for her gynecological examination, her mother, point black, refused for any internal gynecological examination of her said child.

30. This is apparent from EX-PW-3/A.

31. Since it was, allegedly, a case of sexual assault upon a minor, the Investigating Agency should have, besides collecting age proof, convinced victim and her mother to permit such gynecological examination. Refusal to undergo medical has also caused substantial damage to the case of prosecution. Had she undergone the same, and such examination was suggestive of any sexual assault, it could have certainly been taken as a corroborating piece of evidence.

32. Moreover, it appears to be a case of elopement.

33. Though, Miss A, in her deposition made allegations against the accused and, virtually, reiterated what she had claimed in her statement under Section 161 Cr.P.C., such version does not look to be completely

authentic and believable. In her cross examination, she, in no uncertain terms, deposed that she and accused had gone to ISBT in a local bus and that from there, they had gone to Farrukhabad, Uttar Pradesh in a State Transport Bus. She also admitted that there were other passengers in the buses and that she did not raise any alarm. Though, she volunteered that accused had seduced her with his *"sweet talks"*, her such stand does not seem to be inspiring enough. Even when she stayed with accused in said village, she did not raise any alarm. All these things gather significance as she even admitted in witness box that there used to be quarrel between their families and that the reason behind such quarrel was *her constant visits to the house of accused.*

34. In *State v. Rahul 2010 SCC OnLine Del 4556*, prosecutrix travelled by public transport and had ample opportunity to attract attention of others to indicate that she had been kidnapped. Her version that she was threatened was not found reliable and consequently, Coordinate Bench of this Court held that the inferences drawn by the Trial Court that the prosecutrix was not enticed away and was a consenting party to go with the respondent could not be termed to be unsustainable or contrary to the

evidence on record. Reference be also made to *Mahabir v. State 1994 (29) DRJ.*

35. Herein also, they both boarded bus together and travelled for more than 300 kms in crowded bus and for some inexplicable reasons, she raised no alarm whatsoever. Even after reaching Farrukhabad, they both went to the house of the accused and stayed there for two-three days in his native village. The parents, elder brother and bhabhi of the accused were also residing and she also deposed that the brother of the accused had even called up her mother on mobile phone and let her talk to her.

36. It is thus quite palpable that Miss A, voluntarily, accompanied and stayed with accused and his family, and, thus, was herself a consenting party.

37. In *Raju v. State 2025: DHC:8935-DB*, we had an occasion to deal with a similar fact situation, wherein also the victim and accused had travelled together in public transport and resided together for quite some time. While acquitting the accused, we took note of some precedents and observed as under:-

> *"69. In Tameezuddin @ Tammu Vs. State (NCT of Delhi): (2009) 15 SCC 566, Supreme Court observed that though it was true that in a case of rape*

the evidence of the prosecutrix must be given predominant consideration, but to hold that such evidence had to be accepted even if the story was improbable and belied logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. In Rajak Mohammad (supra), the prosecutrix moved freely with the accused for around 12 days and despite the fact she came in contact of many persons at different times, she made no complaint of any criminal act on the part of accused and, therefore, the Supreme Court was compelled to hold that the possibility of her being a consenting party could not be ruled out. Reference in this regard be also made to Tilku alias Tilak Singh vs. State of Uttarakhand: 2025 SCC OnLine SC 353 and Shyam and Another vs. State of Maharashtra: 1995 SCC (Cri) 851."

38. Here, as already noted, in her statement made under Section 164 CrPC, Miss A admitted that she was in love with accused and wanted to marry him. She also claimed that she had gone with him voluntarily. In MLC Ex. PW3/A also, it is recorded that she had gone with her neighbour with her will. *Child Welfare Committee*, in its report dated 06.01.2015, also observed that Miss A had run away with her neighbor to get married and that she had been a victim of neglect in her own house.

39. Thus, her stand before the Court is not fully consistent with the one she took during the investigation.

40. We are also conscious of the fact that the present appeal is an appeal against acquittal, where scope of interference is constricted one. State has failed to display any manifest illegality or perversity in the

impugned order. Appellate Court can interfere with the order of acquittal where it is satisfied that the only possible conclusion, on the basis of evidence led, was that of the guilt of the accused. Appellate Court cannot overturn order of acquittal, merely, on the premise that another view was possible. Thus, a judgment of acquittal can be upset where it is found to be perverse. Here, we, neither, come across any finding which can be branded as perverse, nor find any reason to reach any different conclusion.

41. In view of our foregoing discussion, we are not inclined to interfere with the impugned order.

42. Accordingly, the present appeal stands dismissed.

(VIVEK CHAUDHARY)
JUDGE

(MANOJ JAIN)
JUDGE

OCTOBER 15, 2025/*sw/pb*