



2025:DHC:7439



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

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Reserved on: 29th May, 2025**Pronounced on: 28th August, 2025**

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**CRL.A. 383/2009
DEEPU KUMAR**

.....Appellant

Through: Mr. Sachin Dev Sharma and
Mr. Vishnu Dutt Sharma, Adv.
Appellant in person.

versus

STATE

.....Respondent

Through: Mr. Aman Usman, APP for the
State with SI Ankit Maan, P.S.
Subhash Place.**CORAM:-****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. This is an appeal under Section 374(2) Cr.P.C. for setting aside the judgment dated 31.03.2009 and order on sentence dated 04.04.2009 in SC No. 71/2008, arising out of FIR No. 344/2005, under Sections 363/376 IPC, PS Saraswati Vihar. After examination of witnesses and completion of trial, the trial court was pleased to hold the appellant guilty of offences under Sections 363/376 IPC and vide order on sentence dated 04.04.2009, the appellant was sentenced to 7



years Rigorous Imprisonment [“RI”] with fine of Rs. 2000/- under Section 363 IPC, in default, 6 months RI. He has been further sentenced to undergo RI for 7 years with fine of Rs. 5000/-, and in default, 1 year RI under Section 376 IPC.

2. The brief facts of the case are that on 12.04.2005, father of the prosecutrix, came at Police Chowki and made a complaint that his minor daughter, aged about 14 years and 8 months, has been missing since the night of 09/10.04.2005. He suspected that his tenant Deepu, who was also missing, has enticed away his daughter. Upon such complaint, FIR was registered under Section 363 IPC. The Missing Persons Squad was informed and wireless message also flashed.

3. On 29.04.2005, on the basis of an information received from a secret informer, prosecutrix and appellant Deepu Kumar were apprehended on the pointing of the complainant from New Delhi Railway Station. Appellant was arrested. Appellant and prosecutrix were got medically examined. Statement of prosecutrix was got recorded under Section 164 Cr.P.C., which is Ex. PW-2/A. Consequent upon her statement, Section 376 IPC was added. Exhibits were sent to FSL and on completion of investigation, charge sheet was filed against the appellant under Sections 363/376 IPC.

4. Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. He submits that the date of birth certificate Ex. PW-3/A does not record the name of



the prosecutrix at any place. As per Ex. PW-3/A, the age of mother of prosecutrix is recorded as 21 years. The father of the prosecutrix (PW-1), in cross examination, states that at the time of birth of the prosecutrix, the age of his wife was 17-18 years. It is thus submitted that Ex. PW-3/A is not the birth certificate of the prosecutrix but may be the birth certificate of her elder sister. She was born much before 14.08.2009, while the age of her mother was 17-18 years. It is thus argued that the prosecution has failed to prove that prosecutrix was minor at the time of the alleged occurrence.

5. Learned APP, appearing for the State, submits that as per birth certificate issued by the Municipal Authority, the date of birth of the prosecutrix is 14.08.1990. He states that the date of birth, as recorded in the birth certificate, finds corroboration from the testimony of PW-1, her father. He argues that the parents are the best persons to tell the correct age of their children. According to the father of the prosecutrix, her date of birth is 14.08.1990. At the time of incident, she was merely studying in 7th class and was thus minor at the time of the alleged incident.

6. In the cases of kidnapping and rape, the prime question for consideration always remains the age of the prosecutrix. The age is most relevant because the age of the prosecutrix is a vital factor to find out if she was having capacity to give consent to go with the accused or to indulge in sexual act.



7. Prosecution has built up its case on the basis that prosecutrix was aged about 14 years & 8 months old at the time of incident. Since she was less than 16 years of age, therefore, she was not in a position to give consent to the accused to take her away from the custody of her parents. Prosecution has relied upon the statement of father of the prosecutrix as also her birth certificate to prove her age.

8. As per the birth certificate Ex. PW-3/A, the date of birth recorded is 14.08.1990. It records the name of PW-1 as father of the prosecutrix. The name of the mother also finds mention in the birth certificate. The birth certificate was registered way back on 25.08.1990 i.e. within 11 days of the birth. An entry in any public or other official book, register or record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such books, register or record is kept is a relevant fact in terms of Section 35 of the Evidence Act. The date of birth certificate having been registered way back in the year 1990, cannot be doubted nor the entry of the age recorded in the affidavit as 14.08.1990 can be doubted.

9. The only doubt which the defence is trying to create is that the Birth Certificate records the age of the mother as 21 years, whereas as per the statement of PW-1, the age of his wife was 17-18 years at the time of birth of the prosecutrix. PW-1 states in cross examination that he has three children and prosecutrix is the eldest child. There is no



cross examination, so much so, not even a suggestion in the cross examination that prosecutrix is not eldest child of PW-1. Prosecutrix being the eldest child and birth certificate bearing the names of the parents and recording the date of birth of the prosecutrix as 14.08.1990 cannot be doubted merely because there is a contradiction with regard to the age of the mother recorded in the birth certificate from the age stated by PW-1 in cross examination. There is no reason to doubt that Ex. PW-3/A is the birth certificate of the prosecutrix. That being so, it is duly established that prosecutrix was minor aged 14 years and 8 months approximately on the date of commission of the alleged offence.

10. Learned counsel for the appellant submits that there are contradictions in the testimony of PW-2 and the prosecution version of the incident. She has made improvements in her statement made before the court from the previous statements recorded under Section 161 & 164 Cr. PC. Her testimony is not trustworthy. He further submits that the story propounded with regard to the manner in which the prosecutrix was recovered from the appellant is also doubtful in view of the contradictions in the testimonies of the witnesses. It is argued that the trial court completely ignored that the investigation was unfair, tilted and dishonest.

11. Learned APP, however, has argued that once it is proved that the prosecutrix was less than 16 years of age, accused can be convicted for the offences under Sections 363/376 IPC. The gravamen



of the offence lies in the taking or enticing of a minor under the age specified in that Section out of the keeping of the lawful guardian without the consent of such guardian.

12. Undoubtedly consent of minor is no consent in the eyes of law and carries no meaning. But the defence of appellant has been that he neither took the prosecutrix out of the lawful guardianship of her father nor even accompanied her to Bihar. She was not recovered from his company from the Railway Station. Rather she eloped with some other boy and the appellant being the tenant of her father has been got falsely implicated with a view to get the house vacated.

13. The testimony of the prosecutrix in sexual offences is of utmost importance. By now, it is well settled that unless there are compelling reasons which necessitate looking for corroboration of the statement of the prosecutrix, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to her statement before relying upon the same as a whole, in such cases would literally amount to adding insult to injury. The victim of rape is not an accomplice and her evidence can be acted upon without corroboration. If evidence is reliable and inspires confidence, the conviction can be based on the sole testimony of the prosecutrix. Hence, the deposition of the prosecutrix has to be looked as a whole to find out whether the same has a ring of truth.



14. Prosecutrix stepped in the witness box as PW-2 and deposed that on 09.04.2005, accused Deepu, who used to reside as a tenant in a room of her house, took her away on the pretext of taking her to the temple. However instead of taking her to the temple, he took her to Bihar at the house of his relatives by train. He forcibly applied Sindoor on her forehead and told her that she has become his wife. He introduced her as his wife to his relatives but they did not believe him. She told them that she was not his wife. At the house of one of his relatives in Bihar, accused committed sexual intercourse with her three times. She was kept for 10-12 days in Bihar. On 29.04.2005, accused brought her to Delhi and at New Delhi Railway Station, her father along with the police apprehended the accused and recovered her from his possession.

15. In her cross examination, she stated that she told the police in her statement that accused had taken her away on 09.04.2005 on the pretext of taking her to temple. She was confronted with statement Ex. PW-2/DB made to the police wherein this fact is not so recorded. She stated that she had not told the police that accused had taken her on the pretext of marrying her. She was confronted with statement Ex. PW-2/DB, where this fact finds mention. She stated that she had told in her statement under Section 164 Cr.P.C. before the Magistrate that accused applied Sindoor on her forehead but this fact also does not find mention in such statement. She stated that she told the learned Magistrate in her statement under Section 164 Cr..P.C that accused



introduced her as his wife to his relatives in Bihar. She was confronted with statement Ex. PW-2/A, where this fact is not recorded. She stated that she had told the police as well as the learned Magistrate in her statement that accused committed sexual intercourse with her several times. She was confronted with statements Ex. PW-2/DB and Ex. PW-2/A. In statement Ex. PW-2/DB made to the police, it is mentioned that accused committed sexual intercourse as and when he got the opportunity, while in statement Ex. PW-2/A, it is mentioned that accused had committed sexual intercourse once with her. She testified that she gave the statement before the learned Magistrate as also to the police that she was kept in Bihar for 10-12 days. However, she was confronted with statements Ex. PW-2/DB and Ex. PW-2/A, where this fact is not so recorded.

16. Trial Court did not appreciate that prosecutrix made contradictory statements on every given opportunity. Statement made by her contains material improvements from the previous statements made before police and Magistrate. The statement given by her to the police under Section 161 Cr. PC, the statement before the learned Metropolitan Magistrate under Section 164 Cr. PC and the statement by her in examination in chief and in cross examination are inconsistent and contradictory. There is no consistent stand of the prosecutrix. In her statement under Section 161 Cr. PC, she stated that she was subjected to sexual intercourse number of times and at various places including the house of the prosecutrix. In her statement under



Section 164 Cr. PC, she stated that she was subjected to sexual intercourse only once at Patna, while in her statement on oath before the court, she stated that she was subjected to forcible sexual intercourse three times at the house of Bhabhi of the appellant.

17. In further cross examination, prosecutrix admitted that the house where she was kept is in a thickly populated area. She admitted that there were so many people at the railway station and on the way to the house of the Bhabhi of the accused. She further stated that the train started from Delhi during the day time and it took two days to reach Bihar. At first, she stated that she did not go to the bathroom during those two days but then improved by saying that she had gone to bathroom once. She further stated that accused had also been going to the bathroom. According to her, there was a temple near her house and they had gone to railway station in the TSR.

18. If the testimony of the prosecutrix is to be believed, on the pretext of taking her to the temple, she was taken to Bihar in a train, where she was subjected to sexual intercourse by the appellant. It is in evidence that the temple was near the house of the prosecutrix and it took two days to reach Bihar by train. Prosecutrix was not a girl of tender age who would not understand the intentions of the appellant. She would have realized that the appellant instead of taking her to the temple which was near her home, was taking her somewhere else. There is no evidence that she had put up any resistance or made any hue and cry or made any effort to escape. She admits that there were



people present at the railway station and in the train. She could have made the complaint to the driver of the TSR in which she was taken to the railway station or to the fellow passengers in the train. For two complete days, she travelled with the appellant but made no effort to escape. There is also no evidence that while staying in Bihar, she made any complaint to any of the relatives of the appellant or made any attempt to escape or inform the police. It is not her case that she was prevented from doing so due to any threat from the appellant or because she was confined inside the room and not allowed to leave.

19. The testimony of the prosecutrix, does not inspire any confidence. The evidence of the prosecutrix is not liable to be disbelieved save in exceptional circumstances, but to hold that the prosecutrix must be believed irrespective of the inconsistencies, improvements, contradictions and improbabilities in her story is an argument that can never be accepted. The thrust always is as to whether the given story inspires confidence. The instant case is an exceptional one.

20. The medical evidence also does not corroborate the testimony of the prosecutrix. As per MLC, there were no external injuries on the person of the prosecutrix. There is no definite finding that she was subjected to sexual intercourse. PW-9 Dr. Sujata Gautam deposed that “hymen” appears to be torn. Thus, the testimony of the prosecutrix does not find corroboration even from the medical evidence.



21. The case of the prosecution is that prosecutrix was recovered from the company of appellant on 29.04.2005 from New Delhi Railway Station on the basis of an information and appellant was arrested from there. As per the statement of the prosecutrix recorded under Section 164 Cr.P.C., she came to Delhi with an Advocate 4-5 days before the arrival of the appellant. There is no mention of her recovery and the arrest of the appellant from New Delhi Railway Station. In cross-examination, she owned the statement given to the learned Metropolitan Magistrate. She identified her signatures on the document Ex. PW 2/DB. According to her, her signatures at point A on the said document are voluntarily given, even though, she feigned ignorance, stating that she does not know in what connection this document was written or who had written the same. She admitted that she knows Hindi and document Ex. PW 2/DB is in Hindi. The document Ex. PW 2/DB records that in the morning of 21.04.2005, she was trying to come to Delhi from Muzaffarpur station, where some persons tried to entice her. She met an Advocate by the name Ram Virender Giri. She requested him to take her to Delhi. According to her, she returned to Delhi with the said Advocate. In her cross examination, she stated that she cannot tell the name of the Advocate who had brought her to Delhi. Be that as it may, she did not state that she was not accompanied by any Advocate to Delhi on 21.04.2005. If the prosecutrix had come to Delhi on 21.04.2005 as mentioned in Ex.PW2/DB, the entire story built up by the prosecution that on 29.04.2005 she was recovered from the custody of the appellant from



the New Delhi Railway Station, becomes unbelievable.

22. In cross examination, PW-1 admits that he had not gone to the address of the accused in Bihar. He admits that he was having the mobile number of the appellant and he tried his number but he was disconnecting the phone, and therefore, he was sure that he had not gone to Bihar and was at Delhi. PW-12 ASI Madan Lal states in cross examination that the other tenant Devdutt told him the address of appellant Deepu. Even though, complainant suspected that appellant took away his daughter, no effort was made either by him or the Investigating Officer to trace the prosecutrix at the Bihar address of the appellant. No serious effort was made to search the appellant from Bihar. The Investigating Officer did not even bother to collect the call detail records of the mobile phone of the appellant to confirm his location at Bihar.

23. In cross examination, PW-12 states that he received a secret information about the presence of the appellant and prosecutrix at the railway station, and upon receipt of such information, he had gone to the house of the complainant to tell him about the information, and thereafter he along with the complainant went to the railway station where, the prosecutrix was found in the company of the appellant. However, PW-1 deposed that when he rang up the mobile phone of the accused, he picked up the same, he heard the sound of trains and from that he came to know that he was at the railway station. He told the police about the same and went to the railway station with the



police. Thus, there is apparent contradiction in the testimonies of both these witnesses thereby rendering the prosecution version regarding the arrest of appellant and recovery of the prosecutrix in the manner stated as doubtful.

24. In his statement under Section 313 Cr.P.C, the appellant stated that he was a tenant in the house of father of the prosecutrix, who wanted to get his house vacated. Since the appellant was not vacating the house, father of prosecutrix became inimical towards him and while he had gone to his village in Bihar some days prior to the incident, the prosecutrix ran away with a boy. Her father lodged a complaint to the police. Later on, prosecutrix along with that boy were apprehended by the police. Prosecutrix threatened her father to commit suicide if any action was taken against that boy with whom she was deeply in love. The father of the prosecutrix then got detained the brother of the appellant by the police and asked him to come to Delhi from Bihar before his brother could be released and when he came to Delhi from Bihar, the father of the prosecutrix in connivance with the police, got him involved in the present case.

25. In support of his defence, appellant examined his brother Dalip Kumar, who deposed that on 12.04.2005, he was picked up by the police from his house and taken to Police Post Rani Bagh where he was told that his brother has taken away the prosecutrix and unless his brother is traced, he will not be set free.



26. He further deposed that on 22.04.2005, 2-3 persons along with counsel, prosecutrix and father of the prosecutrix came at the police post, where he was already detained. The father of the prosecutrix asked his daughter to tell the police that she had run away with his brother Deepu. However, prosecutrix told the police that she had not gone with Deepu and had in fact gone with some other person whose name she did not disclose as she did not want to get the said person involved in the case, being in love with him. Upon this, the father of the prosecutrix slapped her. He deposed that one Advocate, who came with the prosecutrix, told him that he had brought the prosecutrix from Muzaffarpur and that he and his brother were innocent and gave him a document Ex. PW-2/DB, bearing the signatures of the prosecutrix.

27. There is no cross examination of DW-1 with regard to the document Ex. PW-2/DB. Since the prosecutrix admits her signatures on the document Ex. PW-2/DB and does not deny that an Advocate accompanied her to Delhi, the same lends credence to the defence of the appellant that prosecutrix had fled away with some other person and came back to Delhi on 21.04.2005 and was not recovered from him on 29.04.2005.

28. In my view, the case of the prosecution bristles with serious inconsistencies, contradictions and improvement in the testimonies of the witnesses. The testimonies of the witnesses are therefore not of sterling quality. It is a cardinal principle of criminal jurisprudence that prosecution must prove its case against the accused beyond reasonable



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doubt. Once defence is able to create a doubt, the benefit must go to the accused.

29. In the present case, as discussed, from the testimonies of the witnesses, it cannot be said that prosecution has been able to prove its case beyond doubt, and therefore, that being so, Court is of the view that the judgment of conviction and sentence rendered by the trial court cannot be sustained. The judgment dated 31.03.2009 and order on sentence dated 04.04.2009 are therefore set aside.

30. Accordingly, the appeal is allowed and appellant is acquitted. Bail Bond of appellant is cancelled and surety is discharged.

RAVINDER DUDEJA, J.

August 28, 2025

RM/AK

सत्यमेव जयते