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

Date of reserving Judgment: 12th January, 2026

Date of decision: 10th April, 2026

IN THE MATTER OF:

\+ CRL.A. 564/2009

SHAMSHAD AHMED .....Appellant

Through: Mr. Lalit Besoya, Ms. Mehak Kalra, Mr. Kumar Gaurav and Mr. Raj Kumar, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for State with SI Mitthan Lal, PS Sarita Vihar.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

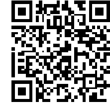
1. Instant case is full of unusual conduct and circumstances right from the very inception. The victim was allegedly kidnapped by the Appellant in a TSR and travelled for quite some distance uninterrupted, unhindered and unchecked for about 1½ hours. The incident took place on 20.07.2005 and in summer time the movement of the people starts early in the morning therefore, every reason was there to find people on the road while the Appellant was taking the victim towards Narela from the area of Shaheen Bagh. Alike the prosecutrix, other students of school and their parents must have been there. Secondly, it is equally strange that the victim was confined in a room where barely only a cot could be adjusted, indicating that the

persons occupying the room i.e. the Appellant and the victim were bound to go outside the room for nothing else than to answer the nature's call etc. In the aforesaid two scenarios, the victim had sufficient opportunity initially to raise alarm to avoid her kidnapping and the ordeal which followed, but for some unknown reason no such attempt, leave alone an effort, was even made. Then she could have seized some opportunity during the travel in TSR, which lasted for about 1½ hours. Subsequently, when she came out of the so-called confinement to make a call to her father from a nearby Public Call Office (PCO) and, thereafter, while travelling in the bus with the Appellant. Astonishingly, no effort was ever made by her to either call the police or the neighbours, PCO owner or co-passengers.

2. The prosecutrix has stated that she was taken forcibly by the accused in a TSR, yet admittedly she did not raise any alarm at that time or during the journey to Narela, as according to her, the accused had gagged her mouth with his hand and threatened her with a knife, due to which she was scared to raise an alarm. Incidentally, no description of the knife was given, nor was it recovered. There is no reference of any knife in her statement under Section 161 Cr.P.C. and 164 Cr.P.C. Ex.PW1/DA and Ex.PW1/A respectively. She further stated that she was kept locked in a room, which did not have any space except for a cot. The relevant part of cross-examination goes as follows:-

"…it was a small room which can accommodate one cot in the room..."

3. It is pertinent to note that even during the period of alleged confinement, she neither attempted to flee nor raised any alarm to seek help from persons in the vicinity. It has come in her testimony that the accused went out for arranging food twice a day and took about ten minutes to return to the room, which provided ample opportunity to the prosecutrix to either



escape or raise an alarm and seek assistance. Further, she was taken to the washroom by the accused and even then knife was shown to her. But this could be another opportunity to flee, yet no such attempt was made. It is not the case that the place of confinement was an isolated room and none else was residing there. The nearby houses / shops were at a distance of mere 20 feet, as deposed by the prosecutrix.

4. Another very unusual circumstance is that the Appellant, on the one hand, allegedly kidnapped the victim, but on the other hand, it is he who brings her back home and leaves the victim near her house. They travelled in a bus from the area of Narela to Shaheen Bagh and again the victim did not raise any alarm as she may not be sure where she was being taken. On the contrary, she was worried about the fact that the Appellant may be arrested by the police. According to the prosecutrix, she did not raise alarm while travelling in bus with the Appellant from Narela as her face / mouth and eyes were covered by Appellant by both of his hands. The relevant portion of the examination of the prosecutrix is given below:

> *"My face and eyes were covered with both the hands of the accused. Accused shown me knife and threatened me."*

5. It is highly improbable that the public / co-passengers in the bus would not notice such an act of the Appellant and would give a go by. The credibility of the prosecutrix keeps corroding further.

6. To top it all, she, while being in Narela area with the Appellant, was able to sneak out to make a call from PCO to her father, but did not share her situation with the PCO owner, nor did she made call to the police. There is an unnatural concern in favour of her alleged kidnapper and perpetrator of sexual assault. The relevant portion of the statement is as below:-

> *"I did not raise any voice while coming from the bus from Narela in my house as I was under impression that police would arrest him".*

7. Additionally, the conduct of the prosecutrix after allegedly informing her father about her whereabouts has not been explained. There is no material on record to show what steps were taken by the father thereafter. Her own statement that she returned because she was scared, and simultaneously that she was afraid that the accused might get arrested, renders her version doubtful and totally inconsistent. In fact, there is no reference of any phone call from prosecutrix to her father in the statement of PW3-Abad Ali. How such an important call be missed by him to be mentioned to police? It should have rather led the police to crack the case instead of the prosecutrix coming back of her own or dropped by the Appellant.

8. As per the case of the prosecution, the victim was kidnapped while she was on the way to her school at about 6:00 AM in the morning on 20.07.2005 and was taken in a TSR to some place in and around Narela. Initially, the matter was reported by the parents of the victim by lodging a missing report, as reflected in DD No. 4 (Mark-A) dated 20.07.2005, but no suspect has been named. After about two days, an FIR No. 347/2005 Ex.PW6/A was registered by the police of PS Sarita Vihar, under Section 363 IPC and in this the name of Appellant comes.

9. As reflected on record, the victim herself reached back home and it is not the case that the police got her recovered from the Appellant or from some place under the control of the Appellant or at his instance.

10. The victim after reaching home narrated her ordeal that she was kidnapped by the Appellant and kept confined in a room for about 9 days

without food. She survived only on water. Incidentally, the prosecutrix has herself deposed in her cross-examination that the Appellant used to go out to fetch food. If the Appellant alone had to eat, he could have eaten outside. There was no need to bring the food to the room. The relevant part of the cross-examination of the prosecutrix goes as under:-

> *"The accused used to go only two times in a day for taking food and water. I did not take food for the said 9 days except water. The accused used to bring food in 10 minutes."*

11. During this period, he raped her at least 5 times on two days. Based upon these facts, initially FIR, which was registered under Section 363 IPC, subsequently got an addition of Section 343 & 376 IPC.

12. The Appellant, after being chargesheeted, was confronted with the charge framed under Section 363/376/343 IPC to which he pleaded not guilty and after the trial i.e. examination of 10 witnesses, including the victim / prosecutrix, he was held guilty under Section 376/363 IPC. For offence under Section 376 IPC, he was sentenced to undergo Rigorous Imprisonment (RI) for a period of *7* years and a fine of Rs. 5,000/- and in default of payment of fine, he was to undergo Simple Imprisonment (SI) for 2 months and for offence under Section 363 IPC, he was sentenced to undergo Rigorous Imprisonment for a period of *2* years and a fine of Rs. 5,000/- and in default of payment of fine, to undergo Simple Imprisonment for 2 months.

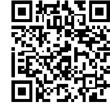
13. Against the backdrop of aforesaid facts and circumstances, the instant Appeal came up for the hearing, wherein learned counsel for the Appellant has primarily raised two issues that the testimonies of the victim and so also of the parents of the victim, are full of contradictions, improvements, inconsistencies and the narrative put forth, thus, is highly improbable. In

addition to that, it is submitted that the prosecution has failed to prove the age of the victim that she was below 16 years of age and for that matter, what was her age at the relevant time, inasmuch as the documents i.e. Birth Certificate and other documents relied upon by the prosecution, in this context, have not been proved in terms of the Indian Evidence Act, 1872. Therefore, it is asserted that there is no proof, leave alone any conclusive proof about the age of the victim, whose testimony is otherwise, full of doubtful narratives and circumstances through which suspicion seeps in her version which entitles the Appellant to be acquitted of the charge. Then there is no trace of the TSR allegedly used to kidnap the prosecutrix, no statement of TSR driver and knife too, was not recovered.

14. The Respondent-State on the other hand, came up with the plea that the prosecutrix was 15 years, 9 months and 20 days of age when the incident took place, as can be inferred and seen from the date of Birth Certificate Ex.PW8/K and Ex.PW8/L, which was collected by the Investigating Officer, who has testified about the same in his testimony.

15. Even if it is presumed that the victim / prosecutrix was a willing party who moved with the Appellant and indulged into the physical intimacy, but was a minor, therefore, her consent was immaterial and that is how, the learned Prosecutor stood by the Impugned Judgment.

16. In the present case, the prosecution has sought to establish the guilt of the accused primarily on the testimony of the prosecutrix. It is a settled principle of law that in cases relating to sexual offences, the sole testimony of the victim can form the basis of conviction and no corroboration is required, if it is found to be trustworthy, reliable and free from material inconsistencies. This legal position has been authoritatively laid down by the Hon'ble Supreme Court in ***State of Punjab v. Gurmit Singh*****,** (1996) 2 SCC



384. Reference can be made to the judgment in case *of* ***Vijay vs. State of Madhya Pradesh*****,** (2010) 8 SCC 191, However, the said principle is not absolute and is subject to the condition that the statement of the prosecutrix must inspire confidence and must not suffer from material contradictions or improbabilities, as reiterated in ***Rai Sandeep vs. State (NCT of Delhi),*** (2012) 8 SCC 21. Reference can be made to the judgment in ***Sadashiv Ramrao Hadbe vs. State of Maharashtra,*** (2006) 10 SCC 92**.** The prosecutrix appeared as PW1 and her statement is marked as Ex. PW1/A. On a careful appraisal of the evidence on record, this Court finds that the statement of the prosecutrix in the present case suffers from several inconsistencies and improbabilities, which go to the root of the prosecution's case.

17. The contention regarding non-examination of the driver of the vehicle and non-recovery of the alleged weapon relates to the quality of investigation. It is well settled that deficiencies or lapses in investigation by themselves do not vitiate the prosecution's case if the substantive evidence inspires confidence. In ***C. Muniappan & Ors. vs. State of Tamil Nadu,*** (2010) 9 SCC 567, the Supreme Court held that defective investigation cannot be a ground for acquittal where there is reliable ocular evidence on record. Incidentally, there are several other lapses in the investigation, such as, not examining the landlord of the premises where the prosecutrix was confined, non-examination of neighbours as also of the PCO owner. The place where the victim was confined has not been ascertained, no site plan is there etc. Again the statement of the prosecutrix under Section 164 Cr.P.C., which should have been recorded at the earliest, took about 2 months to get recorded, leaving enough scope for manipulation.

18. Coming to the charge under Section 363 IPC, the foundational requirement for the said offence is that the prosecutrix must be a minor and must have been taken out of the lawful guardianship of her parents without their consent. In the present case, the prosecution has relied upon certain certificates to prove the age of the prosecutrix. However, it is an admitted position that only photocopies of such documents were produced. The settled rule of evidence requires that documents must ordinarily be proved by primary evidence and secondary evidence can be led only after laying a proper foundation for non-production of the original. No such effort has been made in the present case. In the absence of original documents or legally admissible secondary evidence, the age of the prosecutrix has not been proved in accordance with law. Further, her mother in her statement stated that she did not remember as to when her daughter was born. She deposed that she was born after 5 years of her marriage, however, the father of the prosecutrix states that she was born after 3-4 years of marriage. Neither of them could state conclusively the fact of her year of birth. Consequently, the very basis of the charge under Section 363 IPC remains unsubstantiated, especially when it could not be established that the prosecutrix was enticed or forced by the Appellant as the testimony is not aboveboard on this Court.

19. The date of Birth Certificate has not only been not proved in terms of Chapter V of the Evidence Act, 1872 dealing with documentary evidence, but if the school certificate is taken into consideration, even then no conclusive proof of age is there. In ***Birad Mal Singhvi vs. Anand Purohit*****,** (1988) Supp SCC 604, it has been observed as reproduced hereunder:-

> *" 14. ... The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in*

> *the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value."*

20. A counter argument can be there that the parents of the child and the school authorities were not aware that such a situation in the future would emerge where the issue of age of the victim would crop up. In these circumstances, why anybody would furnish something, which is not correct. Thus, it may be presumed that the school records *qua* the date of birth should be accepted.

21. However, the requirement of law is to be satisfied and in the instant case, it is to be established that the victim was a minor or say less than 16 years of age at the time of the incident. There cannot be any exception to this.

22. As regards the medical evidence, the testimony of the Doctors is only suggestive in nature. Medical evidence in cases of this nature is corroborative and not substantive. Even if taken at its highest probative value, the medical evidence does not conclusively establish the prosecution's case nor does it complete the chain of circumstances so as to bring home the guilt of the accused beyond reasonable doubt. The MLC Ex.PW8/E of the prosecutrix reflects that there was no injury on her person at all, which rules out any forcible sexual act. She might have been subdued by the threat of harm by knife and may have surrendered, which could have been possible thus, no injury was found. However, not only her hymen was torn, but the infamous and banned two finger test or virginity test was there

as reflected in the MLC to the effect that it admits two fingers, which too indicates something. The aforesaid 'Per Vaginal Test' was banned in 2013, however, the instant case is prior to that of the year 2005. Merely five sexual intercourses or rape would not bring such a situation to admit two fingers. It indicates something else, something more. The suggestion to prosecutrix in her cross-examination about her neighbour Faquir Mohd. starts whispering if not speaking, about the possibility of what was suggested by learned counsel for the Appellant about the "*ched-chaad*' by Faquir Mohd., but denied by the prosecutrix, who however, admitted that the said Faquir Mohd. used to visit, but to meet her father.

23. The statements of the parents of the prosecutrix, examined as PW2 Smt. Rafiqul Nishan and PW3 Abad Ali respectively, do contain certain minor inconsistencies. However, these inconsistencies do not materially affect the core of the case and are not decisive in themselves. Nonetheless, when the evidence is appreciated as a whole, the prosecution has failed to cogently establish the essential ingredients of the offences alleged that is, offence of Rape under Section 375 punishable under Section 376 IPC as well as Section 363 IPC. The prosecutrix went out of her home alone and came back alone. There is no witness that she was taken away / kidnapped by the Appellant nor had anyone seen her being dropped back by the Appellant. No witness as to where she was taken and confined. The PCO owner, neighbours, landlord should have been examined to give some credence, but for the reason best known to the Investigating Agency, no such effort was made. Appellant or anybody would not rent out a place for a week or two weeks, then every possibility was there with the Investigating Officer to investigate that part of the narration.

24. No witness of not only rape but kidnapping is there except the victim, but her testimony does not fit the bill of sterling quality. As such corroboration was required, which is not there as cogent evidence. The MLC comes loaded with another possibility. After analysis of the evidence on record, specifically the statement of the prosecutrix, it can be said that the testimony is not free from material inconsistencies and improbabilities. Therefore, it will not be correct to rely on her testimony alone for establishing the guilt of the accused. The fundamental principle of criminal law is that the accused must be proved guilty beyond reasonable doubt. Any gaps in the evidence can raise doubts and the accused must be given the benefit of doubt in such circumstances.

25. The Appeal, as such, is allowed and the impugned judgment dated 18.12.2008 and order on sentence dated 20.12.2008 are *set-aside*. Appeal stands disposed of accordingly.

26. Bail bond stands cancelled and surety stands discharged. Documents / FDR, if any, on record be released to the surety, upon proper acknowledgment. Pending application(s), if any, stands disposed of.

27. Copy of the judgment be transmitted to the Trial Court and the Prison Authorities, for information and necessary action.

VIMAL KUMAR YADAV, J

APRIL 10, 2026/*bj/hk/tng*