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

Date of reserving order: 15th September, 2026

Date of decision: 30th October, 2026

\# **CNR No. DLHC010533542022**

\+ CRL.A. 133/2022

IMRAN .....Appellant

Through: Mr. Nipun Katyal, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI) .....Respondent

Through: Mr. Raj Kumar, APP for the State.
Mr. Archit Upadhyay (DHCLSC) & Mr. Arpit Tripathi, Advs for prosecutrix.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), assails the judgment and order on sentence dated 17.11.2021 and 18.01.2022 respectively, passed by the learned Additional Sessions Judge, Fast Track Special Court (POCSO), South District, Saket Courts, New Delhi in Sessions Case No. 437/2017 arising out of FIR No. 422/2017 registered at Police Station Mehrauli, whereby the appellant was convicted for offences punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") and Sections 366, 376(2) and 506 Part-II of the Indian Penal Code, 1860 ("IPC").

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2. Through the order on sentence dated 18.01.2022, the appellant was sentenced to undergo Rigorous Imprisonment (RI) for 15 years under Section 376(2) IPC, along with fine of ₹10,000/-, in default of payment of fine to further undergo Simple Imprisonment (SI) for six months. For the offence under Section 366 IPC, he was sentenced to RI for seven years with fine of ₹5,000/- and in default thereof SI for three months. For the offence under Section 506 (Part-II) IPC, he was sentenced to RI for two years and six months with fine of ₹5,000/- and in default thereof SI for three months. The substantive sentences were directed to run concurrently. The learned Trial Court also directed payment of compensation of ₹4,00,000/- to the victim, to be contributed equally by the appellant and the DLSA.

3. The case of the prosecution, in substance, is that the prosecutrix, who, according to the prosecution, was a minor at the relevant time, had gone to the shop of the appellant on 20.06.2017, who was working as a tailor, for collecting her stitched suit. It is alleged that the appellant, thereafter, took the prosecutrix with him on a two-wheeler on the pretext of changing/showing her the suit at his factory situated at Maidangarhi area. Instead, he took the prosecutrix to the jungle of Maidangarhi area, to an isolated place near a Kikkar tree, and committed sexual assault upon her.

4. Thereafter, the appellant received a telephone call from one Parshuram, stated to be a security guard, informing him that the parents of the prosecutrix were searching for her. The prosecution alleges that the appellant thereafter brought the prosecutrix back near her residence and threatened her against disclosing the incident. The prosecutrix did not immediately disclose the alleged incident to her parents. She subsequently disclosed it to her parents on 27.06.2017, following which the matter was reported to the police and the FIR came to be registered on 27.06.2017 under

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Sections 376, 354 and 506 IPC and Sections 4 and 8 of the POCSO Act. After investigation, the charge-sheet was filed and charges were framed on 03.11.2017 under Sections 323, 354, 363, 366, 376(2) and 506 IPC, Section 4 read with Section 3 of the POCSO Act and Section 8 read with Section 7 of the POCSO Act, to which the appellant pleaded not guilty and claimed trial.

5. The prosecution, to substantiate its case, examined 13 witnesses. The victim was examined as PW-1. Her mother and father were examined as PW-4 and PW-5 respectively. PW-6 Parshuram was examined in relation to the alleged telephone communication. PW-7 and PW-12 were the respective nodal officers concerning the telephone records. PW-8 was examined regarding the age of the victim. PW-11 Dr. Parul Jaiswal proved/identified the medical record of the victim, while PW-13 was the Investigating Officer.

6. The appellant, in his statement under Section 313 Cr.P.C., denied the incriminating circumstances and stated that he had been falsely implicated. He also disputed the mobile number attributed to him and stated that his identity document had been misused. The defence examined one witness, namely, HC Shokat DW-1. However, the appellant was convicted and sentenced as detailed above.

7. Learned counsel for the appellant has assailed the impugned judgment principally on the ground that the conviction rests substantially upon the testimony of the victim, which suffers from material contradictions and is not of such sterling quality as would sustain a conviction without independent corroboration. Learned counsel has further relied upon the discrepancy concerning the time and movement from the appellant's shop to the alleged place of occurrence. The victim stated that the jungle was

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approximately three kilometres away and that the appellant reached there in about five minutes while driving at high speed.

8. It has been further argued that the victim's version regarding the date of occurrence is inconsistent. While the complaint and testimony before the Trial Court refer to 20.06.2017, the statement under Section 164 Cr.P.C. records the date as 20.05.2017.

9. Another submission concerns PW-6 Parshuram. According to the prosecution, it was his telephone call which caused the appellant to bring the victim back. It is submitted that the mere existence of such a call does not establish that the prosecutrix was accompanying the appellant at that particular time and that PW-6 in any event did not support the version of the prosecution.

10. It is further pointed out that no CCTV footage from the relevant locations was collected or produced and that there is no independent witness who had seen the appellant leaving his shop with the victim. It has not, however, been pointed out that any CCTV cameras were installed at those locations.

11. The appellant has further argued that the medical evidence does not establish the time or manner of the alleged sexual assault and that there were no corresponding injuries establishing the prosecution version.

12. The appellant has further argued that the clothes allegedly worn by the victim were not shown to have been damaged and that the investigating officer did not seize the suit which, according to the prosecution, was the reason for the victim's visit to the Appellant's shop.

13. Learned counsel has further challenged the application of the presumption under Section 29 of the POCSO Act, contending that the

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prosecution was first required to establish the foundational facts before the statutory presumption could operate.

14. Further, learned counsel for the appellant assailed the finding that the prosecutrix was a minor. In the written submissions filed on behalf of the appellant (para 4.8), it is urged that the prosecution has relied only upon the admission registration form (Ex. PW8/A), the admission register entry (Ex. PW8/B) and the certificate of the principal (Ex. PW8/C), PW-8 having stated that, as per the school record, the date of birth of the prosecutrix is 01.12.2001, that no document of the kind mentioned in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act") has been produced and that no ossification test or other medical age determination test was conducted. Reliance was placed on ***State v. Tofil Ahmad @ Sonu Singh***, 2024 SCC OnLine Del 5403, ***Satpal Singh v. State of Haryana***, (2010) 8 SCC 714 and ***Karan Kumar v. State & Anr.***, 2025 SCC OnLine Del 4239.

15. Finally, without prejudice to the challenge to conviction, learned counsel has submitted that the sentence of 15 years imposed upon the appellant is excessive and that there were no reasons recorded demonstrating why a sentence substantially above the statutory minimum was warranted. Learned counsel also submitted that the appellant had, on the date of the submissions, already undergone 7 years, six months and 9 days and has made a humanitarian submission regarding his family circumstances.

16. Per contra, learned APP for the State has stood by the judgment of the learned Trial Court and submitted that the testimony of the prosecutrix is consistent on the core allegation of sexual assault and that minor discrepancies concerning dates or peripheral details cannot demolish an otherwise credible prosecution case. It is submitted that the prosecutrix has

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explained the delay in registration of the FIR, as she could not immediately disclose the incident because of fear and apprehension. It is argued that the evidence of the prosecutrix cannot be discarded merely because an independent witness did not fully support the prosecution. Learned APP has further submitted that the hostility of PW-6 does not demolish the prosecution case because the electronic evidence and the testimony of the prosecutrix independently establish the relevant circumstances.

17. Having heard the learned counsel for both the parties and having perused the evidence led before the learned Trial Court, the impugned judgment and the material placed on record, the question which arises for consideration is whether the prosecution has succeeded in proving, beyond reasonable doubt, the essential ingredients of the offences for which the appellant has been convicted.

18. Since the conviction rests substantially upon the testimony of the prosecutrix, it would be appropriate to first examine the ingredients of the offences and thereafter to appreciate the testimony of PW-1 in the light of those ingredients. Such an exercise is particularly necessary in the present case because the principal challenge of the Appellant is that the testimony of PW-1 contains discrepancies which, according to him, render the prosecution case doubtful.

19. Before proceeding to appreciate the evidence, it would be appropriate to reiterate that in a case of sexual assault, the testimony of the prosecutrix occupies a position of considerable significance. There is no rule of law requiring the testimony of a prosecutrix to be corroborated in every case by independent evidence. If her testimony is found to be reliable, cogent and inspires confidence, a conviction can rest upon her testimony alone. At the same time, the court is required to examine such testimony with due care and

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caution and determine whether the inconsistencies pointed out by the defence are material or merely peripheral. The settled position is that minor discrepancies or variations relating to dates, time or other collateral particulars cannot, by themselves, discredit an otherwise trustworthy account.

20. In the present case, the testimony of PW-1 has to be examined keeping in view the nature of the occurrence alleged, the age of the prosecutrix and the circumstances in which the incident is stated to have taken place. The core of the prosecution case is that the prosecutrix had gone to the appellant's shop for collecting her stitched suit, that the appellant took her with him on the pretext of taking her to the factory for showing/changing the suit, that she was instead taken to an isolated place in the Maidangarhi jungle and that the appellant committed sexual assault upon her there. The above testimony, when read as a whole, forms part of the same transaction and presents a continuous narrative of connected circumstances.

21. The defence has placed considerable emphasis on the discrepancy regarding the date of occurrence, that is, the reference to 20.06.2017 in the complaint and 20.05.2017 in the statement under Section 164 Cr.P.C. This discrepancy undoubtedly requires consideration. However, the mere variation in the date, particularly where the occurrence itself and the identity of the assailant remain consistently asserted, cannot automatically be elevated to the status of a contradiction going to the root of the prosecution's case. The Court has to examine whether the discrepancy affects the very occurrence or merely reflects an error concerning a minor detail.

22. The statement under Section 164 Cr.P.C., recorded on 28.06.2017, is required to be appreciated along with the testimony given before the Court and the other circumstances proved during trial. A variation in the date does

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not, by itself, erase the substantive account of the prosecutrix if the essential features of the occurrence remain intact. It is also noticed that the variation was not put to PW-1 in her cross-examination so as to afford her an opportunity to explain it. The defence has not demonstrated from the material noticed in the present appeal that the discrepancy concerning the month establishes the impossibility of the occurrence or places the appellant elsewhere on the relevant date. The contention is, therefore, rejected.

23. The argument concerning the distance between the appellant's shop and the jungle and the time allegedly taken to reach there also does not persuade this Court to reject the prosecution case. The prosecutrix stated that the distance was approximately three kilometres and that the appellant reached the place in about five minutes while driving at a high speed. The precise calculation of time based upon an estimated distance is not such a circumstance upon which the entire prosecution case can be discarded. The statement, viewed in its proper context, indicates that the appellant took her away from the shop and proceeded towards an isolated place. A minor variation in the estimated distance or time cannot be a ground to demolish the prosecution case and this contention is also rejected.

24. Much emphasis has also been placed on the fact that PW-6 Parshuram did not support the prosecution version in its entirety. However, the testimony of a witness who does not support a particular part of the prosecution case does not automatically render the testimony of the prosecutrix unreliable. The evidence of each witness has to be assessed for its own worth. The Court is required to determine whether the portion of the prosecution case concerning the commission of the offence stands established independently of the particular circumstance which PW-6 did not support.

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25. The prosecution case cannot, therefore, be rejected merely because PW-6 did not support the alleged telephone conversation in the manner projected by the prosecution. The alleged telephone call was relied upon principally as a circumstance explaining why and how the appellant brought and dropped the prosecutrix near her residence. It is not the substantive evidence of the sexual assault itself. The absence of support from PW-6 may affect the weight to be attached to that particular circumstance, but it does not, by itself, destroys the direct testimony concerning the occurrence.

26. Similarly, the absence of CCTV footage or an independent witness who actually saw the appellant leaving his shop with the prosecutrix cannot be treated as fatal in the facts of the present case. Sexual offences, particularly those committed at isolated locations, are ordinarily not witnessed by independent persons. The prosecution is required to prove its case through the evidence available to it and is not required to manufacture independent eyewitnesses to an occurrence which, by its very nature, may take place in private.

27. The fact that CCTV footage was not collected from the relevant locations may constitute an investigative deficiency. However, an omission on the part of the investigating officer does not necessarily demolish otherwise reliable substantive evidence.

28. The same principle applies to the submission that the suit allegedly worn by the prosecutrix was not seized. The non-seizure of a particular article may deprive the prosecution of one possible piece of corroborative evidence, but it does not mean that the occurrence itself stands disproved. The Court has to assess the substantive evidence which is available rather than assume that every investigative omission necessarily creates a reasonable doubt.

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29. The appellant has also relied upon the medical evidence and the absence of corresponding injuries. The submission proceeds on the premise that the sexual assault alleged by the prosecutrix stands disproved, or at least uncorroborated, unless it is borne out by injuries. There is no such rule of law. It is a settled position that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration and the Court may convict the accused on her sole testimony. In ***Vijay @ Chinee v. State of M.P.***, (2010) 8 SCC 191, the Supreme Court, after referring to ***State of H.P. v. Raghubir Singh***, (1993) 2 SCC 622, held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording a conviction. Medical evidence may lend assurance to the version of the prosecutrix, but its absence, or the absence of external injuries, is not by itself determinative where her ocular testimony is otherwise found reliable. What the Court has to examine is whether the medical evidence is inconsistent with the prosecution case, and not whether it independently proves the occurrence.

30. In the present case, the medical evidence, therefore, has to be appreciated for what it establishes and what it does not establish. It cannot be used to introduce a requirement of physical injury which is not an essential ingredient of the offence. Further, medical evidence cannot be independently used as proof of the occurrence. Rather, it has to be seen whether the medical evidence is consistent with the prosecution case or not. The MLC of the prosecutrix (Ex. PW11/A), proved by PW-11 Dr. Parul Jaiswal, records that a mucosal tear at 6 o'clock position (1 cm) without bleeding was noted at the fourchette and introitus and a tear at 6 o'clock without bleeding was noted at the hymen. The medical evidence is, thus, consistent with the

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version of the prosecutrix. No inconsistency has been demonstrated merely by pointing out the absence of external injuries.

31. The learned Trial Court has held the prosecutrix to be a minor on the strength of the school records and has convicted the appellant under Section 4 of the POCSO Act. The age of the prosecutrix is an ingredient of that offence and also determines the footing on which the offences under the IPC are to be examined. Although the point does not appear to have been agitated before the learned Trial Court, it has been specifically taken in the written submissions of the appellant, and in any event the burden of proving that the prosecutrix was a child lay on the prosecution. Section 34(2) of the POCSO Act, moreover, requires the Special Court, where a question arises whether a person is a child or not, to determine it "after satisfying itself about the age of such person" and to "record in writing its reasons for such determination". In ***P. Yuvaprakash v. State***, (2024) 17 SCC 684, the Supreme Court held that, in view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act becomes relevant and applicable and that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the Courts have to take recourse to the steps indicated in Section 94 of the JJ Act. This Court has accordingly examined the question afresh.

32. The criteria for determining the age of a child have been laid down in Section 94 of the JJ Act. The relevant portion reads as under:

> *"94. Presumption and determination of age.*
> *... (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –*
> *(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*

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(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

33. The documents relied upon by the prosecution to prove the age of the prosecutrix, namely the school admission form/application form for admission (Ex. PW8/A), the admission register maintained by the school authorities (Ex. PW8/B) and a certificate issued by the principal stating the date of birth as maintained in their records (Ex. PW8/C), which according to PW-8 record the date of birth of the prosecutrix as 01.12.2001, have therefore to be tested against Section 94(2) of the JJ Act. The question is not whether such an entry exists, but whether it is a document of the kind which Section 94(2) places in the first or second category and, if it is not, what follows from that.

34. Section 94(2) prescribes an order of preference. First in that order is the date of birth certificate from the school or the matriculation or equivalent certificate from the examination Board. Failing that, it is the birth certificate given by a corporation, municipal authority or panchayat. Only in the absence of both is the age to be determined by an ossification test or other latest medical age determination test. In ***P. Yuvaprakash*** (supra), the Supreme Court observed that the burden is always upon the prosecution to establish what it alleges and held that a school transfer certificate and extracts of the admission register are not what Section 94(2)(i) mandates. In the present case no matriculation or equivalent certificate has been produced,

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no birth certificate issued by a corporation, municipal authority or panchayat has been brought on record by the prosecution and, as is admitted, no ossification test or other medical age determination test was conducted.

35. The only question which merits closer consideration is whether the certificate of the principal (Ex. PW8/C) can be treated as "the date of birth certificate from the school" within Section 94(2)(i). In the view of this Court, it cannot, for the following reasons. The certificate does not record an independent determination of the date of birth. It states the date of birth "as maintained in their records", that is to say, it reproduces the entry in the admission register (Ex. PW8/B), which in turn was made on the basis of the admission form (Ex. PW8/A). Its probative value can rise no higher than that of the entry it reproduces. In ***Satpal Singh v. State of Haryana,*** (2010) 8 SCC 714, the Supreme Court, after citing several earlier decisions, held that a document may be admissible under Section 35 of the Evidence Act, but that admissibility is one thing and probative value another. The authenticity of the entry depends on whose instruction or information it was recorded and what his source of information was. An entry in a school register or certificate therefore requires to be proved in accordance with law. ***In State (Govt. of NCT of Delhi) v. Shailesh Kumar,*** 2019 SCC OnLine Del 8318, a Division Bench of this Court held in the same terms that an entry of the date of birth in the school admission register has evidentiary value only if there is material available on the basis of which the age was so recorded. Further, it referred the common view expressed by the Supreme Court and High Courts that no probative value can be attached to such a record unless the parents, or the person on whose information the entry was made, are examined, and held that mere production of the school register would not suffice in the absence of any material document on which the entry was based.

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36. Applying these principles, the entry of 01.12.2001 in Ex. PW8/B, and the certificate Ex. PW8/C which merely repeats it, would carry weight only if the prosecution had established the source of the information on which the date of birth was recorded at the time of admission. The prosecution examined PW-8, Sh. Vikas Kumar, a teacher of SDMC Primary School, Rajpur Khurd, who produced the original application/registration form (Ex. PW8/A), the admission register showing the entry at serial no. 3422 (Ex. PW8/B) and the certificate of the principal (Ex. PW8/C), and stated that the prosecutrix was admitted in Class 1 on 29.04.2010 and that "as per our record" her date of birth is 01.12.2001. In his cross-examination, however, PW-8 stated that he has been working in the school only since July, 2015, i.e., more than five years after the admission, and that the principal who signed Ex. PW8/C retired on 31.07.2019. PW-8 thus had no personal knowledge of the admission. His statement does not disclose who furnished the date of birth to the school, on what information or document it was recorded, or whether any birth certificate or other document was produced at the time of admission. Neither the person who made the entry nor the principal who issued Ex. PW8/C was examined. The parents of the prosecutrix do not fill this gap. PW-4 (the mother) did not state the date of birth or the age of the prosecutrix in her examination-in-chief. In her cross-examination she stated only that the prosecutrix was born at B.K. Hospital, Faridabad and that she did not know whether a date of birth certificate had been obtained. PW-5 (the father), who stated that he is illiterate, likewise did not state the date of birth or the age of the prosecutrix. He stated that she was born at B.K. Hospital, Faridabad and that "we had obtained the birth certificate of our daughter from the Municipal Corporation", but he did not remember whether it was seized by the police. No birth certificate issued by

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the Municipal Corporation, and no hospital record of the birth, was produced or proved by the prosecution, and no witness was asked to state the date of birth stated therein. The record therefore leaves the entry of 01.12.2001 unconnected with any document or information said to have been furnished by the parents. It shows, at the same time, that a document of the kind placed higher in the order of preference in Section 94(2)(ii) of the JJ Act was in existence but was not brought on record. In the absence of such material the entry is of the kind which has been held to carry little or no probative value. In ***Satpal Singh*** (supra), the Supreme Court, referring to ***Vishnu v. State of Maharashtra***, (2006) 1 SCC 283, noticed that very often parents furnish an incorrect date of birth to the school authorities in order to secure admission for their children and that the best evidence for determining the age of a child is that of the parents only if it is supported by unimpeachable documents. The Division Bench in ***Shailesh Kumar*** (supra) reiterated the same position.

37. The omission to conduct an ossification test is not a lacuna which can be held against the appellant. The age of the prosecutrix being an essential ingredient of the offence under Section 4 of the POCSO Act, the burden of proving it beyond reasonable doubt lay on the prosecution, whether or not the accused had disputed it earlier. Where, as here, the school records are the only material and they do not answer the description of Section 94(2)(i) or (ii) in the sense explained above. Thus, it was incumbent on the prosecution to establish through an ossification test that the prosecutrix was below 18 years of age. To the extent the learned Trial Court accepted the school records without testing them against the hierarchy of Section 94(2) and without examining the basis of the entry, it proceeded on an incorrect footing.

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38. In ***State v. Tofil Ahmad,*** 2024 SCC OnLine Del 5403, the only document available was the *Shapath patra* furnished at the time of admission and recorded in the school admission and withdrawal register. The persons who had furnished it could neither justify nor confirm the date of birth and no ossification test was conducted. The Division Bench held that there was no other document contemplated by Section 94 of J.J. Act and that the prosecution had not established beyond reasonable doubt that the survivor was below 18 years. Relying on ***Rajak Mohammad v. State of Himachal Pradesh,*** (2018) 9 SCC 248, the Division Bench observes:

> *"7. While it is correct that the age determined on the basis of a radiological examination may not an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.*
>
> *8. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out."*

Further, in ***Karan Kumar v. State,*** 2025 SCC OnLine Del 4239, where the only document was the school admission register and the entries in it were not made on the basis of any proof of birth issued by any corporation or a Municipal Authority etc. In such absence, and the stand taken by the survivor in her statement under 164 Cr.P.C,it was incumbent upon the prosecution to conduct an ossification test or any other latest medical age determination. In these circumstances, it is evident that the prosecution had failed to discharge its obligation to prove that the survivor was a child within the meaning of Section 2(1)(d) of the POCSO Act.

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39. The prosecution has accordingly not proved, beyond reasonable doubt, that the prosecutrix was below 18 years of age on 20.06.2017, and the benefit of that doubt must go to the appellant. This is not a finding that the prosecutrix was in fact an adult. She is treated as a major for the purposes of this case solely because her minority has not been established in the manner required by law.

40. In light of the aforesaid findings, the conviction of the appellant under Section 4 of the POCSO Act cannot be sustained, the age of the prosecutrix below 18 years not having been proved. The conviction of the appellant under Section 4 of the POCSO Act is accordingly set aside. The offences for which the appellant can now be held liable are those under Sections 376, 366 and 506 IPC.

41. The finding on age does not, however, affect the appellant's liability under the IPC. The age of the prosecutrix is decisive where a case rests on the footing that her consent, even if given, is immaterial. That is not the case here. The case of the prosecution, as deposed by PW-1, is that the appellant had sexual intercourse with her forcibly and without her consent after taking her to an isolated place on a pretext and that she screamed for help. The defence of the appellant is not that the prosecutrix consented but that he has been falsely implicated. In ***Satpal Singh*** (supra), the Supreme Court held that the issue of majority becomes irrelevant if the prosecution successfully establishes that it was not a case of consent. ***Tofil Ahmad*** (supra) and ***Karan Kumar*** (supra), on which the appellant relies, turned on the relationship being found consensual or on the absence of proof of forcible penetrative assault and are distinguishable on that ground.

42. For conviction under Section 376(2) IPC, the Court has to first determine whether the offence of rape has been established and, thereafter,

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whether the facts established on record satisfy the particular aggravated circumstance contemplated by the applicable clause of Section 376(2) IPC.

43. The foundational fact of the sexual act is sought to be established principally through PW-1. Her testimony attributes the sexual assault specifically to the appellant and places the occurrence at the isolated location in the Maidangarhi area to which the appellant had taken her. In her examination-in-chief, PW-1 deposed as under:

> *"On 20.06.2017, I had gone to the shop of Imran for taking my stitched suit at about 7.00 PM. When I asked for my stitched 'suit, Imran told me that I would have to go with him at his factory at Maidan Garhi for trial whether suit was fitting me or not Thereafter, he took me on his scooty for going to his factory at Maidan Garhi but instead of going to his factory at Maidan Garhi, he took me to a jungle towards Maidan Garihi side near a kikar tree. Imran had taken me on his scooty towards jungle by driving at a high speed and when I asked him to stop, he did not stop. In the jungle, Imran removed all my wearing clothes and removed his own pant and thereafter inserted his penis into my vagina forcibly without my consent. I screamed for help but nobody was present there as it was night time and dark."*

44. The aforesaid testimony of the victim addresses the two essential factual questions, first, whether the sexual act occurred and, second, whether the appellant was the person who committed it.

45. The attempt of the defence to discredit the testimony of the prosecutrix by referring to the date discrepancy, the distance and time taken to reach the location, the absence of injuries, the absence of CCTV footage and the failure of PW-6 to support the telephone-call circumstance does not advance its case.

46. None of these circumstances, individually or cumulatively, demonstrates that PW-1's account of the actual sexual assault is inherently

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impossible. At their highest, they concern corroborative or surrounding circumstances. The central allegation against the appellant remains intact.

47. The law does not require the prosecutrix to demonstrate physical resistance through injuries in order for her testimony concerning sexual assault to be accepted. The evidentiary question is whether her testimony is reliable and whether there is material on record which renders the occurrence improbable.

48. The appellant's defence, as recorded under Section 313 Cr.P.C., was one of complete denial and false implication. He disputed the mobile number attributed to him and alleged misuse of his identity document. The defence also examined HC Shokat (DW-1). However, a mere denial of the incriminating circumstances does not constitute a rebuttal of the prosecution evidence. The Court must examine whether the defence has brought on record circumstances which render the prosecution version improbable or establish a competing version on a preponderance of probabilities.

49. On an overall appreciation, the defence has not been able to demonstrate any compelling reason for the prosecutrix to falsely implicate the appellant in a case of this nature. No substantive material has been pointed out to establish a motive for such false implication. The mere fact that certain witnesses did not support every circumstance narrated by the prosecution cannot, in the absence of a credible alternative explanation, outweigh the direct testimony of the victim concerning the central occurrence.

50. It is also necessary to distinguish between contradictions and discrepancies. A contradiction which strikes at the identity of the accused, the occurrence itself or the essential ingredients of the offence may create reasonable doubt. On the other hand, variations concerning peripheral

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matters, such as an estimated distance, precise time or date, do not necessarily have the same consequence. The Court must examine the evidence as a whole rather than isolate individual sentences from the deposition.

51. Applying the aforesaid principle to the present case, the discrepancies relied upon by the appellant do not, individually or cumulatively, destroy the central prosecution narrative. The prosecutrix consistently attributes the act to the appellant and describes the circumstances in which she accompanied him and was taken to the isolated location. The principal allegation of sexual assault has not been displaced by the discrepancies relied upon by the defence.

52. Having considered the objections raised by the appellant, this Court finds that the testimony of PW-1, on the material facts, establishes the occurrence and identifies the appellant as the perpetrator. The medical evidence does not furnish any contradiction to that testimony and, on the contrary, lends corroboration to it.

53. The next question is whether the conviction under Section 376(2) IPC can be sustained. The charge framed on 03.11.2017, the impugned judgment and the order on sentence refer only to Section 376(2) IPC, without identifying the clause relied upon. The impugned judgment does not record any independent reason for invoking Section 376(2) IPC beyond the finding that the prosecutrix was a child and the order on sentence proceeds expressly on the footing that the appellant committed the offence upon a minor then aged about 15 years. On the case of the prosecution, the only clause which could have been attracted is clause (i) of sub-section (2) of Section 376 IPC, namely rape on a woman when she is under sixteen years of age, and that clause depends entirely on the age of the prosecutrix, which has not been

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established. None of the other circumstances enumerated in Section 376(2) IPC, as it stood on 20.06.2017, is alleged or established on the record. The aggravated form of the offence under Section 376(2) IPC is, therefore, not made out.

54. Since the aggravated form is not made out, the question is whether the appellant is liable under the main provision. Section 376(1) IPC takes in every ingredient of the offence of rape which the prosecution was required to prove and is a minor offence to that under Section 376(2) IPC within the meaning of Section 222(1) Cr.P.C. The foundational facts of the sexual act, the absence of consent and the identity of the appellant stand established through the testimony of PW-1 for the reasons recorded above. The appellant has contested all these facts at the trial and in this appeal and no prejudice is caused to him by the alteration, which this Court is competent to make under Section 386(b) Cr.P.C. read with Section 222(1) Cr.P.C. The conviction of the appellant under Section 376(2) IPC is accordingly set aside and altered to a conviction under Section 376(1) IPC.

55. As regards Section 366 IPC, the prosecutrix deposed that the appellant deceitfully took her away from his shop where she had gone for collecting her stitched suit and transported her on the pretext of taking her to the factory, and thereafter took her to an isolated location.

56. The essence of the offence of abduction is contained in Section 362 IPC, which reads as under:

> *"362. Abduction.— Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person."*

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57. The evidence of PW-1, when read as a whole, establishes the circumstances in which she was deceitfully taken away from the immediate vicinity of the shop towards the isolated place.

58. The fact that the prosecutrix herself accompanied the appellant does not, by itself, negate the allegation that she was induced by deceitful means to go from that place. The circumstances under which she accompanied him are to be looked into. The version of the prosecutrix is that the appellant deceitfully induced her to accompany him on the representation that he was taking her for a purpose connected with the stitched suit. The subsequent conduct and destination form part of the same transaction.

59. This Court therefore finds that the prosecution has established the essential ingredients of Section 366 IPC and that the finding of the learned Trial Court on this count does not call for interference. As the prosecutrix has been treated as a major, no question of kidnapping from lawful guardianship arises. The conviction rests on her abduction by deceitful means, followed by the commission of rape upon her at the place to which she was taken, which establishes the purpose contemplated by Section 366 IPC.

60. The conviction under Section 506 Part-II IPC also merits no interference. The prosecutrix deposed in her examination-in-chief that after the occurrence the appellant threatened her against disclosing the incident. The conduct of the prosecutrix in not immediately disclosing the occurrence to her parents has to be examined in this context. Fear of disclosure and apprehension arising from a threat are circumstances which cannot be assessed by applying an artificial standard of conduct to a young girl in the position of the prosecutrix, who was residing with her parents.

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61. The delay in disclosure, therefore, cannot by itself be treated as proof of falsity. The prosecutrix has explained the delay by referring to fear and apprehension. In a case involving a young girl and an allegation of sexual assault, such conduct cannot be considered inherently unnatural. The subsequent disclosure to her parents and the eventual registration of the FIR constitute circumstances which have to be considered while appreciating her explanation.

62. For the reasons recorded hereinabove, this Court finds no perversity or illegality in the conclusion reached by the learned Trial Court on the occurrence. The discrepancies relied upon by the appellant are not of such a nature as to discredit the prosecution case in its entirety. The failure of PW-6 to support one particular circumstance, the non-collection of CCTV footage and the absence of particular articles of evidence may constitute shortcomings in investigation, but they do not create a reasonable doubt regarding the core prosecution case established through the testimony of the prosecutrix and the other evidence on record.

63. The conviction of the appellant under Sections 366 and 506 Part-II IPC is, accordingly, affirmed and the conviction under Section 376(2) IPC is altered to one under Section 376(1) IPC for the reasons recorded above.

64. Coming to the question of sentence, the appellant has challenged the sentence of 15 years' rigorous imprisonment imposed for the offence under Section 376(2) IPC, principally on the ground that the Trial Court did not furnish adequate reasons for imposing a sentence above the statutory minimum. It is settled that sentencing requires consideration of both the gravity of the offence and the circumstances of the offender.

65. In the present case, the offence involves the appellant who took advantage of the circumstances in which the prosecutrix came into his

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contact, took her to an isolated place and subjected her to rape. The nature of the offence and the circumstances in which it was committed are relevant considerations while determining the appropriate sentence.

66. The fact that the appellant has undergone substantial incarceration during the pendency of the appeal, and the humanitarian circumstances urged on his behalf, have also been considered. However, such circumstances cannot by themselves efface the gravity of the offence. They are relevant to the choice of quantum within the range which the law allows.

67. The alteration of the conviction to Section 376(1) IPC has a direct bearing on sentence. The sentence of 15 years was imposed under Section 376(2) IPC, which carries a minimum of ten years. Section 376(1) IPC, as it stood on 20.06.2017, carried a minimum of seven years. The Criminal Law (Amendment) Act, 2018, by Section 4(a), raised that minimum to ten years and, by Section 1(2), is deemed to have come into force on 21.04.2018. That Act is later in point of time than the offence and prescribes a heavier minimum. In view of Article 20(1) of the Constitution of India, which bars a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence, it cannot be applied to the appellant. The range applicable to him is ,therefore, rigorous imprisonment of not less than seven years, which may extend to imprisonment for life. Since the Appellant had actually undergone more than seven years of imprisonment, a sentence limited to the period already undergone is within the range which the law allows.

68. The principles relevant for assessing the quantum of punishment in cases of rape upon a child was laid down by a Division Bench of this Court in ***Khem Chand v. State of Delhi,*** 2008 SCC OnLine Del 1611, and were referred to in ***Om Prakash v. State,*** 2018 SCC OnLine Del 10732:

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"• Criminal and the crime are both important for the purposes of sentence.
• Manner of commission of the crime being with meticulous planning or one on the spur of the moment;
• Violence, If any, accompanying the crime whether injuries suffered were serious and required extensive treatment or have caused any permanent damage to the child bearing capacity or otherwise;
• Whether the offender or accused was in a position of fiduciary trust or exploited a social or family relationship;
• State of the victim, impact of the crime on the victim,
• The antecedents of the accused, his age, whether a first time offender or repeat offender, possibility of recidivism.
• Social backwardness or offender being a poor, illiterate labourer not found to be adequate reason by Courts.
• Passage of time since offence committed by itself considered inadequate reasons for reprieve.
• Rape victim's marriage or rehabilitation may be considered as a mitigating factor".

In ***Bachan Singh v. State of Punjab***, (1980) 2 SCC 684, the Constitution Bench, though dealing with capital punishment, emphasised that the Court must have regard both to the crime and the criminal, which are not to be considered in two watertight compartments and treated the age of the accused and the probability that he can be reformed and will not commit criminal acts of violence as relevant circumstances to be given great weight.

69. Applying these principles, the following circumstances weigh in favour of the Appellant. He was about 30 years of age at the time of the offence, as recorded in his MLC dated 01.07.2017. He has clean antecedents and this is his first conviction. No other offence is attributed to him, including during the periods when he was on bail and no proceeding under Section 229A IPC has been initiated against him. The offence, as deposed by PW-1, was a single occurrence. Her testimony does not allege the use of a weapon or the infliction of grievous hurt, and the case is not one of fiduciary trust or of repeated assault. As per the nominal roll dated 18.09.2026, the Appellant has undergone 7 years, 6 months and 9 days of actual custody.

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The Appellant also relies on his family circumstances, namely, the illness and surgery of his wife and the financial constraints in which the family was placed. Poverty or family hardship is not by itself an adequate ground for leniency, as noticed in ***Khem Chand*** (supra), but these circumstances, taken with the others, are relevant to the probability of reformation and rehabilitation, to which ***Bachan Singh*** (supra) requires the Court to have regard.

70. The circumstances which weigh against the Appellant are the following. The offence was committed by deceit, the prosecutrix being taken on the pretext of trying her stitched suit to an isolated place in the evening, where it was dark and no one was present. The Appellant also threatened the prosecutrix after the occurrence, but that conduct is the subject of a separate conviction and sentence under Section 506 Part-II IPC and cannot be counted twice. The Victim Impact Assessment Report placed before the learned Trial Court records that the prosecutrix suffered emotionally on account of the incident.

71. Weighing these circumstances together, this Court notes that the Appellant has undergone about seven years and six months of actual custody, which exceeds the minimum of seven years prescribed for the offence as it stood on the date of its commission. The features of this case that weigh against the Appellant, namely the deceit, the isolated place and the impact on the prosecutrix, are real, and they justify a term of imprisonment above the minimum. They are sufficiently met by the period actually served, which is above that minimum. The sentence of fifteen years, imposed on the basis of the minority of the prosecutrix and the aggravated form of the offence under Section 376(2) IPC, cannot be sustained once both those foundations have gone.

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72. Having regard to the gravity of the offence on the one hand, and on the other to the fact that the Appellant was a relatively young man at the time of the offence, his clean antecedents and the period of imprisonment already undergone, this Court is of the view that the reformative purpose of sentencing would be served, and the demands of deterrence and proportionality met, by limiting the sentence under Section 376(1) IPC to the period already undergone.

73. Accordingly, the sentence of 15 years' rigorous imprisonment under Section 376(2) IPC is set aside, and the Appellant is sentenced under Section 376(1) IPC to the period of imprisonment already undergone by him. The fine of ₹10,000/- imposed by the learned Trial Court, with the default stipulation of simple imprisonment for six months, is maintained. The sentences of seven years' rigorous imprisonment under Section 366 IPC and of two years and six months' rigorous imprisonment under Section 506 Part-II IPC, which have been fully undergone, and the fines of ₹5,000/- each with the default stipulations, as imposed by the learned Trial Court, are affirmed. The substantive sentences shall run concurrently, as directed by the learned Trial Court.

74. In view of the aforesaid discussion, the present appeal is partly allowed. The judgment of conviction dated 17.11.2021 is set aside insofar as it convicts the Appellant under Section 4 of the POCSO Act, the conviction under Section 376(2) IPC is altered to one under Section 376(1) IPC, and the judgment is otherwise upheld. The order on sentence dated 18.01.2022 is modified as above. The appellant shall be entitled to the benefit of set off under Section 428 Cr.P.C.

75. The Appellant shall be released forthwith, if not required in any other case. A copy of this judgment be transmitted to the learned Trial Court for

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information and necessary compliance, and to the Superintendent of the concerned Jail. The appeal stand(s) disposed of in the above terms.

76. Pending application(s), if any, also stand disposed of.

VIMAL KUMAR YADAV, J.

OCTOBER 30, 2026/*ny/vs*

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