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

*Judgment reserved on: 07.02.2025*

*Judgment pronounced on: 20.02.2025*

+ **CRL.A. 266/2020**

SHYAM SINGH

.....Appellant

Through: Ms. Anu Narula, Adv.

versus

STATE

.....Respondent

Through: Mr. Aashneet Singh, APP

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**J U D G M E N T**

: **JASMEET SINGH, (J)**

1. This is an appeal seeking to challenge the impugned judgment dated 13.12.2019 and order of sentence dated 17.12.2019 passed by the learned Court of ASJ-01, Patiala House Courts, Delhi in S.C. No. 8762/2016 arising out of F.I.R. No. 878/2014 registered at P.S. Vasant Vihar under Section 363 of the Indian Penal Code, 1860 (“IPC”).
2. *Vide* the impugned judgement, the appellant was acquitted under Section 366 of IPC and was convicted under Section 376 of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”).
3. *Vide* the impugned order of sentence, the appellant was sentenced with rigorous imprisonment for 07 years with the fine of Rs. 15,000/- under Section 4 of POCSO Act.



### **FACTUAL BACKGROUND**

4. The brief facts of the case are that on 22.08.2014, the respondent who is the father of the prosecutrix came to the police station and lodged a complaint about the prosecutrix being missing. Consequently, an FIR under Section 363 of IPC was recorded and investigation was conducted. On 23.08.2014, the complainant informed that the prosecutrix had been kidnapped by the appellant.
5. On 23.09.2014, the prosecutrix was recovered along with the appellant from Ghaziabad. The prosecutrix was medically examined and a statement under Section 164 of CrPC was recorded. Also, the appellant was arrested.
6. The prosecutrix in her statement recorded under Section 164 CrPC states that she had met the appellant about 2-3 months back from the date of the incident. In August of 2014, they went to the temple and got married. Thereafter, she started staying in a rented accommodation in Ghaziabad with the appellant. They established physical relations after their marriage. They were staying together when her father and brother came with the police and took them.
7. Upon completion of the investigation, a charge sheet was filed against the appellant. After hearing the parties, the appellant was charged under Section 366 and 376 of IPC read with section 4 of POCSO Act.
8. The prosecution examined a total of 12 witnesses. Some witnesses were dropped in pursuance of admission of certain documents by the appellant under section 294 of CrPC. Thereafter, the statement of the appellant was then recorded under Section 313 of CrPC and he chose not to lead any evidence in his defence.



9. Learned Trial Court *vide* the impugned judgment and the order of sentence, acquitted the appellant of the charge under Section 366 of IPC and he was convicted under Section 376 of IPC and Section 4 of POCSO Act.
10. Aggrieved by the judgement of conviction, the appellant filed the present appeal.

**SUBMISSIONS ON BEHALF OF THE APPELLANT**

11. Ms. Narula, learned counsel appearing on behalf the appellant challenges the impugned judgment and submits as follows:
  - A. Learned Trial Court has failed to appreciate that the prosecution has failed to prove the age of the prosecutrix and the opinion of the learned Trial Court that the prosecutrix was minor at the time of incident i.e. on 22.08.2014 is against the facts and circumstances and even without any cogent evidence. Reliance is placed on *Alamelu & Another v. State, Represented by Inspector of Police, (2011) 2 SCC 385, Rajak Mohammad v. State of Himachal Pradesh, (2018) 9 SCC 248* and *State (Govt. of NCT of Delhi) v. Shailesh Kumar, 2019 SCC OnLine Del 8318*.
  - B. Learned Trial Court has failed to appreciate the fact that the prosecution failed to prove the alleged offence under the POCSO Act against the appellant. Learned Trial Court though was of the view that the prosecutrix was a consenting party, whatever happened with her was with her consent and the appellant never forced anything upon the prosecutrix but the learned Trial Court was also of the



opinion that the prosecutrix was a minor thus her consent was of no consequence and hence the appellant was convicted although the prosecutrix was a consenting party.

- C. Learned Trial Court has failed to appreciate the fact that appellant was merely 19 years old at the time of incident 22.08.2014. The appellant and the prosecutrix were in love with each other. There was nothing on record that could suggest that the present case was of a forceful sexual assault.
- D. Thus, learned Trial Court has erred in holding that the prosecution has been successful in establishing the guilt of the appellant beyond reasonable doubt in respect of offence levelled against the appellant. Therefore, the impugned judgment and order on sentence is liable to be set-aside.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

- 12. *Per Contra*, Mr. Singh, learned APP appearing on behalf of the respondent supports the impugned judgment and submits as follows:
  - A. The date of birth as per school record of the prosecutrix is 02.01.2001. The school record has been proved by PW1/Head Master of the school. It is thus submitted that the age of the prosecutrix has been proved to be a minor. The statement of the prosecutrix is also relied upon in this regard wherein she has stated that she was about 15 years of age at the relevant time.
  - B. The prosecutrix was a minor at the date of the incident, thus, her consent has no legal sanctity. She has deposed that the



appellant made physical relations with her during the one month he kept her in the room, thus amounting to penetrative sexual assault. The prosecutrix was recovered from Ghaziabad. The landlord of the appellant/PW-10 is stated to have established the same.

C. Thus, the prosecution has proved its case beyond reasonable doubt and the learned Trial Court has correctly passed the impugned judgement and convicted the appellant.

### **ANALYSIS AND FINDINGS**

13. I have heard learned counsel for the parties and perused the material on record.
14. Before discussing the merits of the contentions and evidence in this case, it is pertinent to note that the Hon'ble Supreme Court in the case of *Jarnail Singh v. State of Haryana, 2013 (7) SCC 263*, has held that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 would be applicable to also determine the age of a child, who is a victim of crime. The Apex Court opined that there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law and a child who is a victim of crime. The relevant of paragraph of the said judgment is extracted below:-

*“23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with*



*law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. ...”*

15. On 15.01.2016, the Juvenile Justice (Care and Protection of Children) Act, 2015 (“JJ Act”) replaced the Juvenile Justice (Care and Protection of Children) Rules, 2007. Therefore, Section 94 of the JJ Act will be relevant and applicable in the present case which is *pari materia* with Rule 12 of the JJ Rules. The relevant part of Section 94 is extracted below:

*“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;*

*(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.”*

- 16.** Thus, it is evident from reading of the above provision that whenever the dispute with respect to the age of a child arises in the context of her or him being a minor, whether an accused or a victim, the Courts should take recourse to the steps indicated in Section 94(2) of the JJ Act. The three documents in order of which the JJ Act requires consideration is that the concerned court has to determine the age by considering the following documents:

*“(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;*

*(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”.*

- 17.** In the present case, the exhibits which show the date of birth of the victim as 02.01.2001 are:-

**A.** Exhibit PW-1/A: Admission and withdrawal register of the school: Date of Birth - 02.01.2001.

**B.** Exhibit PW-2/F: School leaving certificate of the prosecutrix dated 10.09.2014 issued by the school headmaster: Date of Birth - 02.01.2001.

- 18.** The prosecution has examined PW-1, the headmaster from the school of



the prosecutrix. PW-1 produced the relevant page of the admission and withdrawal register of the school and the school leaving certificate of the prosecutrix. Her date of birth noted in the said record is 02.01.2001. As per the said record, the prosecutrix was admitted in the said school in 1st class on 24.07.2007 and left the school in 3rd class on 31.07.2009. PW-1 has further stated that the admission of the prosecutrix was done on the basis of the statement of the parents who had given her date of birth orally. Hence, there was no documentary proof with regard to the date of birth of the prosecutrix at the time of her school admission. Thus, as per the school records, the prosecutrix would be 13 years 7 months 20 days at the date of the incident.

19. PW-2/father of the prosecutrix in his court testimony on 26.03.2015 has deposed as under:

*“PW-2 Sh. Vishnu, So Sh. Prabhu Dayal, Aged about 42 years, R/o House of Sh. Lala Ram Gupta, Gumat Wali Park, Katwaria Sarai, New Delhi.*

On S.A.

*I have seven children. Out of them prosecutrix is my fourth child.*

... ..

*XXXX by Sh. Kedar Yadav Ld. Counsel for the accused.*

*I do not know the date of birth, month or the year of my elder daughter, I also do not know the date of birth, month or the year of my second child. I also cannot tell the date of birth, month or the year of any of my child. I got married at the age of 18 years. My first child was born after 2-3 years of my*



*marriage. My second child who was a son was born after one year of birth of my daughter. The third child who was a son was born after about two years. My fourth child who is the prosecutrix was born after about one year of the third child. I had told the Head Master at the time of admission of my daughter that she was born on 02.01.2001. I got admitted my daughter i.e the prosecutrix in first standard, but I do not know the year of her admission. It is incorrect to suggest that I had given wrong date of birth of my daughter i.e the prosecutrix while her taking admission in the school. Except my daughter i.e the prosecutrix, none of my child was sent to school for education. It is wrong to suggest that I am giving wrong age of my daughter i.e the prosecutrix. It is wrong to suggest that at the time of alleged incident my daughter i.e the prosecutrix was more than 18 years of age. It is wrong to suggest that I am deposing falsely.”*

20. The question that arises for consideration is whether the documents exhibited as PW-1/A and PW-2/F as well as the testimonies of PW-1 and PW-2 are sufficient to hold that the prosecutrix was a minor at the date of the incident.
21. The chronology of the birth of his children as given above by PW-2 is detailed in the below table:-

| <b>Age of PW-2 at the time of his marriage - 18 years</b> |   |                                 |
|---|---|---------------------------------|
| <b>No. of the children of PW-2</b>                        | <b>Age of PW-2 at the time of birth of his children</b> | <b>Years after his marriage</b> |
|   |   |                                 |

|  |       |     |
|--|-------|-----|
| 1st  | 20-21 | 2-3 |
| 2nd<br>(1 year after 1st child)  | 21-22 | 3-4 |
| 3rd<br>(2 years after 2nd child)   | 23-24 | 5-6 |
| 4th<br>(1 year after 3rd child)  | 24-25 | 6-7 |
| <b>Therefore, the age of PW-2 at the time of the birth of the prosecutrix would be 25 years old.</b> |       |     |

22. From the above calculation, if the age of the father is considered as 42 years on the date of his testimony, the age of the prosecutrix would be about 17 years on the date of the incident. However, on 22.08.2014, when PW-2 filed the missing complaint (Ex. PW-2/A), he stated his age to be 50 years old on the date of the complaint and as per this statement, the age of the prosecutrix would be about 24/25 years on the date of the incident.
23. Therefore, from the above discussion, it is clear that there is no clinching evidence with regard to the date of birth of the prosecutrix and the age of the prosecutrix at the date of the incident has been calculated primarily on guess work and speculation.
24. In the case of *Alamelu & Another v. State, Represented by Inspector of Police, (2011) 2 SCC 385*, the question of determination of the age was involved, the Hon'ble Supreme Court observed that the transfer certificate issued by the government school duly signed by the headmaster would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which age was



recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. The relevant paragraph of the said decision is extracted below:

*“38. ... However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. ...”.*

25. In the present case, the headmaster of the school of the prosecutrix testified that the date of birth recorded was based solely on the oral statements of the parents, without any documentary proof. Additionally, the father of the prosecutrix claimed that he provided her date of birth during school admission but admitted that he does not know the actual date of birth of his children. This creates inconsistencies regarding the age of the prosecutrix at the date of the incident as the school admission record lacks corroboration from her father. Consequently, the prosecution has failed to establish beyond a reasonable doubt that the prosecutrix was below 18 years old at the time of the alleged incident.
26. In the case of *Rajak Mohammad v. State of Himachal Pradesh, 2018 SCC Online SC 1222*, it has been categorically stated that if the prosecution has failed to prove the age of the prosecutrix as per Section 94 of the JJ Act, the benefit of doubt must accrue in favour of the accused. Hence, balancing the rights of the accused with the protection of minors is essential to ensure justice is served appropriately, given the



harsh, severe and stringent penalties under the POCSO Act. The said judgement was referred in paragraph 39 of *Court on its own motion v. State of NCT of Delhi, Criminal Reference No. 02/2024*, which is extracted below:

*“39. In context of said all important aspect of ‘granting of benefit of doubt to accused at every stage’, we may also refer to Rajak Mohammad v. State of Himachal Pradesh whereby the Hon’ble Supreme Court allowed the appeal of the convict who was facing charges of kidnapping and sexual assault and acquitted him while observing as under:- ... ..*

*9. While it is correct that the age determined on the basis of a radiological examination may not be 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....”*

**27.** In cases like the present one, where the prosecutrix is maybe 17 years old and there is no conclusive proof of age as required under Section 94 of the JJ Act, it is unsafe to apply the provisions of the POCSO Act against the appellant. I am of the view that to convict an individual under the POCSO Act without definitive proof of the age of the prosecutrix, especially when the age difference between the prosecutrix and the age of majority is of only one or two years, would be harsh and unjust.

**28.** For the said reasons and in view of the discussion above, I am of the



firm view that despite the school records of the prosecutrix and the testimony of the father of the prosecutrix, it cannot be said with certainty that the prosecutrix was a minor on the date of the alleged incident.

29. Additionally, in the present case, the prosecutrix has categorically stated in her statement under Section 164 of CrPC that the appellant and her got married in a temple in August and she established physical relations with the appellant voluntarily. During her court testimony as well, she has deposed that the physical relations were made between her and the appellant voluntarily. The relevant part of her court testimony is extracted below:

*“Accused met me first time in Delhi near my residence in Katwaria Saraid. Accused made a friendship with me and told me that he would remain with me. I also told the accused that I will also live with him.*

*On 20.08.2014 the accused took me from my house to Ghaziabad and he kept me in a room which he had taken on rent. Accused kept me in that room for about one month. Accused treated me as his wife. Accused made physical relation (sexual assault) with me during the period he kept me in the room. My father and police uncle visited the rented room of the accused. Police uncle and my father brought me and the accused to Delhi. Police took me to hospital where I was medically examined and Doctor prepared the MLC which bears my signature and thumb impression at points A and B on two MLCs and also bears my right thumb impression at points C and D. The MLCs are now Ex.PW3/A and Ex.PW3/B*



*respectively. After my medical examination I was taken to my house by my father. On the next day I gave a statement in the Court regarding the incident.”*

30. During her cross-examination, she denied the suggestion that the appellant had enticed her and allured her for sexual relations. She has further denied the suggestion that he had taken her to a temple in a village and pretended to marry her. She stated that she was in love with the appellant and she had gone and stayed with him willingly. She further stated that they lived for a month as husband and wife and physical relations were established between them voluntarily. The same is cited below:

*“It is incorrect to suggest that accused had enticed me that he would keep me as his wife and he would take me to Aligarh. It is incorrect to suggest that on 20.08.2014 the accused had taken me to the house of his aunt (bua) at Bulandshahar. It is incorrect to suggest that accused had taken me to a Mandir situated in the village Ram Ghat Bulandshahar and he pretended to marry with me. I do not know if my date of birth is 02.01.2001, but my age is around fifteen years. It is incorrect to suggest that accused had enticed me and allured me for sexual relation and pretended that he had married with me in a temple.*

...

*I fell in love with the accused Shyam Singh. I had gone voluntarily along with the accused and stayed with him willingly. Witness is mum regarding the question of her age*



*whether she was above 18 years of age at the time of incident. Again said my age was about fifteen years at the time of incident. I had lived with the accused for one month as husband and wife. The accused had established physical relationship with me. I cannot say if the relationship was established with my consent. It is Incorrect to suggest that I was more than 18 years of age at that time or that the accused had not established physical relationship with me. It is wrong to suggest that I am deposing falsely.”*

- 31.** Therefore, all the facts proved in this case clearly indicate the willingness of the prosecutrix to accompany the appellant and to establish physical relations with the appellant. Further, there is no averment neither in her chief-examination nor cross-examination that physical relations were established without her consent.
- 32.** It is pertinent to note that the MLC report of the prosecutrix Ex. PW-3/A and Ex. PW-3/B, does not support the prosecution’s case as there were no injuries of resistance to the sexual act, thus, showing that the relations between the prosecutrix and the appellant were established with her consent.
- 33.** Furthermore, I believe that societal and legal views on adolescent love should emphasize the rights of young individuals to engage in romantic relations that are free from exploitation and abuse. Love is a fundamental human experience, and adolescents have the right to form emotional connections. The law should evolve to acknowledge and respect these relations, as long as they are consensual and free from coercion.



34. While the legal age of consent is important for protecting minors, I feel that adolescents should be allowed to express their feelings and engage in relations without fear of criminalization. The focus of the law should be on preventing exploitation and abuse rather than punishing love. I am of the view that consensual and respectful adolescent love is a natural part of human development.
35. The legal system must safeguard the rights of young individuals to love while ensuring their safety and well-being. A compassionate approach that prioritizes understanding over punishment in cases involving adolescent love is required. Herein, reliance is placed on the decision of this Hon'ble Court in the case of *Mahesh Kumar v. State (NCT of Delhi)*, *Bail Application No. 1240/2023* which had also held a similar view.
36. The POCSO Act was promulgated for the protection of children. The Act, however, did not choose to draw any distinction as to a girl of less than 18 who chooses a partner out of her own choice and volition. Therefore, any sexual act or intercourse by a man with such a girl would constitute an offence under various provisions of the POCSO Act.
37. In the case of *Court On Its Own Motion (Lajja Devi) vs. State (Delhi)*, *2012 (4) RCR (Civil) 821*, a Full Bench of this Hon'ble Court dealt with the issue that when the girl is more than 16 years of age and makes a statement that she went with her own consent and it can be accepted, the Court would be within its power in quashing the proceedings under Sections 363 and 376 IPC. However, the Full Bench cautioned that there can be no straitjacket formula to be applied and the Court has to be careful to ensure the personal liberty of the girl and the attending



circumstances, which would include the maturity and understanding of the girl, her social background, the age of the boy and girl, would also have to be taken into consideration. The relevant extract of the said decision is extracted below:

*“48. We often come across cases where girl and boy elope and get married in spite of the opposition from the family or parents. Very often these marriages are inter-religion, inter-caste and take place in spite of formidable and fervid opposition due to deep-seated social and cultural prejudices. However, both the boy and girl are in love and defy the society and their parents. In such cases, the courts face a dilemma and a predicament as to what to do. This question is not easy to answer. We feel that no straight jacket formula or answer can be given. It depends upon the facts and circumstances of each case. The decision will largely depend upon the interest of the boy and the girl, their level of understanding and maturity, whether they understand the consequences, etc. The attitude of the families or parents has to be taken note of, either as an affirmative or a negative factor in determining and deciding whether the girl and boy should be permitted to stay together or if the girl should be directed to live with her parents. Probably the last direction may be legally justified, but for sound and good reasons, the Court has option(s) to order otherwise. We may note that in many cases, such girls severely oppose and object to their staying in special homes, where they are not allowed to meet the boy or their parents. The stay in the said*



*special homes cannot be unduly prolonged as it virtually amounts to confinement, or detention. The girl, if mature, cannot and should not be denied her freedom and her wishes should not get negated as if she has no voice and her wishes are of no consequence. The Court while deciding, should also keep in mind that such marriages are voidable and the girl has the right to approach the Court under Section 3 of the PCM Act to get the marriage declared void till she attains the age of 20 years. Consummation of marriage may have its own consequences.”*

- 38.** Therefore, the age of majority as prescribed, must be construed and interpreted in the context of the law for which it is being considered and in a case of this nature, where the minor is certain and unshaken in her opinion and desire, it would not be right and proper for this Court to brush aside her views on the sole ground that she is not 18 years of age as on date.
- 39.** For the reasons as discussed above, what cannot be lost sight of is that, at the time of the incident, the appellant was 19 years of age and the prosecutrix was about 17 years of age. Thus, it was a case of adolescent love and the physical relations were established consensually. Therefore, to convict the appellant under the POCSO Act would be a perversity of justice.
- 40.** Lastly and most importantly, the appellant has undergone almost the entire period of sentence. The appellant was sentenced with rigorous imprisonment for 07 years and has been in judicial custody. As per Nominal Roll dated 18.11.2022, he had undergone 3 years 6 months and



had a remission of 8 months 24 days, leaving an unexpired portion of sentence of 2 years 9 months and 5 days. A period of 2 years 3 months has since elapsed and the unexpired portion of the sentence, as of today, would be about 3 to 4 months.

### **CONCLUSION**

- 41.** Having regard to these overall factors, I am of the view that the prosecution has not been able to prove the age of prosecutrix beyond the reasonable doubt and hence, the benefit of doubt has to accrue to the appellant. Further, the physical relations between the appellant and the prosecutrix were established with the consent of the prosecutrix.
- 42.** For the said reasons, the impugned judgment dated 13.12.2019 and order of sentence dated 17.12.2019 passed by the learned Court of ASJ-01, Patiala House Courts, Delhi in S.C. No. 8762/2016, is set aside and the appellant is acquitted of charges under Section 376 of IPC and Section 4 of POCSO Act.
- 43.** The appellant is directed to be released forthwith, if not required in any other case.
- 44.** With these directions, the appeal is disposed of.

**JASMEET SINGH, J**

**FEBRUARY 20<sup>th</sup>, 2025/(SA)**

*[Click here to check corrigendum, if any](#)*