



2025:DHC:9665



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

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Reserved on: 04.08.2025

Pronounced on: 03.11.2025

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CRL.A.537/2023

RASUL AZAM

.....Appellant

Through: Ms. Sunita Arora, Advocate
(DHCLSC)

versus

THE STATE (GOVT OF NCT), DELHI & ANR.Respondents

Through: Ms. Shubhi Gupta, APP for State with
SI Paramjit PS Ranhola, Delhi.

Ms. Ishita Misra, Advocate for
prosecutrix.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 20.03.2023 and order on sentence dated 15.04.2023 passed SC No.: 49/2019 arising out of FIR No.708/2017, registered at P.S. Ranhola under Section 363/376 Indian Penal Code, 1860 [in short, 'IPC'] and Section 6 of Protection of Children from Sexual Offences Act, 2012 [in short, 'POCSO Act'].

2. The facts in nutshell as noted by the learned trial court are as follows:

"2. As per the version of the prosecution, on 17.10.2017, the complainant, the father of the victim had stated that her daughter 'S' (name withheld to protect the identity of the victim) who was studying in class 9th had not gone to the school on 16.10.2017 due to ill health. He also stated that his daughter who was 4 feet 9 inches tall wearing blue



coloured jeans, a blue shirt and blue coloured sandals had left home on 16.10.2017 without informing anybody at home. He searched for her but could not find her and he had a doubt that some unknown person may have kidnapped her. On receipt of the complaint, FIR was registered under section 363 IPC and SI Sandeep Rathi conducted an enquiry and completed the procedure regarding the search of the missing girl but nothing could be found about the missing girl.

3. *It is further the case of the prosecution that on 05.11.2017, the complainant appeared at P.S. Ranhola along with his daughter 'S'. Thereafter, the victim 'S' was sent to DDU Hospital for her medical examination where she stated that she got a phone call from some unknown number on 16.10.2017 to come to the railway station; she went there but no one was there. There she took a ticket for Bihar and sat on the train; she met some unknown lady who convinced her and took her along with her to Bihar and returned to Delhi on 27.10.2017 and at the station, she met the accused who took her along with him and made sexual relations with her consent on 30.10.2017 and 01.11.2017.*

4. *Thereafter, on 10.11.2017, the victim was taken to Ld. MM for the recording of her statement under section 164 Cr.P.C. On the basis of the statement of the victim in MLC and her statement under section 164 Cr.P.C, section 376 IPC was added in the FIR."*

3. On completion of investigation, the charge was framed against the appellant under Section 363 IPC and Section 6 of POCSO Act, to which the appellant pleaded not guilty and claimed trial.

4. Learned counsel for the appellant has raised multiple contentions. Firstly, it is contended that no offence under Section 6 of the POCSO Act is made out as the victim was above 18 years of age. In this regard, it is stated that the trial court had acquitted the appellant for the offence under Section 363 IPC and the Admission Withdrawal Register (AWR) of the school, in the absence of Municipal or Government record, is not a conclusive proof of age of the victim. On this aspect, learned counsel has referred to the decisions of this court in Phaluta Bai vs Govt of NCT of Delhi & Ors¹, State

¹ decided on 14.11.2024 in W.P.(CRL) 3426/2024



vs Tofil Ahmad @ Sonu Singh², and the judgment of the Supreme Court in P Yuvaprakash vs State Rep. by Inspector of Police,³

5. It was next contended that even the testimony of the victim does not inspire confidence, as though the victim was reportedly missing since 16.10.2017, however, the testimony of the child victim was silent as to her whereabouts from 16.10.2017 to 26.10.2017. The victim has made considerable improvements to her statement recorded during investigation. Further, there is also discrepancy in the prosecution case as to the place of recovery of the victim as well as conspicuous silence on the identity of 'S' to whose house the victim reached after escaping from the home of the appellant where she was allegedly confined.

That in her statement recorded under Section 164 Cr.P.C., the prosecutrix has not leveled any allegation against the appellant and stated that she had gone with her free consent.

6. The appellant's contentions were rebutted by the learned APP for the State as well as the learned counsel representing the victim. It was contended that the prosecution had claimed the age of the victim to be 14 years and duly proved the same through the school records. Victim has consistently stated on the aspect of commission of offence as well as the identity of the appellant. The alleged improvements/contradictions in the statements recorded during investigation were not even put to the victim during cross-examination. Further, no suggestions were given to the father of the victim, who appeared as PW-2, on the aspect of age of the victim. The decisions relied on by the learned counsel for the appellant were sought

² decided on 07.08.2024 in CRL.A.738/2023

³ 2023 SCCOnline SC 846.



to be distinguished by contending that none of the said cases had the same facts situation as the present case.

7. The first and foremost issue that faces this court is as to whether the age of the victim was conclusively established by the prosecution during the trial. As noted above, in this regard, in the testimony of the victim she has categorically stated that she was born on 02.10.2003 and as such merely 14 years of age as on date of incident. Besides, the prosecution has examined one Jai Prakash Meena, TGT (Hindi) as PW-7, who produced the original record of application form of the admission of the victim in the school - Ex. PW7/B(OSR), as well as the AWR No.7 wherein the date of birth of the victim was recorded as 02.10.2003. In his cross-examination, the witness admitted to the suggestion that at the time of admission, no record from Municipal Corporation or GNCTD was furnished.

8. Pertinently, POCSO Act does not prescribe any mechanism or procedure for adjudication of the age of the child victim. However, Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter, 'JJ Act') provides for a method for determination of age of a person who is stated to be a child. Section 94 of JJ Act reads as follows: -

94. Presumption and determination of age.—

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the 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.

(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.

9. The Supreme Court in the case of Jarnail Singh v. State of Haryana⁴, has held that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, though meant for child in conflict with law, would be equally applicable to determine the age of a child, who is a victim of crime. The Apex Court opined that there was not much difference between them when it comes to the issue of minority. The relevant observations are reproduced hereunder: -

"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. ..."

Since the JJ Act replaced the Juvenile Justice (Care and Protection of Children) Rules, 2007, therefore, Section 94 of the JJ Act, 2015 will be relevant and applicable in the present case which is *pari materia* with Rule

⁴ 2013 (7) SCC 263



12 of the JJ Rules.

10. A reading of Section 94 makes it evident that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred, in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these documents that the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. (cf: P Yuvaprakash (Supra)).

11. It is settled law that though the entry in a school register may be admissible under Section 35 of the Evidence Act, however its probative value would depend on the facts and circumstances of each case. Mere production of the register is not enough, its contents have to be proved by leading substantive evidence. The entry contained in the admission form or 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. Recently, the Supreme Court in the case of Birka Shiva v. State of Telangana,⁵ discussed the prevailing position in law regarding the admissibility and evidentiary value of school registers in the context of determining the date of birth in the following manner:-

"8. The evidentiary value of such an entry made in public or official registers may be admissible in evidence under Section 35 of the Indian Evidence Act, 1872⁷. However, admissibility is distinct from probative value. While such documents may be admitted into evidence, their evidentiary weight depends on proof of their authenticity and the source of the underlying information. Mere production and marking of a document as exhibited by the Court does not amount to proof of its contents. Its execution has to be proved by leading substantive evidence, that is, by the 'evidence of those persons who can

⁵ 2025 SCC OnLine SC 1454



vouchsafe for the truth of the facts in issue'. [See : *Narbada Devi Gupta v. Birendra Kumar Jaiswal*⁸] We may refer to a few judicial pronouncements of this Court in this regard:

8.1. This Court, in *Birad Mal Singhvi v. Anand Purohit*⁹, held that the entries contained in the school register are relevant and admissible but have no probative value unless the person who made the entry or provided the date of birth is examined. It was observed:

“14. ... If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value. ... The date of birth mentioned in the scholars' 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 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. ...

15. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to the date of birth made in the school register is relevant and admissible under Section 35 of the Act, but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. ... The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made is examined...”

(Emphasis Supplied)

This decision has been consistently followed by this Court in *Pratap Singh v. State of Jharkhand*¹⁰; *Babloo Pasi v. State of*



Jharkhand¹¹; Murugan v. State of T.N.¹²; State of M.P. v. Munna¹³; C. Doddanarayana Reddy v. C. Jayarama Reddy¹⁴; and Manak Chand v. State of Haryana¹⁵.

8.2. *A coordinate Bench of this Court in State of Chhattisgarh v. Lekhram¹⁶, through S.B. Sinha, J., clarified that though entries in school registers are admissible under Section 35 of the Evidence Act, their evidentiary value improves only when corroborated by oral testimony of persons who are aware of its content, such as parents or the person who made the entry at the time of admission. It held as under:*

“12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. The father of the prosecutrix also deposed to the said effect.

13. ...The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive, but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix.” ...”

12. In the present case, prosecution has examined Jai Prakash Meena, TGT (Hindi) (PW7) who had exhibited the Admission and Withdrawal Register, Admission form of the victim and Affidavit of father that were furnished at the time of admission. All of the above documents mention the date of birth of victim as 02.10.2003. Curiously, no suggestion was put to the father of the victim by the appellant that the said D.O.B was wrong or that the child victim was an adult. In fact, the child victim in her deposition also stated her D.O.B. to be 02.10.2003. In her cross examination, she was given a suggestion that she was more than 18 years old at the time of incident, which she denied. Thus, only one D.O.B. has been stated by the



prosecution. There is no discrepancy or divergence of any kind on this aspect.

13. The appellant's reliance on P Yuvaprakash (Supra) is misplaced as the fact situation in the said case is distinguishable. In that case, to prove the age of the victim, reliance was placed on a transfer certificate, which was not even produced by the prosecution but rather by the Court summoned witness. The D.O.B. in transfer certificate was based on the record sheet of the earlier school. When the headmaster of the earlier school was examined, they stated that they had no knowledge about the document on basis of which the D.O.B. was recorded. Moreover, the concerned revenue official made a categorical statement that the records of birth and death for the relevant year were missing. It was in this context that the said decision came to be passed. In the present case, prosecution has duly brought on record the admission form and the affidavit of the father on whose basis, the D.O.B. came to be recorded in the school register.

14. In Birka Shiva (Supra), the school record was proved by the Headmaster who was not aware of the source of information for recording the date of birth of the child victim. The person who made the entry was not examined. The records of the earlier school were also not produced. Moreover, none of the prosecution witnesses, including the victim, had specifically mentioned the date of birth of the victim. In this context, it was held that the age was not conclusively proved.

In the present case, the source of information of the date of birth is known, i.e. the father and the victim has also specifically mentioned her date of birth.



15. In *Phaluta Bai* (Supra), in a habeus corpus writ petition, the parents of the victim claimed her to be a minor and they relied on a school certificate in this regard. However, the alleged child victim herself did not support this and claimed that the mother had given a lower age in the school. She had further submitted that her Aadhar card had a different D.O.B.

No such contradictions exist in the present case. In fact, the child victim has stated the same D.O.B. as is recorded in the School Register, and no document has been shown which contradicts the same.

16. Lastly, in *Tofil Ahmad @ Sonu Singh* (Supra), an affidavit was filed by the guardian of the child victim at the time of admission in school, which showed her D.O.B. as 27.04.2002. The prosecution did not examine this guardian as a witness. He was examined as DW1, and though he accepted producing the *shapath patra* at the time of school admission, he could not recall as to the basis on which he had written date of birth and whether he learnt the date from the child victim or her mother.

In present case, the father of the child victim had furnished the affidavit at the time of school admission mentioning the D.O.B.

17. Careful analysis of the above-stated cases would show that each case was decided on its own merits and probative value of school register would depend on what evidence was put on record to prove the said entry of date. Thus, in view of the above discussion, this Court is of the view that the prosecution was able to successfully prove the age of the child victim to be 14 years of age at the time of incident.

18. Coming to the next contention that the prosecution has not explained the missing of child victim from 17.10.2017 to 25.10.2017. In this regard, it is noted that the allegations of penetrative sexual assault pertain to the



period from 26.10.17 to 05.11.2017. The victim during her examination stated that in the last week of October, 2017, she had received a call from a wrong number, which later on turned out to be of the appellant. The appellant regularly started making calls to her and friendship developed between them. On 26.10.2017, she received a telephonic call from the appellant who asked her to reach the Anand Vihar Railway Station. (Note- in her earlier deposition, she inadvertently stated the year of the incident to be 2016 which was later clarified on 03.03.2023 to be 2017). The appellant disclosed about his physical description as well as the clothes which he would be wearing for enabling her to identify him at the Railway Station. The victim stated that on reaching the said Railway Station, she met the appellant. Thereafter, the appellant forcibly took her to a room at Badarpur where he kept her as his wife. He developed forcible physical relations with her and also threatened not to disclose the same to the other tenants. He introduced her to the other tenants as his wife. She stated that she was confined for nine days and on each day, the appellant committed rape upon her.

Interestingly, the appellant himself had given a suggestion in the cross-examination that the victim had gone with the appellant out of her own will.

19. It was next contended that MLC does not support the case of prosecution as no external injury was noted. The MLC, being a contemporaneous document, in its history of incident also records that as per the victim, the appellant took her to his home and made sexual relations with her consent. Though no bleeding or injury was detected in the MLC, it is trite law that to establish the offence of rape, penetration, no matter how



slight, is sufficient. (cf: Wahid Khan v. State of M.P.⁶) It is not a given that in every case of rape, there would be injuries on the private part of the victim. There is no requirement in law that if the victim's testimony is not corroborated by the medical opinion, the same has to be discarded. (cf: Ranjit Hazarika vs. State of Assam.⁷) Considering that she was only 14 years old at the time and the appellant was 24 years old, her consent, even if it is assumed to have been given, is of no value in the eyes of the law, in view of her minority.

20. Though much reliance was placed on the statement of victim recorded under Section 164 Cr.P.C, even in the said statement also, the victim stated about establishing physical relations albeit, consensual. The victim had disowned the said statement stating it to be made under the threat of the Police officer.

21. In light of consistent stand of prosecutrix about being subjected to rape, the contention pertaining to variance in statements of other prosecution witnesses as to how she was recovered pales into insignificance.

22. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he was charged with, until the contrary is proved. However, before this presumption can operate, the prosecution has to prove the foundational facts. [Ref: Sambhubhai Raisangbhai Padhiyar v. State of Gujarat.⁸]

23. Considering the consistent stand of the child victim that the appellant took her to his house and established physical relations with her, her age being around 14 years at the time of incident, despite other contradictions in

⁶ 2010) 2 SCC 9

⁷ (1998) 8 SCC 635

⁸ (2025) 2 SCC 399



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her statement, which were never put to her for explanation, it is held that the prosecution has been able to lay the foundation of the facts and thus brought into play Section 29 of the POCSO Act, and that presumption the appellant has miserably failed to rebut. He has failed to conduct thorough cross examination of the prosecution witnesses to precipitate the contradictions which would weaken the prosecution case either on the aspect of the age of the child victim or the chain of events.

24. In view of the above, no ground is made out to interfere with the impugned judgment. The appeal is accordingly dismissed and the impugned judgment convicting the appellant as well as the order on sentence are upheld.

25. A copy of this judgment be communicated to the concerned Trial Court.

26. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 03, 2025*/pmc*