



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

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+ **CRL.A. 653/2023**

SHIV PRASHAD @ KARTARUAppellant

Through: Mr. Bhavesh Seth and Mr. Siddharth
Kaushal, Advocates

versus

STATE (NCT OF DELHI)Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Rinki

Mr. Ankur Chhibber, Advocate (Amicus Curiae)
for victim

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted against the impugned judgment dated 09.11.2022 and order on sentence dated 13.03.2023 passed by ASJ, FTSC (POCSO) District North, Rohini, New Delhi in SC No. 58889/2016 arising out of FIR No. 868/2015 under Sections 323/376/506 IPC and Section 6 of POCSO Act registered at PS. S.P. Badli, Delhi.
2. The applicant was convicted for offences under Section 6 of the POCSO Act and Sections 376/323 IPC and directed to undergo Rigorous Imprisonment (R.I.) for a period of ten years and to pay a fine of ₹3,000/-, and in case of default of payment of fine, to undergo Simple Imprisonment



(S.I.) for a period of five days, for offence under Section 6 of the POCSO Act. The applicant was also directed to undergo R.I. for a period of two months for offence under Section 323 of the IPC. Both the sentences were directed to run concurrently.

3. The sentence of the appellant was suspended by this Court on 28.05.2025.

4. The prosecution case, in a nutshell was that the prosecutrix 'S' came to the police station on 17.07.2015, and gave a written complaint, in which she stated that the appellant used to frequent her neighbour and resided in a nearby *Jhuggi*. In November 2013, he took her to his *Jhuggi* and committed wrong act with her. He threatened her and established sexual relations with her till January 2014. She became pregnant. When her family came to know, her relatives took her to the village of the appellant on 10.06.2014. She was married to the appellant and resided with him. She also gave premature birth to a child on 22.08.2014, who died in 5 days. The appellant then left her with her parents. She claimed to be 16 years old at the time when the appellant first established relations with her.

5. Charges were framed under Section 6 POCSO Act and Section 376/506(II)/323 IPC. The appellant pleaded not guilty and claimed trial. In trial, a total of 20 witnesses were examined by the prosecution to prove its case. The child victim 'S' was examined as PW1, her aunt as PW2, mother as PW3 and brother as PW8. For proving the age of victim, Sh *Mukesh*, the teacher who proved the admission register was examined as PW6. Dr. *A.K. Gupta* who deposed to the prosecutrix delivering a child was examined as PW10. Dr. *Rashmi*, who proved the MLC of the prosecutrix, was examined as PW14. The rest of witnesses were formal in nature who deposed as to



various aspects of investigation. The appellant, in his statement recorded under Section 313 CrPC, claimed false implication.

6. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. He submits that the relations between him and the prosecutrix were consensual and she was an adult at the time. It is submitted that her age was not conclusively proved before the Trial Court and the benefit of doubt ought to be extended to him. He further submits that the MLC of the prosecutrix does not support the conviction under Section 323 IPC.

7. Learned APP for the State, duly assisted by learned counsel for the victim, have opposed the present appeal. They contend that the Trial Court has rightly convicted the appellant. Mr. Ankur Chhibber, learned Amicus Curae (*Pro bono*) fairly states that the Trial Court held that the relationship between the prosecutrix and the appellant was consensual, but in view of her minority, her consent is meaningless.

8. The prosecutrix was examined as PW1. She said that she had gotten befriended with the appellant, who used to live near their house. She got married to him on 10.06.2014. He beat her and treated her with cruelty. She gave birth to a male child on 22.08.2014 who expired within 5 days. She mentioned that the appellant married someone else. She and the appellant were married after her family got to know of the pregnancy and they were taken to the village of the appellant. In cross examination, she stated that the appellant never visited her house, she used to go to his house without informing anyone. The appellant first established relations with her around Diwali in the year 2013. She was given suggestions that relations were



established consensually after she had already attained majority, which were denied.

9. PW3, mother of prosecutrix, deposed as to finding out in 2014 that the prosecutrix was pregnant because the appellant had established physical relations with her. She further deposed as to marrying them. PW2, PW4, PW7, PW8, PW9, PW16 also deposed as to the marriage of the appellant with the prosecutrix.

10. It is also pertinent to note that the FIR was registered on 17.07.2015, whereas the appellant left her at her parents' house in September 2014. The first alleged instance of rape is from November 2013. No explanation is provided for the said delay in reporting the incident. The MLC (Ex. PW14/A) records that internal examination was refused by the prosecutrix. No FSL report was prepared either.

11. The Trial Court, after analysing the evidence that came on record especially, the deposition of the prosecutrix and her earlier statement wherein she did not mention that the appellant tricked or threatened her when he made physical relations, and considering that she used to go to his *jhuggi* repeatedly despite alleging rape, not telling her family despite having multiple opportunities to do so, revealed that the prosecutrix was a consenting party and the relations were consensual in nature.

12. The only question which needs to be looked into is whether the victim was a minor when the physical relations were established and whether her age was sufficiently proved. It would be beneficial to discuss the prevailing position in law as to age determination of the child victim.

13. 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.—

....

(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: ..

14. The Supreme Court in the case of Jarnail Singh v. State of Haryana¹, 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. 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 12 of the JJ Rules. 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 Yuwaprakash vs State Rep. by Inspector of Police²).

15. 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,³ 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 vouchsafe for the truth of the facts in issue'. [See : Narbada Devi Gupta v. Birendra Kumar Jaiswal⁸] We may refer to a few judicial pronouncements of this Court in this regard:

8.1. This Court, in Birad Mal Singhvi v. Anand Purohit⁹, 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:

¹ 2013 (7) SCC 263

² 2023 SCCOnline SC 846.

³ 2025 SCC OnLine SC 1454



“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 Jharkhand¹⁰; 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.” ... ”

16. In the present case, the prosecution has claimed that the date of birth of the prosecutrix was 20.04.1997, making her age in November 2013, when the first incident of rape is alleged to have occurred, to be around 16 and a half years. To prove this age, reliance is placed on the school admission register. *Mukesh*, a teacher at the school of the prosecutrix was examined as PW6. The school admission register was exhibited as Ex. PW6/A, the admission form as Ex. PW6/B and certificate given by principal as Ex. PW6/C. In the admission register, her D.O.B. was recorded as 20.04.1997. The admission form reveals that the same was on the basis of information provided by her father. However, neither the father, nor the person who recorded the entry in the register, was examined in Court. Further, there is no material on record as to on what basis the date of birth was mentioned. Concededly, there is no birth certificate issued by any authority. The probative value of the entry in the admission register, in view of above, becomes negligible.



17. Moreover, the prosecutrix has not stated her date of birth in her deposition, neither has her mother (PW3), aunt (PW2) or brother (PW8). In fact, the bed head ticket of the hospital when the prosecutrix was admitted for her delivery, was exhibited as PW10/A. The same is dated 22.08.2014 and records the age of the prosecutrix as 20 years. If the same is taken as true, then the prosecutrix would have been a major at the time physical relations were first established in 2013.

18. Thus, it appears that the sole basis of considering 20.04.1997 as the D.O.B. is the entry in the School Admission register, which, due to reasons discussed hereinabove, is not sufficiently proved. Co-ordinate bench of this Court in State v. Hitesh,⁴ held that where the conclusive proof of age as per Section 94 of the JJ Act is not given, and the alleged age difference between the stated age and the age of majority is only one or two years, convicting an accused by applying provisions of POCSO Act would be unsafe. The relevant extracts are reproduced hereunder:-

“23. The issue that the prosecutrix was less than 18 years old on the day of the incident is an important ingredient of the offence under the POCSO Act. The burden lies upon the prosecution to prove the same. In the present case in hand, there are inconsistencies with regard to the date of birth of the prosecutrix as the school records are not corroborated by any evidence as mandated under Section 94 of the JJ Act. Thus, the prosecution has failed to establish beyond reasonable doubt that the prosecutrix was below the age of 18 years on the date of the alleged incident.

24. In cases like the present one, where the prosecutrix is nearly 17 years old (16 years, 10 months, and 21 days), 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 accused/respondent. I am of 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

⁴ 2025 SCC OnLine Del 962



the prosecutrix and the age of majority is of only one or two years, would be harsh and unjust.”

Similar view has also been taken in Raj Kishore v. State.⁵

19. In the present case, as per prosecution's own case, the prosecutrix would have been around 16 and a half years of age at the time of the first instance of rape. The prosecution has failed to prove her age conclusively as per Section 94 JJ Act. Consequently, benefit of doubt must be extended to the appellant. As the trial court has returned a finding that the relations were established consensually, the appellant is acquitted for the offences under Section 6 POCSO Act and Section 376 IPC.

20. Insofar as the conviction under Section 323 IPC is concerned, no specific instance was given in the deposition of the prosecutrix. The MLC also does not record any injury. The prosecution has failed to prove the said charge beyond reasonable doubt. Consequently, the appellant is acquitted for the offence under Section 323 IPC as well.

21. The appeal is allowed. The appellant's bail bonds are cancelled and sureties discharged.

22. A copy of this judgment be communicated to the concerned Trial Court and Jail Superintendent.

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

20. This Court records its appreciation for the assistance rendered by the learned *Amicus curae*, Mr. Ankur Chhibber, Advocate.

**MANOJ KUMAR OHRI
(JUDGE)**

DECEMBER 15, 2025/ry

⁵ 2025 SCC OnLine Del 1303