



2026:DHC:3649-DB



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

Reserved on: 18.03.2026
Pronounced on: 30.04.2026

+ **CRL.A. 169/2022**

STATE

.....Appellant

Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav and
Mr.Atiq Ur Rehman, Advs.

versus

DILAVAR SINGH

.....Respondent

Through: Ms.Rakhi Dubey, Adv.
(DHCLSC) (*Amicus Curiae*)
with Ms.Arpita Srivastava,
Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed challenging the judgment dated 28.11.2019 passed by the learned Additional Sessions Judge (POCSO) West, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in Sessions Case no. 219/2013 arising out of FIR no. 183/2013 under Sections 342/506/376 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'), registered at Police Station Paschim Vihar, Delhi, whereby the learned Trial Court acquitted the respondent of the Charges.



erred in appreciating the evidence while acquitting the respondent. He submits that the statement of the victim was consistent and worthy of acceptance. It was also supported and corroborated by the statements of the parents, the sister of the victim, as also from the injuries found on her by Dr. Supriya Prashar (PW-6).

14. The learned APP further submits that the learned Trial Court has erred in holding that the prosecution failed to establish that the prosecutrix was below eighteen years of age. In the absence of documentary proof, reliance was placed on the Ossification Test assessing her age between 16 and 18 years; however, the learned Trial Court incorrectly adopted the upper limit of the range. It is contended that, particularly under the POCSO Act, a beneficial legislation aimed at protecting the minors, the lower end of the age range ought to have been considered. In support of his submission, the learned APP placed reliance on the judgment of the Supreme Court in *Jarnail Singh v. State of Haryana*, (2013) 7 SCC 263; and of this Court in *Raju Yadav v. State of NCT of Delhi*, 2023 SCC OnLine Del 2782. He submits that therefore, the perceived consent of the victim, was immaterial to find the respondent guilty of the offence charged.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT:

15. On the other hand, Ms. Rakhi Dubey, the learned Amicus Curiae appointed for the respondent, submits that the victim in the present case, that is, PW-2 is not reliable and there are glaring



inconsistencies in her statements recorded under Sections 161 and 164 of the Cr.P.C. and her deposition before the Court. She submits that it is inconceivable that the respondent could have taken away the victim without any other person in the house noticing it. She further submits that, in fact, the victim went with the respondent on her own and it is only when she was found by the parents as missing, a concocted story of rape was made involving the respondent.

16. As regards the age of the victim, the learned counsel for the respondent submits that the victim PW-2 in her statement had stated that her brother is younger to her and is aged about 18 years. This clearly shows that the victim was a major on the date of the alleged offence. Even her Ossification Test Report opined her age to be between 16 and 18 years. She further submits that, in such cases, the benefit of doubt has to be given to the accused and, therefore, the age of the victim has to be taken more than 18 years on the date of the offence. In support, she places reliance on the judgments of this Court in *Shweta Gulati & Anr. v. The State Govt. of NCT of Delhi*, 2018 SCC OnLine Del 10448; *State v. Basir Ahmad*, 2023 SCC OnLine Del 5852; *Court On Its Own Motion v. State of NCT of Delhi*, 2024:DHC:4915-DB; and of the Supreme Court in *Rajak Mohammad v. The State of Himachal Pradesh*, 2018 SCC OnLine SC 1222.

ANALYSIS AND FINDINGS

17. We have considered the submissions made by the learned counsels for the parties and have also perused the records.

18. In the present appeal, two questions arise for consideration:



- (a) whether the prosecution has been able to prove beyond reasonable doubt that the respondent had abducted the victim against her will and, thereafter, committed rape upon her; and
- (b) whether the victim, on the date of the alleged offence was a minor, thereby making her consent for the sexual intercourse to be irrelevant.

19. As far as the factum of sexual intercourse is concerned, the learned Trial Court, based on the statement of PW-6 Dr. Supriya Prashar and MLC (Ex. PW 6/A), has found the same to be proved and had returned a finding that sexual intercourse had taken place. PW-6-Dr. Supriya Prashar, who examined the victim on 26.06.2013, had found the hymen to be torn with congestion and tenderness. She also reported that there was a small tear at upper junction of labia minora. We, therefore, find no reason to differ from the learned Trial Court on this finding.

20. The primary issue to be determined by this Court is whether the prosecution has been able to establish that the said sexual intercourse was without the consent of the victim. In this regard, PW-2, the victim in her statement states that while she was sleeping along with her siblings on the ground floor of her *jhuggi* and her parents were sleeping on the upper floor, she heard a knocking at the door. She states that she thought that her father might have come so she opened the door. She states that the respondent put his hand on her mouth and took her to his house where, after threatening her that he would kill her, he removed her clothes and raped her. She then came out of the house of the respondent and in the gali outside, she met her parents



and told them about the entire incident.

21. Interestingly, none of the siblings heard any noise of knocking on the door on the night of the alleged incident or any sound of the victim while she was allegedly being taken away by force. The distance between the *jhuggi* of the victim and *jhuggi* of the respondent is stated to be about 20 steps. It is stated to be surrounded by other *jhuggis* where people live, however, again nobody saw the respondent taking away the victim by force. Her being missing from the house came to the fore only when her sister PW-5, woke up at about midnight and found her missing and went to the parents to look for her.

22. She also states that the respondent was not known to her prior to the incident, which is contradictory to her statements recorded under Section 161 of the Cr.P.C (Ex.PW 2/A), her statement before the Magistrate under Section 164 of the Cr.P.C (Ex. PW 2/B).

23. Apart from the above, there are material contradictions in the statements of the victim recorded under Section 161 of the Cr.P.C (Ex.PW 2/A), her statement before the Magistrate under Section 164 of the Cr.P.C (Ex. PW 2/B), and her statement before the learned Trial Court. In her statement under Section 161 of the Cr.P.C., she states that while she was sleeping with her siblings on the ground floor of the *jhuggi*, she opened the door of the *jhuggi* on hearing a knock. She saw the respondent standing there. The respondent asked her to accompany him. She asked for the reason for the same to which the respondent answered that he wishes to speak with her. He, thereafter, took her to his own *jhuggi* and closed the door from inside and



threatened her that she should do what he asked her to do otherwise he would kill her. He, thereafter, raped her. She even shouted for help whereafter he left her. She wore her clothes, opened the door and ran towards her own house when she found the parents looking for her. Therefore, in this statement, there is no mention of the respondent forcefully taking the victim to his own house by putting his hand on the mouth of the victim. There is also a mention that it is the respondent who had closed the door of his own jhuggi after taking the victim there from inside and it was the victim herself who opened the door after the respondent had left her after committing the rape. The two statements are also contradictory on whether the victim knew the respondent from before, with the statement under Section 161 of the Cr.P.C. suggesting that the victim knew the respondent, while in the statement before the learned Trial Court, the victim denied it.

24. The said statements have material contradictions to the statement of the victim recorded under Section 164 of the Cr.P.C. as well, wherein to a question put by the learned Magistrate as to whether she raised any alarm or not, she states that she shouted for help, however, no one was there and someone had locked the *jhuggi* from outside. She further stated that the lock was opened by a friend of the respondent, however, she could not see him. She stated that after raping her, the respondent left her in the gali and ran away. She does not state that she met her parents in the gali, but states that she narrated the incident to them after coming home in the night itself. The statement also suggests that the victim knew the respondent from before.



25. While it is settled law that conviction can be based on the statement of the prosecutrix alone, such statement must be found to be reliable and trustworthy. Reliance is placed on a decision in *State (GNCT of Delhi) v. Vipin alias Lalla*, 2025 SCC OnLine SC 78 wherein the Supreme Court, in the context of basing the conviction solely on the testimony of the alleged victim, observed as under:

“10. Although it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court.....”

26. Similarly, Supreme Court in *Rai Sandeep @ Deepu v. State (NCT of Delhi)*, (2012) 8 SCC 21, has observed as under:

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a



sister of the victim, are concerned, they had not seen the incident and, as noted hereinabove, they went looking for the victim as PW-5 found her to be missing. They, thereafter, found the victim coming from the house of the respondent. It is quite possible that the victim, seeing her parents while coming from the house of the respondent, concocted the story of being raped by him. Their statements therefore can only corroborate that the victim was coming from the house of the respondent in the middle of the night, however, are insufficient to hold, beyond reasonable doubt, that the respondent had taken the victim to his house forcibly or that the respondent had a sexual intercourse with her without her consent.

29. As far as the injuries on the victim are concerned, PW-6 Dr. Supriya Prashar explains these injuries as under:

“On examination, she had multiple scratch mark over anterior aspect of base of neck, swelling over abrasion on right elbow, small abrasion over anterior aspect of lower thigh near right knee.”

30. The respondent had stated that, on seeing the victim coming back from the house of the respondent, the parents of the victim took her and gave her beatings. The injuries which have been mentioned are more consistent with this defence, than with the case of the prosecution as showing a forceful sexual intercourse and these injuries being marks of resistance.

31. In view of the above, we find that the prosecution has been unable to prove beyond reasonable doubt that there was a forceful sexual intercourse committed by the respondent on the victim. The



inconsistencies and surrounding circumstances create a reasonable doubt, and the benefit thereof must flow to the respondent.

32. The law governing appeals against acquittal is well settled. The appellate court though can re-appreciate the evidence, it shall interfere only when the findings of the Trial Court are perverse, manifestly illegal, or grossly unjust. The Supreme Court in *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450, observed that the presumption of innocence in favour of the accused stands reinforced by an order of acquittal, and unless the conclusions drawn by the Trial Court are perverse, manifestly illegal, or wholly unreasonable, the appellate court ought not to substitute its own view merely because another view is possible. The relevant extracts from the said judgment are as under:-

“69. The following principles emerge from the cases above:

- 1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*
- 2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at*



issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;*
- (ii) The trial court's decision was based on an erroneous view of law;*
- (iii) The trial court's judgment is likely to result in "grave miscarriage of justice";*
- (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
- (v) The trial court's judgment was manifestly unjust and unreasonable;*
- (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*
- (vii) This list is intended to be illustrative, not exhaustive.*

2. The appellate court must always give proper weight and consideration to the



become irrelevant in case she is held to be a minor on the date of the offence.

36. In *Jarnail Singh* (supra), the Supreme Court held that the procedure for the determination of the age as prescribed in Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the “Rules”) is applicable not only to a child in conflict with law but also to a child who is a victim of crime.

37. It is admitted that there are no primary documents available in terms of Rule 12(3)(a) of the Rules to determine the age of the victim. The age of the victim was, therefore, sought to be determined by way of an Ossification Test. The Ossification Test opined the age of the victim to be between 16 and 18 years as on the date of the incident.

38. The judgment of *Raju Yadav* (supra) by a learned Single Judge of this Court, which had held that for determining the age of a child victim under the POCSO Act, the inclination of the Court should be towards considering the lower side on the margin of error, was later considered by the Division Bench of this Court in *Court On Its Own Motion* (supra), wherein, after detailed analysis of various judgments, the Court held as under:

“22. In the case in hand also, such estimation age is given as 16-18 years by the concerned Medical Board. The issue is whether age of the victim should be taken on the lower side or on the upper side of such range. What ought to be the approach of the Court – whether to consider the age of the child victim as 16 years or as 18 years? And secondly and more importantly, whether any further “margin of error” is also to be applied on either side, thereby making the age range, in context of present situation, from ‘16 to 18 years’ to ‘14



to 20 years.’

23. We cannot be oblivious of the fact that we are following adversarial system of law where the presumption of innocence is indispensable philosophy. Though in any criminal trial, the endeavour is to reach the truth, in adversarial system, the judge generally acts like an umpire who watches whether the prosecution has been able to prove the case beyond reasonable doubt or not. Since the adversarial system in India is based on the innocence of the accused’, the burden of proof, generally, falls on prosecution. Our criminal system prescribes that a case against any accused has to be proved beyond doubt. Meaning thereby, if there is an element of doubt, such benefit has to go to the accused.”

39. This Court, in reaching the above conclusion, also placed reliance on decision of the earlier Division Bench of this Court in ***Basir Ahmad*** (supra), wherein it had been held as under:

“13. The question which thus, arises is whether the lower or the upper age recommended in the ossification test should be adopted to be the age of the prosecutrix. If benefit of doubt has to be given to the accused under all circumstances, then, it is the higher limit which has to be taken and benefit extended as has been held in the cases of Triveniben Vs. State of Gujarat (1989) 1 SCC 678 and Maru Ram Vs. Union of India (1981) 1 SCC 107. So being the case, we may consider the range of age of the prosecutrix as given in the ossification test to be 17 to 19 years. Applying the margin of error principle of two years on either side, the age of the prosecutrix could be anything between 15 to 21 years. Even if the margin of error is not on the higher side, the upper limit of the age has been estimated by the ossification test as 19 years. Giving the benefit, the age of the



prosecutrix has to be held as 19 years. Similar conclusion was taken by the Court in the case of Shweta Gulati vs. State of NCT of Delhi 2018 SCC OnLine Del 10448. We thus, find that learned ASJ has rightly held the prosecutrix to be major at the time of incident. We find no infirmity in the findings in respect of the age of the prosecutrix.”

40. Reliance was further placed on the judgment of the Supreme Court in ***Rajak Mohammad*** (supra), wherein the Supreme Court had reiterated that the benefit of doubt must go in favour of the accused as the Ossification Test may not give an accurate determination of the age of the victim. We quote from the judgment 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.”

41. This Court in ***Court On Its Own Motion*** (supra), further answered the reference made to it as under:

*“46. As an upshot of our foregoing discussion, the Reference is answered as under:-
(i) Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?*

Ans: In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on 'bone age ossification



report', the upper age given in 'reference range' be considered as age of the victim.

(ii) Whether the principle of „margin of error“ is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.

Ans: Yes. The margin of error of two years is further required to be applied.”

42. Though the learned APP submits that the above judgment would require a re-consideration, we see no ground for doing the same as we find ourselves in full agreement with it. The basic foundation of criminal law is that unless the statute carves out an exception, the benefit of doubt must go in favour of the accused.

43. In POCSO Act, a presumption against the accused is created in Sections 29 and 30 thereof, which read as under:

“29. Presumption as to certain offences.—
Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

30. Presumption of culpable mental state.—
(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt



and not merely when its existence is established by a preponderance of probability. Explanation.—In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.”

44. The above provisions would apply only where the basic foundational facts are proved, including that the victim was a minor on the date of the offence. The presumption in Sections 29 and 30 cannot be invoked against the accused for determining whether the victim was a minor on the date of the offence.

45. In the present case, the Ossification Test conducted on 08.07.2013, opined the age of the victim to be between 16 and 18 years at the time of the incident. Giving the benefit of doubt to the accused/respondent, therefore, her age would have to be taken at least 18 years thereby making her a major on the date of the offence. In view of our earlier finding that the prosecution has been unable to prove beyond reasonable doubt that the sexual intercourse had taken place without the consent of the victim, in our view, the learned Trial Court had committed no error in acquitting the respondent of the offences charged.

46. In view of the above, we find no merit in the present appeal. The same stands dismissed.

47. The bail bonds and the surety of the respondent are hereby discharged.

48. A copy of this judgment be communicated to the learned Trial Court and the concerned Jail Superintendent for information and compliance.

