



2025:DHC:5201



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 03.07.2025*+ **CRL.A. 277/2007****BANSI KUMAR**

.....Appellant

Through: Mr. Chandra Prakash Sharma,  
Adv.

versus

**STATE**

.....Respondent

Through: Mr. Naresh Kumar Chahar,  
APP for the State with Ms.  
Puja Mann, Adv. along with SI  
Mahendra.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The present appeal has been preferred by the appellant seeking setting aside of the impugned judgment and order on sentence, both dated 07.04.2024, passed by the learned Additional District and Sessions Judge, Delhi, [hereafter '*Trial Court*'] whereby the appellant was convicted for offence under Section 366/376 of the Indian Penal Code, 1860 [hereafter '*IPC*'] in case arising out FIR No. 596/2005 registered at Police Station Narela, Delhi.

2. By way of the impugned judgment, the appellant was



sentenced to undergo rigorous imprisonment for a period of seven years and pay a fine of ₹2,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

3. Briefly stated, the facts of the present case are that on 20.11.2005, the present FIR was registered on the complaint of Roshan Khan, who reported that his daughter, aged about 14 to 15 years, had gone missing since 6:00 PM that evening, and despite extensive searches, she could not be traced. He had further stated that, in the meantime, one Shorab had visited his house and threatened him with dire consequences, stating that if he reported the matter to the police, his daughter would be killed. The complainant also informed the police that he suspected his daughter had been induced or threatened by Shorab and Bansi, i.e. the present appellant. Subsequently, on 30.12.2005, the prosecutrix was recovered in the company of the accused Bansi. Her statement was recorded under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], and an ossification test was conducted, which opined that the age of the prosecutrix could be between 18 to 19 years.

4. After completion of the investigation, the charge sheet was filed. Thereafter, charges for offence under Sections 366 and 376 of IPC were framed against the present appellant, to which he pleaded not guilty and claimed trial. The prosecution led its evidence, and upon conclusion of the trial, the learned Trial Court convicted the appellant while arriving at the following findings:



“18. Moreover, I may observe that even if the age of the prosecutrix is taken as between 18 years to 19 years as per bony age report, the same is immaterial. The reason being that even if she was major, one does not have a right to/ have intercourse forcibly. The age could have been relevant only if prosecutrix had admitted consent.

19. Now coming to the aspect of consent, it may be observed that the burden of proving the same was upon the accused which he has failed to discharge. His own bald statement that the prosecutrix voluntarily accompanied her and had sexual intercourse with her with her consent is not enough. The Counsel for the accused strenuously urged that the conduct of the prosecutrix in not telling the employer or the other labour or any person from the public when she had been kept forcibly by the accused, belies the version of the prosecutrix. I am unable to understand the argument. The prosecutrix has considerably explained that she was threatened by the accused not to tell anything to anyone failing which her parents would be killed. In such state of affairs it was quite natural for her not to tell the incident to anybody.

20. The Counsel for the accused also submitted that prosecutrix did not support the case of prosecution in statement U/s 164 Cr.P.C. where she stated that she was in love with the accused for the last two years and she had gone along with accused of her free will and she married with the accused in a temple namely chhota temple at Narela with her free will. She was living with the accused as his wife with her free consent. She wanted to go with her husband/ accused. Again I feel that the prosecutrix has suitably explained the circumstances in which she gave the said statement. She deposed that she gave the statement under threat of Sohrab. Statement U/s 164 Cr.P.C is not substantive piece of evidence. The main evidence is the statement given during trial.

21. The counsel for accused submitted that story of threat at the time of statement u/s 164 Cr. P.C. is not believable because the prosecutrix was brought from Nari Niketan and Sohrab had no occasion to meet her. The argument is not convincing as no such question was put to prosecutrix in her cross examination.

22. The counsel for the accused relied upon Mahavir Singh Versus State 1994 (3) CCC 6 in which it was held that going by train to a far of distant place and staying in the house of DW, conduct of prosecutrix in not raising banner of revolt and



attempt to flee, introducing himself as wife of the accused, going to bazar for shopping shows consent. The same is not applicable to the case in hand because here there is nothing to show that the prosecutrix and accused travelled by train. Gurgaon is not a far of distant place. Moreover in the cited case the prosecutrix admitted her age as 18 years and the same was assented by her mother. That is no so in the instant case.

23. The Counsel for the accused took opportunity to urge that no semen was detected in Ex.P1, Ex.P3 and Ex.P4 viz undergarments, pubic hair and slide of vaginal swab. The same demolishes the case of the prosecutrix. I fail to appreciate the argument. When the accused himself as admitted that he had intercourse with the prosecutrix, absence of semen loses significance.

24. From the material on the record I find that the prosecution has proved its case beyond reasonable doubt against the accused. The accused is convicted U/s 366/376 IPC. File be consigned to Record Room.”

5. The learned counsel appearing for the appellant argues that the prosecutrix had voluntarily entered into a relationship with the appellant, and both of them were working as labourers at the relevant time. It is submitted that the prosecutrix had resided with the appellant for approximately 4 to 5 days without raising any alarm or complaint to anyone, which reflects the consensual nature of their association. The learned counsel further contends that the prosecutrix’s statement under Section 164 of Cr.P.C. was recorded after she had been produced from Nari Niketan, and therefore, there was no occasion or possibility for the appellant to have intimidated or influenced her statement. It is also argued that the ossification test conducted on the prosecutrix reflected her bony age to be between 18 to 19 years, which creates doubt regarding the claim of her being a



minor. The learned counsel further submits that the school certificate relied upon to establish the prosecutrix's age cannot be treated as reliable evidence in the present case, as the birth certificate of the prosecutrix was neither produced nor proved before the learned Trial Court. In view of the above, the learned counsel prays that the conviction of the appellant is unsustainable and the impugned judgment deserves to be set aside.

6. The learned APP for the State, on the other hand, submits that as per the school records, the prosecutrix was 15 years of age at the time of the incident. It is contended that the prosecutrix was under intimidation by the appellant at the time when her statement under Section 164 of Cr.P.C, was recorded, during which she appeared to have supported the appellant's version. The learned APP further submits that, in her statement to the police, the prosecutrix had categorically stated that the appellant had forcibly taken her away, and had forcefully established physical relations with her. However, she did not disclose these facts before the learned Magistrate as she was under fear and threat exerted by the appellant. It is, however, not disputed that the prosecutrix was produced before the learned Magistrate from Nari Niketan. Nonetheless, it is submitted that the omission of certain facts in one of her statements cannot be treated as sufficient ground to discredit her other statements in their entirety, particularly when the version disclosed to the police and the evidence on record support the prosecution's case. In view of the above, the learned APP prays that the present appeal be dismissed.



7. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

8. In the present case, having gone through the records of the case, this Court is of the opinion that the learned Trial Court has failed to render a categorical finding regarding the age of the prosecutrix, which was a material aspect in the present case. It is noted that only a photocopy of the birth certificate was placed on record, which neither stood proved in accordance with law nor could be relied upon as admissible evidence to establish the age of the prosecutrix conclusively. On the other hand, the ossification test report, which forms part of the judicial record, has categorically opined that the prosecutrix was between 18 to 19 years of age at the relevant time.

9. In such circumstances, this Court is of the opinion that it was incumbent upon the learned Trial Court to have recorded a clear and reasoned finding regarding the age of the prosecutrix, particularly when dealing with offences under Sections 366 and 376 of the IPC, where the minority of the prosecutrix is a material consideration. Though the learned Trial Court proceeded to observe that even if the age of the prosecutrix is taken as between 18 to 19 years, the same would be immaterial, this Court finds such reasoning to be unsustainable in law. The age of the prosecutrix, especially in cases alleging inducement or abduction, is a relevant and determinative factor. In the absence of any other reliable documentary proof of age, the ossification test report constitutes the best available evidence



before the learned Trial Court, and due weight ought to have been accorded to the same while adjudicating the present matter.

10. Further, the learned Magistrate in this case had categorically recorded that the prosecutrix was brought before it from Nari Niketan and was not under any kind of pressure or coercion at the time of recording her statement. The record also reflects that immediately after being recovered, the prosecutrix was sent to Nari Niketan, precisely to ensure that she remained beyond the reach of any undue influence, intimidation, or external pressure.

11. In her statement under Section 164 of Cr.P.C., the prosecutrix clearly stated that she had accompanied the accused herein, voluntarily and had resided with him for approximately one month. However, during her deposition before the learned Trial Court, the prosecutrix retracted from her earlier statement and alleged that the statement recorded before the learned Magistrate was made under pressure.

12. The fact that the prosecutrix was produced from Nari Niketan on the date when her statement under Section 164 of the Cr.P.C. was recorded, coupled with the learned Magistrate's categorical observation that she was not under any form of pressure or coercion and that she made her statement voluntarily, does cast a doubt upon the subsequent version of events put forth by the prosecutrix during her deposition before the learned Trial Court.

13. Further, the testimony of PW-5, Chhavi Lal, with whom the



parents of the prosecutrix were working, also indicates that the prosecutrix and the appellant were living together voluntarily as husband and wife. The prosecutrix herself had stated that she and the appellant were married at Chhota Temple, Narela, out of her own free will.

14. It is also relevant to note that when she was produced before the learned Magistrate for the purpose of recording her statement under Section 164 of Cr.P.C., she specifically reiterated her desire to reside with the appellant, whom she referred to as her husband. To reiterate, the fact that at the time of recording the said statement, she had been kept at Nari Niketan, a government shelter home, further diminishes the possibility of any undue influence or threat being exerted upon her by the accused or his family members. Thus, the material contradictions between her earlier voluntary statement and her later deposition before the Court creates a doubt regarding the veracity of the prosecution's version.

15. Having considered the overall facts and circumstances of the present case, this Court is of the opinion that the learned Trial Court erred in placing reliance upon the birth certificate of the prosecutrix, which was neither produced by the Investigating Agency during the course of investigation, nor seized in accordance with law, nor proved through any admissible evidence. The record is conspicuously silent as to how the said document came to be placed on record, particularly when it was neither filed by the parents of the prosecutrix nor produced by the prosecution through any witness. The birth





certificate relied upon by the learned Trial Court was admittedly a mere photocopy, unaccompanied by any seizure memo or supporting testimony establishing its authenticity. In such circumstances, reliance on an unproved document to determine the age of the prosecutrix amounts to an error in law.

16. Insofar as the allegations regarding rape, illegal confinement, or the accused forcibly taking the prosecutrix to Gurgaon are concerned, this Court is of the opinion that once the ossification test, which is a scientific method of age determination, placed the prosecutrix's age between 18 to 19 years, the allegation that she was a minor at the relevant time loses credibility. Furthermore, when she was recovered, the prosecutrix herself made a voluntary statement that she had gone with the appellant of her own free will, that they had solemnised marriage at a temple in Narela, and were living as husband and wife. This version is further corroborated by PW-5, the contractor, who deposed that both the prosecutrix and the appellant were living together voluntarily, working as labourers, without any protest or complaint by her for nearly a month.

17. It is pertinent to note that the place of their stay in Gurgaon was a heavily populated area with several other labourers residing nearby. In such circumstances, the subsequent statement of the prosecutrix alleging forcible confinement also does not inspire much confidence, especially in the aforementioned facts and circumstances of the case.



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18. In view of the foregoing discussion, this Court is of the opinion that the prosecution has failed to establish its case beyond reasonable doubt. The material inconsistencies in the version of the prosecutrix, coupled with the absence of reliable evidence to conclusively establish the age of the prosecutrix, especially the assertion that she was a minor, entitles the appellant to benefit of doubt.

19. Accordingly, this Court holds that it is a fit case for extending the benefit of doubt to the appellant. Consequently, the appellant is acquitted of the charges for offence under Sections 366 and 376 of IPC.

20. The impugned judgment and order on sentence is set aside.

21. The bail bonds furnished by the appellant stand cancelled and the surety stands discharged.

22. In view of the above, the present appeal stands disposed of.

23. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**

**JULY 03, 2025/A**