



2025:DHC:10639



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

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*Judgment reserved on: 14.11.2025**Judgment pronounced on: 28.11.2025**Judgment uploaded on: 03.12.2025*+ **CRL.A. 279/2025 & CRL.M.(BAIL) 511/2025**

UMESH PASWAN

.....Appellant

Through: Ms. Supriya Juneja, Advocate

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Manoj Pant, APP for the  
State with SI Savita Solanki,  
P.S. Khyala.Mr. Anubhav Tyagi, Amicus  
Curiae for the victim.Ms. Vandana Chauhan, from  
Child Welfare Committee-I  
along with Ms. Rupa Singh  
and Ms. Pratima, (House  
Aunty) CHG from Nirmal  
Chaya.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present appeal, the appellant seeks to assail the judgment dated 08.10.2024 and order on sentence dated 27.11.2024, passed by the learned Additional and Sessions Judge (FTSC)



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(POCSO)-01, West District, Tis Hazari Courts, Delhi [hereafter '*Trial Court*'], in SC No. 577/2018, *vide* which the learned Trial Court was pleased to convict the appellant herein for commission of offence punishable under Sections 366/376/506 of the Indian Penal Code, 1860 [hereafter '*IPC*'].

### **FACTUAL BACKGROUND**

2. Briefly stated, the facts of the case are that on 03.07.2018, the Duty Officer (ASI Hansraj) posted at Police Station Khyala, Delhi had produced the victim 'A' and her mother 'V' before the Investigating Officer (I.O.), pursuant to a receipt of call from GGSG Hospital with respect to collecting the MLC of victim 'A'. As per the statement of the victim, in the month of February she had gone to play in a park in Khyala, where she had met one Umesh, who had taken her to a corner of the said park on the pretext of enticing her. He had asked her to remove her jeans and, upon her refusal, had threatened to kill her, forcibly opened her jeans, and pulled them down. Thereafter, he had partially removed his own pant, had laid her on the ground, sat over her, and had forcibly raped her. The victim had not disclosed the incident to her mother due to fear. It had further been stated by the victim that on two subsequent occasions as well, when she had gone to the park to play, the accused Umesh had again raped her at different secluded places after threatening to kill her. When the victim later suffered stomach pain, her mother had taken her to Guru Gobind Singh Government Hospital, where the doctor



had informed her that the victim was pregnant. On the basis of the statement of the victim, *rukka* had been prepared by the I.O., pursuant to which the present FIR under Sections 376(3)/506 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'] had been registered against the accused.

3. During investigation, the place of occurrence had been identified and pointed out. The I.O. had searched for the accused, but he had initially not been found. The victim's statement under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] had been recorded on 04.07.2018. On 05.06.2018, the prosecutrix had been produced before the Child Welfare Committee (CWC), Nirmal Chhaya, which had directed that her ultrasound be conducted at DDU Hospital and the report be placed before it. Thereafter, the ultrasound had been conducted and on 06.06.2018, the victim and her mother had been produced before the Chairperson, CWC, Nirmal Chhaya. As the mother of the victim had refused to keep the child with her, the Chairperson had directed that the victim be placed in Nirmal Chhaya.

4. Subsequently, the accused had been arrested from Village Wazirabad, Delhi, at the instance of the mother of the victim. His blood samples had been collected by the concerned doctor and handed over to the I.O. The accused had then been taken to Nirmal Chhaya, where the victim had identified him from a distance as the same person who had repeatedly raped her. On 07.07.2018, the



accused had been sent to judicial custody.

5. After completion of investigation, the chargesheet had been filed before the concerned Court. The FSL report and the bone ossification report of the victim had been filed subsequently by way of a supplementary chargesheet. After cognizance had been taken, the victim 'A' had delivered a child on 08.09.2018 and her child's DNA sample had been collected. The DNA report had also been placed before the learned Trial Court. Charges under Sections 363/366/376/506 IPC and Section 6 of the POCSO Act had been framed against the accused.

6. The prosecution had examined 19 witnesses in support of its case. The statement of the accused under Section 313 of Cr.P.C. had been recorded, though no defence evidence had been led by him. Upon completion of trial, the learned Trial Court convicted the appellant for the offences under Sections 366/376/506 of IPC, holding as under:

“40. As noted above, the consent of the victim/prosecutrix was not free and voluntary in the present case and the victim/prosecutrix was compelled by the accused to go to the secluded room in the park, where: the accused committed offences against her 3-4 times. The accused also threatened the victim/ PW-I by saying that if she would disclose the same to her mother, she (mother of the victim) will beat her and not let her stay in the house. The Court cannot turn a blind eye to the strata of the society to which the victim belongs while appreciating her testimony. The amalgamation of guilt and embarrassment is the prime reason of fear generated in the mind of the victim in our society and the vulnerability of such a victim also cannot be lost sight of.

41. Conclusively, in light of the above-said discussion and



reasons, this court finds that the prosecution has proved to the hi It that the accused abducted the victim/prosecutrix with intent to seduce her to illicit intercourse, committed rape upon her 3-4 times leading to her pregnancy & birth of a female child and also criminally intimidated her. Consequently, **the accused Umesh Paswan, S/o Sh. Sagar Paswan is found guilty for the said charges and stands convicted for the offences punishable under Sections 366 IPC, 376 IPC & 506 IPC.** However, since the victim/prosecutrix could not be proved to be a 'child' as defined under Section 2(d) of POCSO Act & has been proved to be above 18 years of age, **the accused Umesh Paswan, S/o Sh. Sagar Paswan stands acquitted for the offence punishable under Section 06 POCSO Act & 363 IPC."**

7. The appellant had thereafter been sentenced by the learned Trial Court in the following manner:

- (i) rigorous imprisonment for a period of 10 years and fine of Rs. 5,000/- (rigorous imprisonment for a period of two months, in default) for the commission of offence punishable under Sections 366 of IPC
- (ii) rigorous imprisonment for a period of 12 years and fine of Rs. 5,000/- (rigorous imprisonment for a period of two months, in default) for the commission of offences punishable under Section 376 of IPC
- (iii) simple imprisonment for a period of 02 years for the commission of offence punishable under Section 506 of IPC.

8. Aggrieved by the aforesaid judgment of conviction and order on sentence, the appellant has preferred the present appeal.

#### **SUBMISSIONS BEFORE THE COURT**



9. The learned counsel appearing on behalf of the appellant impugns the judgment of conviction dated 08.10.2024 on the ground that the learned Trial Court had erred in convicting the appellant. It is argued that the learned Trial Court failed to appreciate that there were material improvements and discrepancies in the statements of the victim and other prosecution witnesses, which directly affects the credibility of the prosecution case. According to the appellant, these inconsistencies were significant and could not have been brushed aside, and therefore the appellant was entitled to the benefit of doubt. It is argued that the learned Trial Court based the conviction solely on the testimony of the victim, while being influenced by the statutory presumption under the POCSO Act, despite having simultaneously held that the appellant could not be convicted under the POCSO Act. It is submitted that such contradictory reasoning is impermissible in law. The learned counsel also assails the finding regarding the age of the victim, contending that her age had not been proved beyond reasonable doubt. He submits that the ossification test had placed her age between 15 to 17 years, and the learned Trial Court failed to give the permissible margin of error of two years on the higher side, which could have placed her age at 19 years. It is argued that if such benefit of doubt had been extended, the entire prosecution case under Section 376 of IPC would have fallen, as the relationship, if any, would then be presumed consensual. The learned counsel also points to the delay of nearly five months in lodging the FIR, contending that such delay creates doubt about the prosecution story and raises the possibility of



tutoring the victim. It is argued that the contradictions in the statements of PW-1 (victim) indicate that either the alleged incident never took place, or that the victim might have been assaulted by someone else. The reliance placed by the learned Trial Court on the DNA report is also assailed on the ground that it is only an opinion of an expert and no adequate explanation has been tendered by the expert as to the methodology employed during the test. Even assuming that the appellant is the biological father of the child, learned counsel submits that the victim's age, when read with the margin of error, would make her a major, and therefore the possibility of consent cannot be ruled out. He further argues that the prosecution has not examined any independent witness, and the learned Trial Court has erred in convicting the appellant solely on the basis of the victim's testimony. He also contends that the appellant has no motive to commit such an act, has exhibited good conduct in jail, and has a wife and five children dependent upon him. Therefore, it is prayed on behalf of the appellant that the present appeal be allowed.

10. On the other hand, the learned APP appearing for the State supports the impugned judgment and submits that the prosecution has proved its case beyond reasonable doubt. It is submitted that the appellant had taken advantage of the vulnerability of the victim and her family, particularly when the mother of the victim had previously been assisted by the appellant's mother during her medical treatment at DDU Hospital. The learned APP argues that the repeated sexual



assault upon the victim stands established from her consistent statements under Sections 161 and 164 of Cr.P.C., her medical examination, her testimony before the Court and the DNA report which conclusively connects the appellant to the child born to the victim. It is further submitted that in cases of sexual assault, the absence of an eye-witness is natural and cannot in any manner diminish the weight of the victim's testimony. It is contended that the settled law permits conviction on the sole testimony of the prosecutrix if it is found to be trustworthy and inspires confidence, and that in the present case the Trial Court had rightly relied upon the victim's testimony, which is also corroborated by other evidence. The learned APP further submits that the delay in lodging the FIR stands satisfactorily explained considering the age of the victim, the nature of the offence, and the fear typically associated with such offences. It is thus prayed that the present appeal be dismissed.

11. The learned amicus curiae appearing for the victim also supports the impugned judgment. It is submitted that the testimony of the victim is clear, cogent and consistent on all material aspects, and has rightly been appreciated by the learned Trial Court. It is argued that the DNA report, far from being a mere opinion, is a scientifically validated and reliable piece of evidence which establishes the paternity of the child and corroborates the victim's account. It is further contended that minor inconsistencies, even if any in the testimony of the victim, do not go to the root of the matter. The learned amicus submits that the conviction recorded by the learned





Trial Court is well-reasoned, and therefore does not warrant interference.

12. This Court has **heard** arguments addressed on behalf of the appellant, the victim and the State, and has perused the material available on record.

### **ANALYSIS & FINDINGS**

#### **Testimonies of Crucial Prosecution Witnesses**

13. To appreciate the rival contentions and to assess the correctness of the conclusion arrived at by the learned Trial Court, it is apposite to briefly discuss the testimonies of the material prosecution witnesses.

14. ***PW-1, the victim 'A'***, is the most crucial witness. In her examination-in-chief, she has deposed that the accused Umesh Paswan belonged to her native village in Bihar and had been known to her and her mother through a woman named Parwati, after they had come to Delhi. Around 2–3 years prior to lodging the FIR, her mother had undergone surgery at Deen Dayal Upadhyay Hospital, during which period the accused had stayed at the hospital to assist her mother. After her mother resumed her factory work and used to return late in the evening, the victim would go to a nearby park in Khyala to play with friends. The accused used to visit that park and would take her to a secluded, dilapidated structure in the park, where he had committed “galat kaam” with her on 3–4 occasions. She has



explained “galat kaam” to mean that the accused removed her clothes and his own clothes and inserted his private part into hers. She stated that she had initially intended to tell her mother, but the accused threatened her that her mother would beat her and abandon her, because of which she remained silent. When she later suffered from stomachache, she was taken to Guru Gobind Singh Hospital where it was discovered that she was pregnant. Her statement was then recorded by the police, and subsequently she delivered a female child who is presently in Nirmal Chhaya. She has also identified the accused in Court.

15. PW-1 was permitted to be cross-examined by the learned APP (with the Court’s permission) on the ground that she was withholding certain facts. In this cross-examination, PW-1 admitted that the accused had threatened to kill her and her mother if she disclosed the acts committed by the accused to her mother. In her cross-examination conducted on behalf of the accused, the victim has stated that she and her mother lived alone in Delhi; no one else stayed with them. The accused used to stay with her mother in the hospital but did not visit their house during that period. He, however, came to their house occasionally after her mother returned from the hospital. The first incident of “galat kaam” took place after her mother had resumed work post-operation. The park was large, and the accused had taken her to different secluded spots inside the park. She has denied that her mother ever went out with the accused or that the accused took care of their expenses or medical follow-up. She has



clarified that during her mother's hospitalization, she stayed with her mother's employer ("aunty"), who took her to visit her mother in the hospital. She has denied the suggestion that no such secluded place existed inside the park or that she had been sexually assaulted by some other boys. She has also denied that she had falsely implicated the accused.

16. ***PW-2, Dr. Bhagyashree, Senior Resident (Gynaecology), Guru Gobind Singh Hospital***, has deposed that she had examined the victim on 03.07.2018, who was then brought by her mother with complaints of abdominal pain and an alleged history of sexual assault while playing in the park. The victim's abdomen was uniformly distended, with a uterus corresponding to approximately 24–26 weeks' gestation. Fetal heart sounds were positive on Doppler. She has further deposed that the case was diagnosed as a high-risk teenage pregnancy and the victim was referred to a higher centre for further management. The MLC was proved as Ex. PW-2/A. This witness was not cross-examined on behalf of the accused.

17. ***PW-4, Smt. 'V', the mother of the victim***, has deposed that she had known the accused Umesh Paswan for 4–5 years, as he belonged to her native village and had assisted her during her treatment for a leg ailment at DDU Hospital. After her recovery, she had resumed work in a factory from 9 AM to 9 PM. In 2018, when the victim, then aged about 13–15 years, had complained of stomachache, PW-4 had taken her to Guru Gobind Singh Hospital, where the doctor had



informed her that the victim was pregnant. Upon repeated inquiry, the victim had told her that while playing in a nearby park, the accused had taken her to a secluded place, removed her clothes, lay upon her after removing his own clothes, and committed “wrong act” with her. The victim did not name anyone other than the accused as responsible for her pregnancy. PW-4 has further stated that the hospital staff had informed the police; the victim thereafter had pointed out the place of occurrence to the police; and as PW-4 was unable to keep the victim at home, she was sent to the CWC. PW-4 has further stated that the accused was apprehended from his sister’s house at Wazirabad at her instance. She has correctly identified the accused in Court.

18. In her cross-examination, PW-4 has stated that she had been residing in Delhi for seven years and that the victim was about 10–11 years old when they came to Delhi. She stated that although the victim’s birth was recorded with the Anganwadi in their village, no certificate existed and none was taken by the police. She has denied that the accused had ever resided with them. She has admitted that during her hospitalization, the accused had taken care of her and that he had accompanied her to the hospital for follow-up visits even after discharge. She has stated that the victim also knew the accused and may have regarded him as a father figure. She has denied suggestions that she was deposing falsely, that the victim was a major at the time of the incident, or that she had misstated the victim’s age.



19. **PW-7, Sh. D.S. Paliwal, Assistant Director (Biology), FSL Rohini**, has deposed that on 18.09.2018, five sealed parcels relating to this case were received by him for DNA examination. He had examined Exhibit 1: blood sample of the accused, Exhibit 2a: blood sample of the victim, and Exhibit 3a: blood sample of the victim's child. He has opined that the DNA profile from Exhibit 3a matched genetically with Exhibits 1 and 2a, establishing conclusively that the accused and the victim are the biological father and mother of the child. He has proved his detailed report dated 27.03.2019 (Ex. PW-7/A) along with the genotype data (Ex. PW-7/A1). In cross-examination, he denied the suggestion that his report had been prepared at the instance of the investigating officer without examining the exhibits.

20. **PW-12, Dr. Puja Bhasin, CMO, DDU Hospital**, has deposed that on 17.09.2018, the victim was brought for a bone ossification test. A medical board comprising a Dentist, Radiologist and Physician (Dr. Abhinav, Dr. Malvika Gandhi and Dr. Archana) had examined the victim and submitted their findings to her. Based on their assessment, she had issued the final opinion (Ex. PW-12/A) that the victim's age was between 15 and 17 years. PW-12 was not cross-examined on behalf of the accused.

#### **Statement of the Accused**

21. The statement of the accused under Section 313 of Cr.P.C. was recorded on 03.07.2024 wherein he has denied all incriminating



evidence put to him and has only claimed that he was innocent and had been falsely implicated by the victim and her mother in order to shield the real culprits. He did not opt to lead any evidence in defence. Consequently, the defence evidence was closed *vide* order dated 03.07.2024.

### **Issue Regarding Age of the Victim**

22. The appellant has, in essence, argued that the learned Trial Court has erred in its assessment of the victim's age. It is contended that since the ossification test opined the victim's age as 15–17 years, the learned Trial Court ought to have applied the margin of error of two years on the higher side, which would place her age at approximately 19 years. According to the appellant, the failure to extend such benefit resulted in a legally flawed conclusion, and had the margin been duly applied, the case under Section 376 of IPC would fail on the ground that the relationship was consensual.

23. These arguments, however, are contrary to the record. This Court notes that the presumption under Section 29 of the POCSO Act was not invoked by the learned Trial Court, and the benefit of the permissible margin of error was expressly extended to the appellant. This is evident from the following observations of the Trial Court:

#### **“Determination of age of the victim/prosecutrix ‘A’**

18. In the present case, it is the case of the prosecution that the victim/prosecutrix was aged about 14 years at the time of the alleged offence against her. Further, as per the case of the prosecution, the mother of the victim disclosed that the victim 'A' was never admitted in the school. Therefore, to determine



her age, medical examination of the victim for assessment of her age was conducted, as per which in the opinion of the doctors, the age of the victim was opined to be about 15 to 17 years, as on 17.09.2018. As per the MLC Ex.PW-2/1, the age of the victim was stated to be 14 years. Further, in her statement before the Court also, the victim stated her age to be 14 years. It has also been observed by the Court at the time of recording or her deposition that the victim appeared to be lacking maturity or 16/17 years old girl. The mother of the victim (PW-4) has deposed before the Court that in the year 2018, when she took the victim 'A' to the hospital, she was aged about 13 to 14 years and again stated that she was aged about 15 years.

19. The mother of the victim (PW-4) in her cross-examination dated 08.03.2021 has deposed that she is residing in Delhi for past 07 years and when she came to Delhi, her daughter/victim 'A' was aged about 10 to 11 years. Thus, as per the said statement, the victim's age comes to be about 17 to 18 years in the year 2018 when the present FIR was registered.

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21. Thus, it is clear that the age of the victim has to be determined in the same manner as that of a child in conflict with law. Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 provides the method to determine the age.....

22. With regard to the specific issue, the Hon'ble High Court of Delhi in a recent judgment titled as Court on its own motion vs. State of NCT of Delhi' (Crl. Ref. 2/2024), has specifically held while dealing with the following questions of law and answered the same 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 principal 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.”

23. In the light of the above-said dictum, the upper age given in the reference range i.e. ‘17 years’ is to be considered as the age of the victim and margin of error of two years is further required to be applied. On applying the above principle of ‘margin of error’ in the Bone Age Estimation Report dated 17.09.2018, age of the victim ‘A’ in the present case is held to be around 19 years as on 17.09.2018. The alleged offence pertains to February 2018 and accordingly, it stands established that the victim ‘A’ was major i.e. around 18-19 years of age at the time of the commission of the offence. Hence, the prosecution has failed to prove that the victim ‘A’ was a minor at the time of commission of the alleged offence.

24. Now that it is proved that the victim ‘A’ was a major at the time of commission of the offence, the present case wriggles out of the purview of the POCSO Act. Hence, the burden shifts upon the prosecution to prove its case beyond all reasonable doubts for the charges under the IPC.”

24. From the above observations, it is clear that the learned Trial Court (i) considered the upper age of the ossification range, i.e., 17 years, (ii) applied the mandatory margin of error of two years, and (iii) consequently held that the victim was approximately 18–19 years old at the time of the offence, and therefore not a minor. This Court finds no infirmity in the approach of the learned Trial Court and concurs with its conclusion on the issue of age.

#### **Issue Regarding Delay in Lodging the FIR**

25. With respect to the argument advanced on behalf of the appellant that the FIR was lodged after an unexplained delay of about





five months, this Court finds no merit in the contention. Although, as a matter of law, the prosecution could not establish that the victim was a minor – there being no documentary proof of age and the ossification test placing her age between 15 to 17 years with the margin of error extended to the appellant – yet the record clearly reflects that the victim was a young girl who had herself disclosed her age as 14 years. The learned Trial Court had also recorded its impression that the victim appeared simple, spoke like a child, and lacked maturity of a 16–17 years old girl.

26. The testimony of the victim, including her cross-examination, also reveals that she came from a socio-economically vulnerable background. She has stated that her mother worked for long hours, including overtime, after recovering from surgery. Both mother and daughter would visit the *subzi mandi* early in the morning; the victim assisted her mother there. Her statements such as, “*Meri mummy sabzi mandi mein chhantti thhi... main sabzi chunti thhi aur naale par bechti thhi,*” indicate the modest circumstances in which the family lived. The testimonies of victim and her mother further establishes that the accused belonged to the same native village as the victim’s family and had gained the confidence of the victim’s mother by assisting her during her medical treatment. He used to visit their house frequently. In her cross-examination, the victim has stated that on one or two occasions when she attempted to disclose the incident to her mother, the accused had threatened her that her mother would beat her if she did so. Having regard to the victim’s age, background,



and the position of influence held by the accused, the possibility that she remained silent due to fear and intimidation cannot be ruled out.

27. It is also undisputed that the incident came to light only when the victim suffered stomach ache, was taken to Guru Gobind Singh Hospital by her mother, and the doctor had informed them that she was pregnant. It was thereafter that the police was called. Thus, the delay in lodging the FIR is intrinsically linked to the delayed discovery of the pregnancy and the victim's earlier silence out of fear.

28. In the facts of the present case, this Court is of the view that the delay stands satisfactorily explained. The conduct of the victim, the surrounding circumstances, and the background of the parties fully support the conclusion reached by the learned Trial Court that the delay in registering the FIR was neither deliberate nor fatal to the prosecution.

#### **Issue Regarding the Appellant Being the Biological Father of the Child Delivered by the Victim**

29. In the present case, the DNA profiling report has opined as under:

“The DNA profiling (STR analysis) performed on the exhibits provided is sufficient to conclude that the source of DNA Profile generated from the source of exhibit ‘1’ (Gauze cloth piece-Blood sample of accused) & exhibit ‘2a’ (Liquid blood sample-Blood sample of victim) is biological father and, mother of the source of DNA Profile generated from the source of exhibit ‘3a’ (Liquid Blood sample- Blood sample of Victim's Child).”



30. Therefore, it is evident that the scientific evidence establishes that the appellant is the biological father of the child delivered by the victim. PW-7, Sh. D.S. Paliwal, Assistant Director (Biology), Forensic Science Laboratory, Rohini, Delhi, has proved the said report and has deposed that he had personally conducted the DNA examination of the samples received, and that the findings recorded in his report dated 27.03.2019 (Ex. PW-7/A), along with the accompanying genotype data (Ex. PW-7/A1), were based on the analysis carried out in the laboratory.

31. As regards the contention of the learned counsel for the appellant that the DNA report was doubtful, or that the expert witness did not explain the methodology employed in conducting the test, this Court notes that during the cross-examination of PW-7, the defence counsel has put only a general suggestion that the report was prepared at the instance of the I.O. without examining the exhibits, which the said witness has categorically denied. No specific question has been put to PW-7 regarding the procedure followed for conducting the DNA test, the testing protocol, or any alleged deficiency in the methodology. In the absence of any such challenge during cross-examination, this Court finds no merit in the appellant's contention.

32. The DNA report, in the considered opinion of this Court, clearly advances the prosecution case that sexual intercourse did occur between the accused and the victim, and serves as strong



corroborative evidence in support of the victim's testimony.

**Alleged Offence Proved Beyond Reasonable Doubt**

33. The contention of the learned counsel for the appellant that the relationship between the appellant and the victim was consensual also deserves outright rejection. The victim has consistently disclosed – in her statement to the police, before the learned Magistrate under Section 164 of Cr.P.C., and in her testimony before the learned Trial Court – the manner in which the appellant had repeatedly subjected her to sexual assault. Her account has remained uniform on all material particulars.

34. This Court also notes that there is an age difference of about 20 years between the appellant and the victim. The appellant, aged about 35 years and married with five children, was known to the victim's mother as they belonged to the same village, and he had gained her trust when he assisted her during her surgery and treatment. There is nothing on record to suggest that any consensual relationship existed between a young girl aged about 15–17 years and the appellant, a much older married man. In her cross-examination, no contradiction or inconsistency emerged that could create doubt about her testimony or weaken the prosecution case.

35. Pertinently, the learned counsel for the appellant has put forth two mutually contradictory arguments. On one hand, it was argued that the appellant had been falsely implicated and that the offence may have been committed by someone else; and on the other hand, it



was urged that the victim was in a consensual relationship with the appellant. In this Court's opinion, both the contentions are unmerited. The suggestion that someone else was responsible for committing the offence of rape is completely negated by the DNA report, which establishes the appellant as the biological father of the child delivered by the victim. The plea of consent is also meritless in view of the victim's clear and consistent statements that the appellant herein had committed rape upon her alongwith other material particulars of the incident disclosed by the victim, which have already been discussed above.

36. Furthermore, the argument that the incident could not have occurred in the park because it is an open space is also meritless. The victim in this case has clearly deposed that the appellant took her to a dilapidated, vacant part of the park which was secluded and away from public view, and that the park contained many such secluded spots. As regards the argument of lack of any independent witness, suffice it to say that in offences of this nature, independent witnesses are rarely available, as such acts are committed in isolation.

37. In view of the consistent and credible testimony of the victim, duly corroborated by the scientific evidence on record, this Court finds no reason to differ from the conclusion of the learned Trial Court that the offence of rape under Section 376 of IPC stands proved beyond reasonable doubt.

38. With respect to the conviction under Section 366 of IPC, the



victim's testimony establishes that the appellant enticed her away from the area where she was playing and took her to secluded locations with the intention of subjecting her to sexual assault. The repeated acts of taking her away, accompanied by threats and inducement, satisfy the ingredients of abduction with intent that she may be forced or seduced to illicit intercourse. The finding of the learned Trial Court convicting the appellant under Section 366 of IPC also calls for no interference. Similarly, the appellant has also been rightly convicted for offence under Section 506 of IPC.

39. This Court has also examined the order on sentence passed by the learned Trial Court and, considering the facts and circumstances of the present case, finds no reason to interfere with the same. Moreover, no specific argument was addressed before this Court on the aspect of sentence. The order on sentence is, accordingly, upheld.

40. In view thereof, the present appeal is dismissed. Pending application is also dismissed.

41. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**  
**NOVEMBER 28, 2025/ns/zp**