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

% *Judgment reserved on: 03.12.2025*
Judgment pronounced on: 29.01.2026
Judgment uploaded on: 29.01.2026

\+ **CRL.A. 1384/2010**

RAVI KUMAR .....Appellant

Through: Mr. Mukesh Singh and Mr. Ramashish Yadav, Advocates.

versus

STATE .....Respondent

Through: Mr. Naresh Kumar Chahar, APP for State with SI Pinky.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of the present appeal, the appellant seeks setting aside of the judgment of conviction dated 09.11.2010 and order on sentence dated 10.11.2010, passed by the learned Additional Sessions Judge-02, South, Saket Courts, Delhi [hereafter '*Trial Court*'] in case FIR bearing no. 205/2008, registered at Police Station Vasant Kunj, Delhi, for offence punishable under Sections 366/376/506 of the Indian Penal Code, 1860 [hereafter '*IPC*'].

FACTUAL BACKGROUND

2. The brief facts of the case are that the present FIR came to be

registered on 25.04.2008 at P.S. Vasant Kunj, Delhi for the commission of offences punishable under Sections 363/366/376/506 of IPC, wherein it was alleged that in the intervening night of 24-25.04.2008, a PCR call was received *vide* DD No. 5B and the same was marked to ASI Dharmapal, but later handed over to W/SI Sushila for necessary action. The police officials had reached the spot pursuant to receipt of call. The prosecutrix, in her statement, alleged that on 24.04.2008 at about 9:30 PM, she was going to attend nature's call, and the present appellant Ravi had stopped his car and had forcibly made her sit in his car. Thereafter, he had taken her to B-1, Jal Board. After taking her there, the accused had removed his trousers and also removed her *salwar* and thereafter forcefully established sexual relations with her. Thereafter, the accused Ravi had left her near her *jhuggi*. The prosecutrix had then revealed this incident to her uncle and aunt. The accused-appellant Ravi was arrested on 25.04.2008. The prosecutrix and accused were medically examined, the alleged vehicle and its seat covers were seized, the statement of the prosecutrix under Section 164 of the Cr.P.C. was recorded, exhibits were sent to FSL, and after completion of investigation, the charge-sheet was filed before the concerned Court.

3. The charges under Sections 366, 376, and 506 of the IPC were framed against the accused *vide* order dated 07.02.2009. During the course of trial, the prosecution examined fourteen witnesses in support of its case. Upon completion of the prosecution evidence, the statement of the accused under Section 313 of the Cr.P.C. was duly

recorded. The defence, in turn, examined one witness in support of its case.

4. After conclusion of trial, the appellant-accused Ravi Kumar was convicted by the learned Trial Court *vide* impugned judgment 10.11.2010, for the offences under Section 376 and 366 of the IPC. *Vide* impugned order on sentence, he was sentenced to rigorous imprisonment for a period of seven years and payment of fine Rs. 1,000/- for the offence punishable under Section 376 of IPC, and rigorous imprisonment for a period of five years and payment of fine Rs 1,000/- for the offence punishable under Section 366 of IPC.

SUBMISSIONS BEFORE THE COURT

5. The learned counsel appearing for the appellant argues that the impugned judgment of conviction and order on sentence suffer from serious legal infirmities and are based on conjectures rather than reliable evidence. It is argued that the appellant has been falsely implicated due to prior enmity with the uncle of the prosecutrix, a defence consistently taken by the appellant and supported by defence evidence, which was discarded without cogent reasons. The prosecution case is stated to be riddled with contradictions regarding the time, place, and manner of occurrence, inconsistencies in police testimony, and failure to join independent public witnesses despite the alleged incident having occurred in a densely populated area. It is further contended that the prosecutrix herself resiled from material aspects of her earlier statements, compelling the prosecution to cross-

examine her, thereby affecting her credibility. The applicability of Section 366 IPC is also questioned, as there is no evidence of inducement or intent to compel marriage. The age of the prosecutrix, according to the appellant, has not been conclusively proved, no documentary evidence having been produced, and reliance solely on radiological opinion entitles the appellant to benefit of doubt, It is also urged that the medical and forensic evidence does not conclusively support the prosecution case and that the testimony of the vehicle owner casts serious doubt on the prosecution version. On these grounds, it is submitted that the conviction deserves to be set aside.

6. The learned APP for the State submits that the impugned judgment of conviction and the order on sentence are legal, well-reasoned, and based on a proper appreciation of the entire evidence on record, and therefore do not call for any interference by the appellate court. It is argued that the testimony of the prosecutrix is cogent, natural, and consistent on material particulars, and she has supported the prosecution case not only in her statement under Section 164 CrPC but also during her deposition before the Trial Court. Minor discrepancies, if any, are stated to be inconsequential and do not go to the root of the prosecution case, particularly in offences of this nature. The learned APP further contends that the prosecution case is duly corroborated by medical and scientific evidence. The prosecutrix was medically examined soon after the incident, her exhibits were seized in accordance with law, and the

accused was also medically examined. The FSL report confirms the presence of semen on the salwar of the victim, the underwear of the accused, and the back seat cover of the car, thereby providing strong forensic linkage between the accused, the victim, and the place of occurrence. It is submitted that such scientific evidence lends substantial corroboration to the ocular version of the prosecutrix. It is further argued that the car used in the commission of the offence was recovered and seized at the instance of the accused, and the evidence on record establishes that the vehicle was in his possession at the relevant time. The statement of the prosecutrix under Section 164 CrPC was recorded promptly, ruling out any possibility of tutoring or false implication. The age of the prosecutrix has been duly established through medical evidence, which opined her bone age to be more than 16 years and less than 18 years, clearly proving that she was a minor at the time of the incident and justifying the application of the relevant penal provisions. Accordingly, the appeal is liable to be dismissed.

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

ANALYSIS & FINDINGS

Age of the Prosecutrix

8. In the present case, this Court notes that the prosecution did not produce any documentary evidence such as a birth certificate or

school record to establish the exact age of the prosecutrix, though it was the case of prosecution that the prosecutrix was aged about 12 years at the time of incident. However, the ossification test report opined her age to be between 16 and 18 years. After taking into account the margin of error of two years on either side, as recognised in law, and giving the benefit of the same to the accused, it could be presumed the prosecutrix would be about 20 years of age at the time of committing the offence. The learned Trial Court has thus rightly held that, in law, the prosecutrix would be presumed major as on the date of incident.

Appreciation of Evidence & Rival Contentions

9. PW-1, the prosecutrix, has deposed that on 24.04.2008 at about 9:30 p.m., when she was going to attend the call of nature, the accused Ravi, who was present in Court, had stopped his car near her and forcibly made her sit inside the car. She has stated that the accused thereafter had taken her to B-1, Jal Board, where he had removed his trouser as well as her *salwar* and committed rape upon her twice. She has further deposed that thereafter the accused had left her near her *jhuggi* and had driven away his car. The prosecutrix has stated that she had narrated the incident to her uncle and aunt (*chacha* and *chachi*), pursuant to which the police was called. She has further stated that the police recorded her statement, which was Ex. PW-1/A, bearing her signatures at point A, and that she was taken to the police station and thereafter sent for medical examination. She has also deposed that subsequently the accused Ravi was apprehended by the

police.

10. This Court notes that the prosecution case substantially rests on the testimony of the prosecutrix. A careful reading of her deposition, her statement recorded under Section 164 of Cr.P.C., and her initial complaint reveals a consistent narration of events insofar as the alleged incident is concerned. The prosecutrix has categorically stated that the appellant forcibly took her in his car, removed her clothes, and had forcefully established physical relations with her, without her consent. It is also noted that despite a detailed cross-examination, nothing has been elicited to discredit her version on material particulars. Minor inconsistencies relating to the precise location where the vehicle had been parked while committing the offence or the seat of the vehicle on which rape was committed, in the opinion of this Court, does not affect the core of the prosecution case. It is well-settled that a victim of sexual assault cannot be expected to recount the incident with photographic memory and precision, particularly when she is a young girl subjected to sexual assault.

11. It is also noted that though corroboration is not a *sine qua non* in cases of sexual offences where the testimony of the prosecutrix inspires confidence, the case of the prosecution, to an extent, is also corroborated by the scientific evidence. This Court notes that the FSL report placed on record confirms the presence of human semen on the undergarments of the prosecutrix, as well as on the seat cover of the

car of the accused, which was allegedly used in the commission of offence. While it is correct that the blood group with respect to the semen could not be ascertained and linked to the appellant herein, the recovery and seizure of the vehicle at the instance of the appellant herein, coupled with the aforesaid forensic evidence, though limited, provide corroborative support to the ocular evidence.

12. Much emphasis has been placed by the learned counsel for the appellant on the absence of external injuries on the private parts of the prosecutrix, and the fact that the hymen was found intact. This Court finds no merit in the said contention. There is no cavil that absence of injuries or an intact hymen does not rule out the offence of rape, as even minimal penetration constitutes the offence of rape. The medical evidence, in the present case, therefore cannot be used to discredit the testimony of the prosecutrix.

13. In this regard, reference may also be made to the decision of the Supreme Court in case of ***State of H.P. v. Manga Singh:*** *(2019) 16 SCC 759*, wherein while dealing with a case of rape committed in the year 2010 (i.e. prior to amendment of the laws in the year 2013), as in the present case also, the Supreme Court had held as under:

> "15. …As discussed earlier, the respondent-accused made the prosecutrix (PW-4) to sleep with him and inserted his private part in the private part of the prosecutrix which constitutes rape. This may not have ruptured the hymen. In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix…"

14. The learned counsel for the appellant has also argued that the prosecutrix had herself voluntarily accompanied the appellant. This submission stands belied by the consistent assertion of the prosecutrix that she was forcibly made to sit in the car, gagged, and threatened. In her cross-examination also, the prosecutrix has stated that though she knew the accused Ravi, they were not friends and they never used to meet each other. The circumstances in which the prosecutrix was taken, the immediate disclosure made to her relatives, and the absence of any material suggesting a consensual relationship, clearly negates the defence of consent taken by the accused. Consent, to be valid, must be unequivocal, voluntary, and conscious, which is wholly absent in the present case.

15. The testimony of PW-3, i.e. the aunt of the prosecutrix lends further assurance to the prosecution version. She has deposed that the prosecutrix had returned home in a disturbed condition and, after initial hesitation, she had disclosed the incident of sexual assault to her. Her testimony appears natural, and no material contradiction has been shown which would render her evidence unreliable.

16. The defence has highlighted certain discrepancies regarding DD entries, timing of medical examination, and non-examination of some police officials. This Court is of the considered view that these lapses, even if assumed, pertain to the manner of investigation and do not strike at the root of the prosecution case. It is well-settled that defects in investigation cannot accrue to the benefit of the accused

when substantive evidence otherwise establishes the commission of offence. The victim cannot be made to suffer for the lapses of the investigating agency, and similar observations to this effect have also been made by the learned Trial Court in the impugned judgment.

17. Moreover, although the prosecutrix has been held to be a major, in view of law regarding bone ossification test, for the purpose of kidnapping, the evidence clearly establishes that she was *abducted* with the intent to force her into 'illicit intercourse'. The conduct of the appellant before, during, and after the incident clearly reflects the requisite intention contemplated under Section 366 of IPC. The learned Trial Court has correctly appreciated this aspect, and this Court finds no reason to differ.

18. In view of the foregoing discussion, this Court finds no merit in the appeal. The prosecution has proved its case beyond reasonable doubt, and the conviction of the appellant under Sections 366 and 376 of IPC is based on sound appreciation of evidence and settled principles of law. The impugned judgment of conviction is accordingly upheld.

Order on Sentence

19. *Insofar as the order on sentence is concerned*, the appellant has been awarded rigorous imprisonment for a period of seven years for the offence under Section 376 of IPC and rigorous imprisonment for a period of five years for the offence under Section 366 of IPC.

20. The incident in question had taken place in the year 2008, i.e.,

prior to the amendment of Section 376 of IPC in the year 2013. At the relevant time, Section 376 IPC, as amended by the Criminal Law (Amendment) Act, 1983, prescribed a minimum sentence of seven years' imprisonment, while also incorporating a proviso empowering the Court, for adequate and special reasons to be recorded in the judgment, to award a sentence of less than seven years. Section 376 of IPC provided as under:

> "**376. Punishment for rape.**
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> (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both
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> Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years…"

21. It is not disputed that the appellant is not involved in any other criminal case. The appellant was about 26 years of age at the time of passing of the order on sentence and was newly married. As on date, the appellant is about 42 years old. He has already remained in judicial custody for more than three years and two months and has earned remission of eight months and sixteen days. Further, the appellant has been facing the ordeal of criminal proceedings for the last about eighteen years.

22. Having regard to the aforesaid circumstances, this Court is of

the considered view that no useful purpose would be served by sending the appellant back to custody after the passage of such a long period. Taking into account the long lapse of time since the incident, the period of incarceration already undergone, the absence of any other criminal antecedents, and the *proviso* to Section 376 of IPC as it stood prior to the 2013 amendment, this Court finds that there are adequate and special reasons to reduce the sentence.

23. Accordingly, the sentence awarded to the appellant is reduced to the period of imprisonment already undergone by him.

24. The appeal is accordingly disposed of in above terms.

25. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JANUARY 29, 2026/zp
T.S./T.D.