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

**Date of Decision: 24<sup>th</sup> September, 2025**

+ **CRL.A. 563/2025 & CRL.M.(BAIL) 933/2025**

RAJNISH

.....Appellant

Through: Mr. Sudarshan Rajan and Mr. Hitain Bajaj, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Hemant Mehla, APP for the State.

SI Aman, PS: Mandawali.

Ms. Inderjeet Sidhu, Mr. Lalit Choudhary and Mr. Aditya D. Atri, Advocates for Prosecutrix.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

### **JUDGMENT**

#### **SANJEEV NARULA, J. (Oral):**

1. The present appeal under Section 415(2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023<sup>1</sup> is directed against judgment of conviction dated 31<sup>st</sup> January, 2025 and order on sentence dated 15<sup>th</sup> February, 2025 passed by the ASJ (SC-POCSO) East District, Karkardooma Courts in Sessions Case No. 426/2017, titled “*State v. Rajnish*”. The said proceedings emanate from FIR No. 82/2017, registered at P.S. Mandawali

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<sup>1</sup> “BNSS”



for the offences under Sections 363/366/376 of the Indian Penal Code, 1860<sup>2</sup> and Section 6 of the Protection of Children from Sexual Offences Act, 2012.<sup>3</sup>

### **FACTUAL BACKGROUND**

2. The case of the Prosecution, in brief, is as follows:

2.1. The FIR was registered on 8<sup>th</sup> March, 2017, on a complaint lodged by the father of the Prosecutrix, reporting that his minor daughter, aged 14 years, had been missing since 5<sup>th</sup> March, 2017. It was suspected that she had been enticed away by unknown persons. During the course of investigation, the statement of one Bhure, uncle (*chacha*) of the Appellant, was recorded under Section 161 of the Code of Criminal Procedure, 1973,<sup>4</sup> wherein he disclosed that the Appellant and the Prosecutrix were residing together in Farukhabad, Uttar Pradesh.

2.2. On 9<sup>th</sup> April, 2017, the police traced the Appellant and the Prosecutrix at Farukhabad and brought them to Delhi. The Prosecutrix was medically examined at LBS Hospital. In her statement under Section 161 Cr.P.C., she stated that she was in love with the Appellant, had accompanied him of her own accord, and that they had married. She further admitted that they had established physical relations on two to three occasions. In light of this disclosure, Section 376 IPC and Section 10 of the POCSO Act were added to the case.

2.3. The Prosecutrix was placed in Sanskar Ashram, Dilshad Garden, while the Appellant was remanded to judicial custody. On 11<sup>th</sup> April, 2017,

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<sup>2</sup> “IPC”

<sup>3</sup> “POCSO”

<sup>4</sup> “Cr.P.C.”



her statement under Section 164 Cr.P.C. was recorded before the Magistrate. Pursuant to orders of the Child Welfare Committee, her custody was restored to her parents. On 17<sup>th</sup> April, 2017, she visited the police station with her mother and informed that she was pregnant. She was again medically examined at LBS Hospital, and relevant exhibits were seized. On 24<sup>th</sup> July, 2017, her pregnancy was medically terminated, and the foetal remains were seized by the Investigating Officer.

2.4. The date of birth of the Prosecutrix was obtained and placed on record. The Appellant was also medically examined at LBS Hospital, and a potency test was conducted. His blood sample was taken for analysis. In view of the material collected, Section 6 of the POCSO Act was subsequently invoked. The seized exhibits were forwarded to the FSL for analysis. Upon conclusion of investigation, chargesheet was filed, and charges were framed against the Appellant under Sections 363/366/376(2)(n) IPC and Section 5(l) read with Section 6 of the POCSO Act. The Appellant pleaded not guilty and claimed trial.

2.5. In support of their case, the Prosecution examined eighteen witnesses, summarised in the table below:

PW No.	Name / Description	Role / Deposition
PW-1	The Prosecutrix	Victim; deposed about physical relations and pregnancy; statement under Section 164 CrPC.
PW-2	Dr. S. Lal	Conducted potency test of the Appellant.
PW-3	Dr. Namrta Goel	Examined the Prosecutrix and prepared her MLC.
PW-4	Ms. Rekha Narayan, Principal	Produced school record; established DOB of the prosecutrix as 16 <sup>th</sup> June, 2003.
PW-5	ASI Raj Kumar, Duty Officer	Endorsed the <i>rukka</i> ; facilitated registration of the FIR.
PW-6	ASI Mahesh Chand, the	Made several entries in registers of the



PW No.	Name / Description	Role / Deposition
	MHC(M)	<i>Malkhana.</i>
PW-7	Mr. Sunil Shah	Complainant; Father of the Prosecutrix.
PW-8	W/Constable Priyanka	
PW-9	Constable Dilbagh	Apprehended the parties from Farukabad and brought them back to Delhi.
PW-10	ASI Naresh Kumar	
PW-11	W/ Constable Manju	Got the Prosecutrix's MLC conducted from LBS Hospital; took her to Sanskar Ashram.
PW-12	SI Ajay Swami	Initial IO; recorded the FIR; arrested the Appellant.
PW-13	Mr. Bhure Singh	Uncle of the Appellant; deposed about elopement of the parties.
PW-14	Mother of the Prosecutrix	Corroborated disclosure.
PW-15	W/SI Bhargavi	Subsequent IO; prepared the chargesheet.
PW-16	Mr. Saurabh Pathak, FSL Expert	Proved the FSL Report.
PW-17	W/SI Shikha Garg	Subsequent IO; proved various documents prepared during the course of investigation.
PW-18	W/SI Suman	Filed the Supplementary Chargesheet.

2.6. After closure of prosecution evidence, the statement of the Appellant was recorded under Section 313 Cr.P.C. All incriminating circumstances appearing in the record were put to him. The Appellant denied the allegations *in toto*, asserting that he was innocent, and had been falsely implicated. He, however, did not lead any defence evidence.

2.7. Upon determination of the age of the Prosecutrix, the depositions of witnesses, and the medical evidence brought on record, the Trial Court concluded that the testimony of the Prosecutrix was clear, consistent and credible. Accordingly, by the impugned judgment, the Appellant was convicted for offences under Sections 363, 366, and 376(2)(n) IPC, and Section 5(l) of the POCSO Act. By order on sentence dated 15<sup>th</sup> February, 2025, he was sentenced as follows:



Rigorous imprisonment for 3 years under Section 363 IPC, with fine of ₹8,000/- and default sentence of 3 months;

Rigorous imprisonment for 5 years under Section 366 IPC, with fine of ₹10,000/- and default sentence of 5 months;

Rigorous imprisonment for 10 years under Section 6 POCSO, with fine of ₹25,000/- and default sentence of 6 months.

The sentences were directed to run concurrently. The Appellant was extended the benefit of Section 428 Cr.P.C. He was further directed to pay prosecution costs of ₹10,000/- to the State. In addition, compensation was awarded to the Prosecutrix.

### APPELLANT'S CASE

3. Counsel for the Appellant assails the conviction and sentence on multiple grounds, urging that the impugned judgment suffers from grave infirmities and rests on assumptions rather than reliable proof. His submissions are summarised as follows:

3.1. The account of the Prosecutrix remained inconsistent across her various statements. In her initial statement recorded under Section 161 Cr.P.C., the Prosecutrix stated that she was in love with the Appellant, had voluntarily left her home, and had married him. A similar version was recorded by the doctor at the time of her medical examination on 9<sup>th</sup> April, 2017. However, in her subsequent statement recorded under Section 164 Cr.P.C. before the Magistrate, just two days later, she changed her version, stating that she was in love with “some boy” and further alleged that he had forcibly taken her away and had established physical relations with her against her will. Furthermore, while deposing before the Court, material



inconsistencies were noted in her testimony.

3.2. In light of these discrepancies, the Trial Court misapplied the settled legal principles governing the appreciation of a prosecutrix's testimony. In cases of sexual offences, a conviction cannot be sustained solely on the basis of the Prosecutrix's testimony unless it is found to be of sterling quality, *i.e.*, unblemished, wholly reliable, and of such nature as to inspire confidence. In the present case, the testimony of the Prosecutrix has been inconsistent, full of material contradictions, and therefore, she does not qualify as a "sterling witness".

3.3. The Prosecution also failed to establish that the Prosecutrix was a minor at the time of the alleged incident. Although the Prosecution examined the Principal of the school of the Prosecutrix (PW-4), who proved the date of birth as 16<sup>th</sup> June, 2003 as per school records, she admitted in her cross-examination that no birth certificate had been produced at the time of the Prosecutrix's admission. She further failed to provide any explanation for the absence of the Prosecutrix's photograph in the admission and withdrawal register. In view of the foregoing, the date of birth appears to have been recorded without supporting documentary evidence, casting doubt on the reliability and authenticity of the school records.

3.4. In the absence of credible proof regarding the Prosecutrix's age, the foundational facts necessary for invoking the presumption under Section 29 of the POCSO Act remain unestablished. Consequently, it is contended that the Trial Court erred in invoking the presumption under the said provision.

3.5. The Prosecution also failed to prove the essential ingredients of Section 361 IPC, *i.e.*, kidnapping from lawful guardianship. The Prosecutrix, in her statement under Section 161 Cr.P.C. and during her medical



examination, stated that she was in love with the Appellant and had married him, indicating voluntary companionship. Even if such marriage were legally invalid owing to her minority, the fact remains that she accompanied him of her own volition. In these circumstances, the essential ingredients of “taking away” under Sections 363 and 366 IPC are not satisfied. Furthermore, the Prosecutrix was missing from 5<sup>th</sup> March, 2017 and was recovered on 9<sup>th</sup> April, 2017. During this entire period, she remained in the company of the Appellant without raising any alarm or seeking assistance, thereby casting serious doubt on the allegation of kidnapping or coercion.

3.6. There was an unexplained delay in lodging the FIR, which was filed only on 8<sup>th</sup> March, 2017 three days after the Prosecutrix was allegedly missing. This delay, coupled with her recovery over a month later, further undermines the Prosecution’s case.

3.7. The Appellant also points to the non-examination of certain material witnesses. In particular, no independent witnesses from Farukhabad, where the parties allegedly resided together as husband and wife, were examined. The failure to adduce such corroborative evidence, though readily available, creates a significant gap in the Prosecution’s case.

3.8. The medical and forensic evidence remains inconclusive. While the Prosecutrix was found pregnant, the foetal remains seized upon termination were not conclusively linked to the Appellant by DNA analysis. In the absence of such scientific confirmation of paternity, the medical evidence, according to the Appellant, cannot be treated as corroborative of the charge.

3.9. Lastly, without prejudice, it is submitted that the sentence awarded is disproportionate. The Trial Court did not adequately consider mitigating circumstances such as the alleged consensual nature of the relationship, the



Prosecutrix's initial support for the Appellant, and the absence of prior criminal antecedents.

**RESPONDENTS' CASE**

4. On the other hand, Mr. Hemant Mehla, APP for the State, and Ms. Inderjeet Sidhu, counsel for the Prosecutrix, oppose the appeal and support the findings of the Trial Court. Their submissions are summarised as follows:

4.1. The testimony of the Prosecutrix is clear, cogent, and consistent, and can be categorised as being of 'sterling quality'. Throughout her statements, she has unequivocally maintained that the Appellant subjected her to sexual assault. Although, in her statement recorded under Section 161 Cr.P.C. as well as in her MLC, the Prosecutrix mentioned being in a romantic relationship with the Appellant, such a claim is of no consequence, as consent is immaterial in cases involving a minor.

4.2. It is contended that the reliance placed by the Appellant on alleged inconsistencies is misplaced. The law does not require the testimony of a child victim to be flawless in every detail; what matters is whether the core allegation remains intact.

4.3. The age of the Prosecutrix has been duly established through documentary evidence, *i.e.*, school records. The contention raised by the Appellant to cast doubt on her age is entirely baseless and without merit.

4.4. Once the age of the Prosecutrix was duly proved, the statutory presumptions under Sections 29 and 30 of the POCSO Act stood attracted. The burden then shifted to the Appellant to rebut the presumption of commission and culpable mental state. Mere reliance on minor variations in





her statements or speculative attacks on the school record does not discharge that burden. No independent defence evidence was led, nor was any plausible explanation offered for her recovery from his company or her pregnancy. In the absence of such rebuttal, the statutory presumption strengthens the Prosecution's case and supports the conviction.

4.5. The fact that the Prosecutrix was found from the company of the Appellant stands duly proved, as she was recovered by the police from Farukhabad, Uttar Pradesh, where she had been taken by the Appellant. This recovery substantiates the Appellant's conviction under Sections 363/366 of the IPC.

4.6. Although the foetal samples collected from the Prosecutrix were sent to FSL, no result could be generated, as the box containing the samples was found empty. This procedural lapse, however, does not prejudice the case of the Prosecution. The fact of the Prosecutrix's pregnancy has been conclusively established through medical evidence. This pregnancy was a direct consequence of the physical relationship between the Appellant and the Prosecutrix.

### **ANALYSIS**

5. The Appellant stands convicted for repeated penetrative sexual assault upon a child. With that backdrop, it is apposite to first settle the question of age of the Prosecutrix, for it bears directly on the statutory presumptions and on the (in)significance of any plea of "consent".

### ***Age of the Prosecutrix***

6. To establish the age of the Prosecutrix, the Prosecution examined PW-4, the Principal of the school attended by the Prosecutrix. PW-4



produced school records, including the admission and withdrawal registers and a date of birth certificate, which reflect the date of birth of the Prosecutrix as 16<sup>th</sup> June, 2003.

7. It is well-settled that a date of birth certificate issued by a school falls within the first category of preference under Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 for determining the age of a child. In this regard, the Supreme Court, in *P. Yuvaprakash v. State*,<sup>5</sup> while interpreting Section 34 of the POCSO Act read with Section 94 of the JJ Act, held as under:

*“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. **The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:***

***“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;***

***(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;***

***(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.***

14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court.

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16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in Sanjeev

<sup>5</sup> 2023 SCC OnLine SC 846.



*Kumar Gupta vs. The State of Uttar Pradesh & Ors that:*

*“Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. **Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.**”*

8. Applying the above principles, the school certificate squarely satisfies the statutory preference. Though PW-4 was cross-examined about the absence of a municipal birth certificate at admission, no contrary record was produced, no suggestion of manipulation of the school registers was made, and no request for medical age determination was advanced. In the absence of cogent rebuttal, and given the statutory primacy accorded to school records, the date of birth recorded as 16<sup>th</sup> June, 2003 cannot be doubted. The period of occurrence: between 5<sup>th</sup> March, 2017 (when the Prosecutrix went missing) and 9<sup>th</sup> April, 2017 (when she was recovered and brought back to Delhi) places the Prosecutrix at about 13 years and 9-10 months, undisputedly a “child” under Section 2(1)(d) POCSO and below the age of consent in law.

9. Once minority is established, two consequences follow. First, the charge falls squarely within the POCSO framework; any purported “consent” bearing out from the Prosecutrix’s statement under Section 161 or 164 Cr.P.C. or even at trial, is legally ineffectual or irrelevant. Second once foundational facts are laid (including the child’s age, identity of the



accused, and the factum of the sexual act), the reverse-burden regime applies: Section 29 raises a presumption that the accused committed the charged POCSO offence(s), and Section 30 creates a further presumption as to culpable mental state. These presumptions are rebuttable, but only on a preponderance of probabilities; speculative suggestions or minor discrepancies do not suffice to shift the onus back to the prosecution at each turn.

### ***Statements of the Prosecutrix***

10. The record contains several contemporaneous accounts of the Prosecutrix: her statement under Section 161 Cr.P.C., the history recorded in the MLCs dated 9<sup>th</sup> April 2017 and 17<sup>th</sup> April 2017, her statement under Section 164 Cr.P.C., and her deposition at trial. The earliest account of the Prosecutrix emerges from her statement recorded under Section 161 Cr.P.C., wherein she stated that she had known the Appellant, who resided in her neighbourhood, for the last 7-8 months, that she was in love with him, and that they used to meet frequently. She further stated that on 5<sup>th</sup> March, 2017, without informing her parents, she left for Farukhabad along with the Appellant, where they got married. Thereafter, the Appellant took her to Ugaadpur, where she stayed with his relatives. There, the Appellant and the Prosecutrix established physical relations on 2-3 occasions. Her statement is reproduced to the following effect:



"मैं एक लड़के जिसका नाम Rajnish S/o Mahesh Chand को पिछले 7-8 महीने से जानती हूँ जो Rajnish हमारे घर के सामने ही रहता है और मैं उससे प्यार करती हूँ जो मैं उससे अक्सर मिलती रहती थी। दिनांक 5/3/17 को मैं बिना घर पर बताए उसके साथ फरुखाबाद चली गई और वहाँ जाकर मंदिर में शादी कर ली। इसके बाद रजनीश मुझे उगादपुर ले गया और हम वहाँ पर रजनीश के रिश्तेदार के वहाँ रहने लगे। वहाँ पर मेरे और रजनीश के बीच 2-3 बार शारीरिक संबंध भी बने हैं। मैं रजनीश से प्यार करती हूँ और उसके साथ रहना चाहती हूँ।

11. Pursuant to the recovery of the Prosecutrix from Farukhabad and her return to Delhi, she was taken for medical examination at LBS Hospital, as recorded in the MLC dated 9<sup>th</sup> April, 2017. The medical history noted therein records as follows: *"running away from home 1 month back and marrying the accused Rajnish (boyfriend) on 5/3/17. Pt. had consensual sexual relations with the accused. Pt. was found and brought back home on 8/4/17 and referred to us for medical examination"*.

12. In her statement recorded under Section 164 Cr.P.C., the Prosecutrix stated that she had become friends with a boy and that they had fallen in love. She further alleged that one day, while she was on her way to purchase vegetables, the boy met her and asked her to accompany him to meet his *chachi*. Although she refused, the boy allegedly forced her into an auto-rickshaw and took her to Anand Vihar, and from there, they boarded a bus to Farukhabad. Upon reaching Farukhabad, the boy's relatives suggested that they get married in court. However, the Prosecutrix protested, stating that she was still a minor. She also suggested that the boy forcibly established physical relations with her on 2-3 occasions. For reference, her statement is extracted:



"मैं स्कूल जाती थी। एक लड़के से मेरी दोस्ती हुई। एक दूसरे से love करने लगे। एक दिन सब्जी लाने गए थे। वो लड़का मिल गया। उसने कहा, चलो अपनी चाची से मिलवाकर लाता हूँ। मैंने मना करा, कि मम्मी की तबीयत खराब है, किसी और दिन मिल लेंगे। उसने जबरदस्ती से हमें Auto में बिठाकर ले गया। Auto में बिठाकर Anand Vihar ले गया। वहाँ से बस से Farukhabad ले गया अपने मामा के घर। वहाँ उसके घर वाली ने कहा Court में जाकर शादी कर ले। मैंने मना करा कि मैं अभी छोटी हूँ पर वो नहीं माने। मैंने कहा मम्मी से बात करवा दो, पर कोई बात नहीं करवाता था। फिर हमारे मम्मी पापा हमें खोज लिया। यह लड़का जबरदस्ती हमारे साथ 2-3 दिन गलत काम किया। मुझसे कहता था मैं तुमसे प्यार करता हूँ, तुम मुझसे प्यार नहीं करती। हम मजबूर हो जाते थे। लड़के के घरवाले कहते थे "तुम अपने मम्मी पापा का साथ मत देना, अपने पति का साथ देना"। हम कहते थे जब शादी नहीं हुई तो पति का साथ क्या देना।"

13. At trial, the Prosecutrix deposed that the Appellant persuaded her to accompany him on the pretext of meeting his *chachi* and, despite her reluctance, took her to Anand Vihar. She further stated that although she expressed unwillingness, the Appellant made her board a bus and took her to Farukhabad, to the residence of his *mama* (maternal uncle). During her stay there, the Appellant subjected her to forcible sexual intercourse on several occasions. She also deposed that the relatives of the Appellant arranged a marriage between them, and that she was unable to contact her parents as the Appellant had broken the SIM card of her mobile phone. The material part of her testimony is extracted below for reference:

*One day I had gone to subzi mandi for taking vegetables and there Rajnish met me. Rajnish asked me to accompany him so that he can introduce me to his aunt(chachi se mila ke lata hun). I told Rajnish that I will not accompany him because my mother was unwell and further told him that I may accompany him on some other day. **But Rajnish insisted that I should accompany him to see his chachi saying that he would take me in an auto rickshaw and he would bring me back soon***



**thereafter.** *Thereafter I had accompanied him in an auto and he had straightway taken me to Anand Vihar, bus station. I asked Rajnish as to why he had brought me to Anand Vihar, bus station. Rajnish told me that his aunt was residing at a nearby place and asked me to board a bus saying that he we will come back soon. **I told Rajnish that I would not sit in any bus and asked him to drop me to my home saying that I will raise alarm if you did not drop me at my home. Rajnish told me that it will not look nice if I raise alarm as the public will notice it and they will beat him. Thereafter Rajnish made me to sit in a bus and taken me to Fraukhabad at the house of his mama (maternal uncle). I was kept at the house of mama of Rajnish for about 10 days. During the stay at the house of his mama, accused Rajnish had made physical relations(sexual intercourse) with me forcibly. Rajnish had made physical relation with me forcibly many times.** Rajnish had made physical relations with me saying that he loves me.*

*After 2-3 days of taking me to his mama's place at Farukhabad by accused, the uncle of accused also came there and they got me married, with accused Rajnish in the house of his mama itself by calling a priest (pandit) in the presence of the family member of accused. I could not contact with my parents and other family members as accused had broken the sim of my mobile.”*

14. The Defence has sought to capitalise on two perceived variations in the Prosecutrix’s accounts: first, that in her statement under Section 161 Cr.P.C. and in the history recorded during her medical examination, she did not describe the Appellant’s conduct, either in taking her to Farukhabad or establishing physical relations with her, as forceful; and second, that in her statement under Section 164 Cr.P.C., she referred to “a boy”<sup>6</sup> rather than naming the Appellant specifically. These discrepancies, however, do not advance the defence. In prosecutions under the POCSO Act, the plea of “consent” is immaterial where the victim is a minor. Thus, even if the Prosecutrix did not characterise the sexual acts as forcible in her earliest accounts, or even described them as consensual in her MLC, such statements do not exculpate the Appellant. The crucial fact remains that the Appellant



took her to Farukhabad and engaged in sexual intercourse with her. As for the omission of his name in her Section 164 statement, it bears emphasis that in all her other statements, Section 161 statement, MLC history, deposition before court, she has consistently and unequivocally identified the Appellant.

15. The Supreme Court has consistently cautioned against magnifying peripheral inconsistencies into determinative contradictions when the central narrative of sexual assault is coherent and credible.<sup>7</sup> The settled position in law is that the testimony of a prosecutrix, if found trustworthy, requires no routine corroboration and can, by itself, form the foundation of conviction. In *Rai Sandeep v. State (NCT of Delhi)*,<sup>8</sup> the Supreme Court articulated the concept of a “sterling witness”, whose account inspires confidence and withstands scrutiny even without independent corroboration. Likewise in *Nirmal Premkumar v. State*,<sup>9</sup> the Court explained that oral testimony may fall into three categories: wholly reliable, wholly unreliable, or falling in between, clarifying that a prosecutrix whose testimony is clear and consistent belongs to the first class, where no further corroboration is required as a matter of law :

**“11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.”**

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<sup>6</sup> Referred to as “ek ladka” in her Section 164 Cr.P.C. statement.

<sup>7</sup> State of Punjab v. Gurmit Singh, (1996) 2 SCC 384; State of H.P. v. Sanjay Kumar, (2017) 2 SCC 51

<sup>8</sup> (2012) 8 SCC 21.

<sup>9</sup> 2024 SCC OnLine SC 260.





13. *The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While a victim’s testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”*

16. Further, the Supreme Court, in ***State of M.P. v. Balveer Singh***,<sup>10</sup> after examining a catena of previous decisions, succinctly summarised the governing principles for appreciating the testimony of a child witness:

*“35. From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify. **The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.**”*

17. Assessed against these principles, the Prosecutrix’s testimony cannot be doubted or deemed unreliable. Her statements disclose a consistent and coherent core. Throughout the proceedings, she has consistently recounted the fundamental fact: the Appellant took the Prosecutrix away from Delhi to Farukhabad, confined her at his uncle’s house, arranged a purported marriage, and engaged in repeated sexual intercourse with her. While it is



true that her statement under Section 164 Cr.P.C. did not explicitly name the Appellant, and her later accounts offered more comprehensive details about the alleged incident, these minor variations do not constitute material contradictions capable of undermining her credibility. At every stage, she implicated the Appellant as the man who took her away and had sexual relations with her during the relevant period. This reiterative narrative, tested in cross-examination and reinforced by medical evidence of pregnancy, materially supports the Prosecution's case.

18. It is well-recognized that a child of tender years may not possess the vocabulary or presence of mind to articulate the precise nature of the abuse in her initial statement; therefore, it is both natural and expected that her subsequent statements, given in safer and more formal environments, would provide greater clarity and detail. Taking these factors into account, the Court is of the opinion that the testimony of the Prosecutrix is coherent, credible, and sufficiently reliable to command the confidence of this Court.

### ***Scientific Evidence***

19. The credibility of the Prosecutrix's account finds substantial reinforcement in the medical evidence on record. Her initial examination at LBS Hospital on 9<sup>th</sup> April, 2017 (Ex. PW-1/C) recorded no external injuries, but confirmed a torn hymen. While both the Prosecutrix and her mother declined an internal examination at that stage, a urine pregnancy test was advised, which subsequently returned positive (Ex. PW-3/A). When the Prosecutrix was re-examined on 17<sup>th</sup> April, 2017 at the Gynaecology Casualty, her pregnancy was assessed at approximately five weeks and three

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<sup>10</sup> 2025 SCC OnLine SC 390.



days. She thereafter underwent medical termination of pregnancy. PW-3, the former Registrar in the OBGY Department at LBS Hospital, proved these findings. The fact of pregnancy, read with her testimony, conclusively establishes that penetrative sexual intercourse had occurred.

20. The Investigating Officer, SI Shikha Garg (PW-17), testified that upon receiving information from LBS Hospital regarding the Prosecutrix's termination of pregnancy on 27<sup>th</sup> April 2017, she seized the product of conception, documented through a seizure memo (Ex. PW-17/C). However, the forensic examination could not be completed as the forensic sample box was found empty. This serious lapse, whether in extraction, sealing, or transportation, reflects poorly on the diligence of the investigating agency. Nevertheless, the absence of the forensic report does not diminish the weight of the established facts. The pregnancy of the minor Prosecutrix is proved beyond doubt through contemporaneous medical records. Her sworn testimony, read with these medical findings, leaves no room for doubt that the Appellant subjected her to repeated penetrative sexual assault.

21. In this backdrop, the conviction of the Appellant under Section 376(2)(n) IPC and Section 5(l) POCSO is firmly anchored in both testimonial and medical evidence. The procedural lapse in relation to the handling of foetal material, though regrettable, does not undermine the core evidentiary foundation of the Prosecution's case.

### ***Offence of Kidnapping/Abduction***

22. The Court also finds no substance in the Appellant's challenge to his conviction under Sections 363 and 366 IPC. Section 361 IPC, which defines kidnapping from lawful guardianship and is punishable under Section 363,



criminalises *inter alia* the act of taking or enticing a female under eighteen years of age out of the custody of her lawful guardian without such guardian's consent. In the present case, it stands proved beyond doubt that the Prosecutrix was 14 years old at the time of the incident. Once her minority is established, her ostensible willingness or professed affection becomes immaterial in law, for a minor is incapable of consenting to her removal from lawful guardianship. The evidence shows that the Appellant removed the Prosecutrix from the vicinity of her residence, transported her first to Anand Vihar and thereafter to Farukhabad, all without the consent or knowledge of her parents. She was later recovered from Farukhabad along with the Appellant, pursuant to the complaint lodged by her father. These circumstances squarely attract the mischief of Section 361 IPC and sustain the conviction under Section 363.

23. Section 366 IPC, *inter alia*, penalises the act of kidnapping or abducting a woman with intent that she may be compelled to marry against her will, or knowing it to be likely that she will be so compelled, or that she will be forced or seduced to illicit intercourse. In the present case, after removing the Prosecutrix from the custody of her parents, the Appellant transported her to Farukhabad, where a purported marriage ceremony was arranged by his relatives without the consent of the Prosecutrix or her lawful guardians. During her stay there, the Appellant engaged in repeated sexual intercourse with her. These circumstances clearly demonstrate both the intent and the consequence contemplated by Section 366 and fully satisfy its ingredients. The conviction under this provision, therefore, stands on a firm legal footing.

24. Consequently, the Appellant's challenge to the charges under Sections



363 and 366 IPC is also devoid of merit. The evidence unequivocally establishes his guilt under these provisions, and he is accordingly held liable.

### ***Other Grounds of Challenge***

25. The Court has also considered whether any other ground, either expressly raised or inferable from the submissions, could cast doubt on the conviction. The following points merit brief notice:

25.1. Absence of independent witnesses: The Defence may urge that no independent public witness was examined to support the Prosecution case. However, in offences of this nature, particularly involving a minor, it is well recognised that such offences ordinarily occur in secrecy and not in the presence of outsiders.<sup>11</sup> The law does not require independent corroboration if the testimony of the victim is otherwise reliable and is supported by medical and circumstantial evidence.

25.2. Delay in lodging FIR: Though the FIR was registered on 8<sup>th</sup> March, 2017, three days after the Prosecutrix went missing, such delay stands explained. The father of the Prosecutrix initially searched for his daughter before approaching the police, which is a natural reaction in cases of missing children. In any event, once minority and sexual assault stand established, this delay is not material to the core prosecution case.<sup>12</sup>

25.3. Medical evidence of absence of injuries: The initial MLC of the Prosecutrix recorded no external injuries. However, the Supreme Court has consistently held that the absence of injuries is not fatal to the prosecution, particularly where the victim is a child.<sup>13</sup> A minor's lack of resistance, or

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<sup>11</sup> State of Punjab v. Gurmit Singh, (1996) 2 SCC 384.

<sup>12</sup> Santhosh Moolya v. State of Karnataka, (2010) 5 SCC 445.

<sup>13</sup> State of Punjab v. Gurmit Singh, (1996) 2 SCC 384; Lok Mal v. State of Uttar Pradesh, (2025) 4 SCC



inability to physically repel the assailant, cannot be equated with consent. Here, the positive pregnancy test and subsequent termination of pregnancy provide strong corroboration of the sexual assault.

25.4. Failure of FSL sample: As already noted, the foetal sample box sent for forensic analysis was found empty. While this lapse reflects poorly on the investigation, it does not create a fatal gap. The fact of pregnancy is conclusively established by contemporaneous medical records. The identity of the perpetrator is proved through the consistent testimony of the Prosecutrix.

25.5. Defence of false implication: The Appellant has offered a bare denial and pleaded false implication, without any supporting material or plausible motive attributed to the Prosecutrix or her family. Such bald denial cannot outweigh the cogent and corroborated evidence led by the Prosecution.

### **CONCLUSION**

26. It is not lost on the Court that in her earliest accounts, the Prosecutrix portrayed herself as being “in love” with the Appellant and even alluded to marriage. However sincere such feelings may have appeared from her perspective, they cannot eclipse the legal reality. At the relevant time, she was a child of about 14 years. The Appellant, then a 21-year-old adult, was fully conscious that the Prosecutrix was underage. At the very least, there is nothing on record to suggest that he entertained any *bona fide* belief that she had attained majority. The disparity in age and maturity magnifies the likelihood of influence or manipulation, a risk the statute is designed precisely to guard against. What may have been perceived as affection or



willingness is, in the eyes of the law, immaterial; more importantly, the circumstances suggest a relationship marked by the vulnerability of the minor and the capacity of the adult to manipulate. The medical record confirming pregnancy during the relevant period, when read alongside the Prosecutrix's consistent narrative, establishes beyond reasonable doubt that the Appellant subjected her to repeated penetrative sexual assault. These facts squarely bring the case within Section 5(j)(ii) (pregnancy resulting from penetrative sexual assault)<sup>14</sup> and Section 5(l) (repeated penetrative sexual assault) of the POCSO Act, punishable under Section 6.

27. With minority and pregnancy established, the statutory presumption under Section 29 of the POCSO Act stands triggered. The defence has not rebutted it even on a preponderance of probabilities. The sentence of 10 years' rigorous imprisonment under Section 6 of the POCSO Act, together with the concurrent terms imposed under Sections 363 and 366 IPC, is firmly within the statutory framework and proportionate to the gravity of the offences proved. The appeal is, therefore, dismissed. The conviction and sentence are affirmed.

28. If not already done, the DSLSA shall facilitate the disbursement of the compensation amount of INR 7,00,000/- awarded to the Prosecutrix by the Trial Court, *vide* order on sentence dated 15<sup>th</sup> February, 2025. The DSLSA shall also ensure the opening and/or verification of a protected bank account in the name of the Prosecutrix and complete the disbursal process within eight weeks from the date of this order, in accordance with the provisions of Section 33(8) of the POCSO Act read with the Delhi Victim Compensation Scheme.

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<sup>14</sup> Although Appellant has not been convicted for this offence.



29. Disposed of, along with pending application.

**SANJEEV NARULA, J**

**SEPTEMBER 24, 2025**

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