



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

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Judgment reserved on: 29.04.2026

Judgment pronounced on:04.05.2026

+ **CRL.A. 240/2017**

SUHAIL

.....Appellant

Through: Mr. Mohd. Shamikh, Advocate along
with appellant in person.

versus

STATE

.....Respondent

Through: Mr. Ajay Vikram Singh, APP for the
State with SI Arvind Verma and SI
Anita, P.S. Gokalpuri

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 read with Section 383 of the Criminal Procedure Code, 1973 (the Cr.P.C.), the sole accused in Sessions Case No.44445/2015 on the file of the Additional Sessions Judge (North-East), Karkardooma Courts, Delhi, assails the judgement dated 11.11.2016 and order on sentence dated 15.11.2016, as per which he has been convicted and



sentenced for the offences punishable under Section 376(2)(n), Section 366 and 363 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 20.01.2014, at around 12:00 PM, the accused kidnapped PW1, a minor girl aged about 16 years, from the lawful guardianship of her parents to a hostel in Delhi and Rampur in U.P. with the intent to force or seduce her into illicit intercourse and further committed penetrative sexual assault upon her without her consent and against her will. As per the chargesheet/ final report, the accused is alleged to have committed the offences punishable under Sections 363, 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

3. On the basis of Ext. PW7/A FIS/FIR of PW7, given on 20.01.2014, Crime no. 84/2014, Gokal Puri Police Station, i.e., Ext. PW3/A FIR was registered by PW3, Assistant Sub-Inspector (ASI). PW8 Sub-Inspector conducted investigation into the crime and on completion of the same, filed the chargesheet/final report



alleging commission of the offences punishable under the aforementioned sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him, as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court, *vide* order dated 02.06.2014, framed a Charge under Sections 363, 366, 376(2)(n) of the IPC and Section 6 of the PoCSO Act, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 12 were examined and Exhibits Ext. PW1/A-B, Ext. PW2/A-D, Ext. PW3/A-B, Ext. PW4/A-D, Ext. PW5/A, Ext. PW6/A, Ext. PW7/A, Ext. PW9/A, Ext. PW10/A, Ext. PW11/A-B, Ext. PW12/A-C, Mark PA, and Ext. C-1 were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence



of the prosecution. The accused denied all those circumstances and maintained his innocence. The accused submitted that PW1 was in a relationship with him and that both of them had gone on outings several times, and that sexual intercourse had also taken place with the consent of PW1 at a hotel in Rampur, U.P. The accused further submitted that he had never kidnapped PW1 and that she had accompanied him out of her own consent.

7. After questioning the accused under Section. 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him.



8. No oral or documentary evidence was adduced by the accused.

9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, *vide* the impugned judgement dated 11.11.2016 held the accused guilty of the offences punishable under Sections 376 and 366 and 363 IPC. *Vide* order on sentence dated 15.11.2016, sentenced him to undergo rigorous imprisonment for a period of 7 years each and to fine of ₹2,000/- each, and in default of payment of fine, to simple imprisonment for a period of 15 days each for the offences punishable under Sections 363 and 366 IPC, and to rigorous imprisonment for a period of 10 years and to fine of ₹5,000/-, and in default of payment of fine, to simple imprisonment for a period of one month for the offence punishable under Section 376(2)(n) IPC. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.



10. The learned counsel for the accused submitted that the prosecution has failed to conclusively establish that PW1 was a minor, and that Ext. PW5/A birth certificate, cannot be relied upon as the original register was not produced in court by PW5. It was further submitted that, as per the testimony of PW10, the doctor who examined PW1, the latter had attained menarche in 2007, and if her age is calculated on an estimated baseline of about 11 years at that time, she would have been around 18 years old on the date of the incident, i.e., 15.05.2016.

10.1. The learned counsel for the accused pointed out that PW1, in her statement under Section 164 CrPC, did not initially allege sexual intercourse and had only vaguely expressed by stating “zabardasti”. It was further submitted that even in her examination in chief, she did not support the prosecution case. It was also highlighted that during her cross examination, PW1 voluntarily denied any forceful physical relations, thereby undermining the prosecution version. It was further contended that



a crucial incriminating circumstance, namely, whether the accused had knowledge that the victim was below the legally prescribed age of consent, was never specifically put to him during his examination, thereby causing serious prejudice to his defence and the conviction cannot be based solely on the explanation furnished by the accused in his statement recorded under Section 313 Cr.P.C. Reliance was placed on the dictum in **Jabbar Isak Shaikh v. State of Maharashtra, 2021 SCC OnLine Bom 13359** and **Gabbar Patel v. State, 2022 SCC OnLine All 589**.

11. The learned Additional Public Prosecutor submitted that the impugned judgment does not suffer from any infirmity warranting interference by this court as the trial court has duly considered each and every ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits. It was further submitted that the evidence on record conclusively proves that PW1 was a minor on



the date of occurrence, and therefore any purported consent or voluntary participation is of no legal consequence.

11.1. The learned counsel appearing for the victim submitted that the explanation furnished by the accused in his statement under Section 313(1)(b)CrPC clearly indicates that he was in a relationship with PW1 and had engaged in sexual intercourse with her. It was contended that, in view of the minority of PW1, the question of consent is immaterial in law, and therefore, there is no infirmity in the impugned judgment holding the accused guilty of offences punishable under Sections 363, 366 and 376(2)(n) IPC.

12. Heard both sides and perused the materials on record.

13. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgement calling for an interference by this court.

14. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case Ext. PW7/A, the FIS/FIR of PW7, father of PW1 wherein he had stated



that on 20.01.2014, at 12:00 noon PW1, his daughter, aged about 15 years, left home without informing anyone and had not returned since. PW7 further stated that he suspects that some unknown person has lured or enticed away his daughter and so legal action should be taken.

15. PW1 in Ext. PW1/A Section 164 Statement has stated that that she initially went with Sohail (the accused) of her own free will and had arranged to meet him at Dilshad Garden. After visiting the zoo and the Old Fort, the accused took her to a hotel and had her speak with his sister over the phone. PW1 further deposed that they then travelled to Rampur, U.P., where the accused booked a hotel room and then did something forcefully (*jabardasti*) with me. During this time, Sohail took ₹2,700/- that she had brought from home and instructed her to switch off her phone when her family members attempted to call. After staying for two to three days, the accused dropped her at her village, Noorpur, at her request and provided her with ₹300 for the bus



fare. While she was on the bus, the conductor took her to the police station following instructions from her father.

16. PW1, when examined before the trial court, deposed that her native village is Noorpur near Chandpur, District Bijnor and that she used to visit her native place with her family members where she met the accused and thereafter became friendly with him. PW1 further deposed that they had first met when she was travelling to her native village in a bus as the accused was working as a conductor in that bus. PW1 could not recollect the exact date but stated that it was the 15th day of a month, more than six months prior to the incident, she received a call from the accused on her mobile phone requesting her to come to Dilshad Garden Metro Station. Accordingly, she went there, from where the accused took her to Red Fort and Zoological Garden and thereafter dropped her back at her parental house. On the next Sunday, the accused again called her and took her to Dilshad Garden Metro Station and thereafter dropped her back at her house. She further deposed that



on the next day her mother and sister went to Mumbai. On that day she again received a call from the accused. She informed him that her mother and sister had gone to Mumbai. The accused pressurised her to join him, but she refused. The accused again called her and told her that he would commit suicide if she did not join him. Thereafter, she went to Dilshad Garden Metro Station without informing her family members. The accused took her to Rampur (U.P.) where they stayed for 2 to 4 days and during that period, he took her to various places and thereafter dropped her at her native village Noorpur and gave her ₹300/-. The accused returned to Rampur saying that he would pick her up the next morning. On the next day she boarded a bus for Seemapuri, Delhi. The accused called her and asked her where she was and when she told him that she was on the bus in which he used to work, the latter replied that it was not possible for him to join her. Meanwhile, she received a call from her father enquiring about her whereabouts, but she disconnected the call. Thereafter, a person in



the bus (bus wale uncle) informed her father, who reached there and took her with him. At this juncture, the prosecutor sought permission to put some leading questions regarding the incident. This request was allowed by the trial court.

16.1. On further examination by the prosecutor, PW1 admitted that the accused had taken her to a hotel at Rampur (UP) and that the latter forcibly had sexual intercourse with her. PW1 admitted that the accused had never sought permission from her parents to call her or take her to different places. PW1 further admitted that she had left her house under “emotional pressure” as the accused had threatened to commit suicide. PW1 denied that the accused had forcibly established physical relations with her and further denied that she was concealing the fact of sexual relations with the accused. PW1 also admitted that she had never gone out with anyone other than her family members either before or after the incident.



16.2. PW1 in her cross examination, admitted that when her parents had gone to Mumbai, she had voluntarily accompanied the accused and her joining the accused was not under any threat or pressure. PW1 further admitted that immediately prior to going to Rampur, her brother had beaten her and, out of desperation, she called the accused and asked him whether she could join him for 2 to 3 days. The accused consented and suggested her to come to Rampur. PW1 further admitted that during her stay at Rampur, the accused neither extended any threat nor was there any coercion. But, according to PW1, the accused had forcibly committed sexual intercourse with her. PW1 deposed that she did not seek help from anyone at the hotel as the accused had taken her phone and she was helpless. PW1 further deposed that she did not seek help while leaving the hotel as the accused had threatened to kill her brother if she disclosed the incident. PW1 further deposed that the accused had established sexual intercourse



with her about 6 to 7 times, and that the same did not occur in Delhi.

17. PW5, Statistical Clerk, East Delhi Municipal Corporation, produced the original birth certificate of PW1 and the same was marked as Ext. PW5/A. As per the same, the date of birth of PW1 is 22.07.1998.

18. PW10, Senior resident, Obstetrics and Gynaecology GTB Hospital, when examined, deposed that, on 23.01.2014, PW1 was brought before her for medical examination. As per the history given by PW1, she had gone to Mustafabad for attending the wedding of her friend Shabnami. Thereafter she received a call from the accused asking her to meet him at Hotel Taj, where he had allegedly taken her to a room and committed rape upon her. According to PW10, PW1 had attained menarche in the year 2007. On local examination, the hymen was found to be torn. There were no fresh injuries, either on the body or on the private parts of the



victim. PW10 was unable to say whether the hymen tear was recent or old.

19. The trial court has found the accused guilty of the offences punishable under Section 363, 366, and 376 IPC as well as Section 6 PoCSO Act. In the light of Section 42 PoCSO Act, no separate sentence is seen passed for the offence punishable under Section 6 PoCSO Act. Section 363 IPC deals with punishment for kidnapping. Section 361 IPC, which defines kidnapping from lawful guardianship, says that whoever takes or entices any minor under sixteen years of age, if a male, or under eighteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, commits the offence of kidnapping from lawful guardianship. Section 366 IPC deals with kidnapping, abducting or inducing woman to compel her marriage. As per this Section, any person who kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be



likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, is liable to be punished with imprisonment and fine. The Section also says that whoever by means of criminal intimidation as defined in the Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person is also liable to be punished.

20. I have already referred to in detail the testimony of PW1. An entire reading of her testimony raises doubts regarding the prosecution case of enticing/kidnapping/abducting. PW1 keeps changing her testimony. However, at one point, she categorically admitted that when her parents had gone to Mumbai, she had voluntarily accompanied the accused and her joining the accused was not under threat or pressure. She further admitted that



immediately before going to Rampur, her brother had beaten her and out of desperation, she called the accused and asked him whether she could join him for 2 to 3 days. The accused consented and suggested her to come to Rampur. She further admitted that during her stay at Rampur, the accused did not extend any threat nor was there any coercion. However, according to her, the accused had forcefully committed sexual intercourse with her. Therefore, the prosecution case of abduction, kidnapping, threatening or inducing etc. is quite doubtful. In the light of such unsatisfactory evidence, the trial court obviously went wrong in convicting the appellant/accused for the offenses punishable under Sections 363 and 366 IPC.

21. Now what remains is the offence punishable under Section 376(2)(n) IPC. The date of the incident in this case is 20.01.2014. According to the prosecution, PW1 was a minor at the time of the incident. They rely on the testimony of PW5 as well as Ext. PW5/A birth certificate to prove the date of birth. According



to PW5 and as per Ext. PW5/A birth certificate, the date of birth of PW2 is 22.07.1998. There is practically no effective cross examination of PW5. Going by Section 94 of the Juvenile Justice Act, 2015 (the JJ Act), where there exists a doubt regarding the age of a person, the competent authority is required to undertake an age determination process by first seeking documentary evidence. In this hierarchy, the date of birth certificate from the school or the matriculation certificate is to be considered in the first instance, and in their absence, the birth certificate issued by a corporation, municipal authority or panchayat can be relied upon. It is only when both these categories of documents are unavailable that recourse is to be taken to medical opinion such as ossification or other age determination tests. Therefore, Ext. PW5/A birth certificate issued by the East Delhi Municipal Corporation is certainly admissible under Section 94 of the JJ Act. That being so, the date of birth of PW1 stands established as 22.07.1998. The date of incident is 20.01.2014. Therefore, on the date of the incident,



PW1 was aged 15 years and 6 months. According to the learned counsel for the appellant, PW10, the doctor has opined that PW1 had attained menarche in the year 2007. If that be so, the argument is that she must have attained menarche at the age of 11. Hence, at the time the incident occurred she would have been 18 years. This argument cannot be accepted for the simple reason that the onset of menarche varies significantly from person to person and depends upon several biological and environmental factors and, therefore, cannot be treated as a reliable or legally recognized method for age determination, especially when documentary evidence such as a birth certificate is available.

22. The testimony of PW5 and Ext.PW5/A establishes that PW1 was only 15 years and 6 months of the time of the incident and, therefore, apparently a minor at the time of the commission of the offence. The accused when questioned under Section 313(1)(b) Cr.P.C. answered thus:- *“I am innocent. I have been falsely implicated in this case. Victim was in love affair with me and we*



both had outings several times and sexual intercourse was performed with her consent at a hotel in Rampur, UP. I never kidnapped the victim but she accompanied me with her own consent”

23. It is no doubt true, as argued by the learned counsel for the appellant/accused, that answers given by the accused cannot be made the sole basis of conviction as laid down in the decisions relied on by him. But as held in **Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467**, the effect of the answers given by the accused can be considered or read along with the other evidence that is brought on record. Here the testimony of PW1 clearly shows that sexual intercourse had taken place between her and the accused. It is also clear that though PW1 claims that it was a forcible one, a whole reading of the testimony establishes that her version is not right. As stated by the accused, it appears to have been certainly a consensual one but since PW1 was a minor at the time of the offence, her consent is immaterial. Therefore, the



offence of rape as defined under Section 375 is certainly made out. PW1 also deposed that the accused had sexual intercourse with her about 6 to 7 times. That being so, the finding of guilt by the trial court for the offence punishable under section 376(2)(n) IPC is certainly justified.

24. Further, it was submitted that the issue regarding the age of PW1 was never put to the accused during his examination, thereby depriving him of an opportunity to effectively defend himself on that aspect. This contention does not merit acceptance, as the accused was clearly put to notice regarding the age of the victim and the nature of the allegations arising from her minority. The same is evident from the questions put to him during his examination under Section 313(1)(b) Cr.P.C as well as from the Charge framed by the trial court. Moreover, one of the charges framed against the accused was under Section 6 of the POCSO Act, which is inherently dependent upon the age of the victim. In



such circumstances, it is not tenable to contend that the accused was denied an opportunity to defend on the aspect of age.

25. In the light of the above said discussion, the appeal is partly allowed. The conviction and sentence of the appellant/accused for the offences punishable under Sections 363 and 366 IPC is set aside. However, the conviction and sentence of the appellant/accused for the offence punishable under Section 376(2)(n) IPC is confirmed.

26. Application(s), if any, pending shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 04, 2026
kd/p'ma