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

% Reserved on : 12.09.2025
Pronounced on : 16.09.2025

\+ **CRL.A. 1004/2018**

ARJUN .....Appellant
Through: Mr. Sharan Mehta, Advocate

versus

STATE (NCT OF DELHI) .....Respondent
Through: Ms. Shubhi Gupta, APP for State
Dr. M.P. Singh, Advocate (Amicus Curiae) for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgement of conviction dated 23.01.2018 and order on sentence dated 30.01.2018, vide which he has been directed to undergo RI for a period of 3 years alongwith payment of fine of Rs.5,000/-, and in default thereof to undergo SI for 6 months, for the offence punishable under Section 376 IPC. The benefit of Section 428 Cr.P.C. was also provided to the appellant.

2. The facts in a nutshell are that on the intervening night of 24-25.03.2013 at about 01:40 (midnight), the mother of the victim came to P.S. Gulabi Bagh and lodged a complaint of her minor daughter having gone missing. The complainant alleged that on 24.03.2013, her daughter had left the house without informing anyone and despite search, she could not be

traced. On this complaint, a case under Section 363 IPC came to be registered.

On 30.03.2013, the missing girl came to the P.S. on her own and got her statement recorded to the effect that on 24.03.2013, she along with one *Pavan Pal @ Ashutosh* (the co-accused, who had faced trial and was acquitted) had gone to the house of one *Vicky @ Rakesh*, a friend of *Pavan Pal*'s. On the next day, she along with *Pavan Pal* had gone to Kashmere Gate and then to Ghaziabad, where a priest had solemnized their marriage. Thereafter, they both went to the house of *Pavan Pal*'s relative at Ghaziabad, where they remained till 30.03.2013. On that day, her mother assured her that she would solemnize the victim's marriage with *Pavan Pal*, and it was only on such assurance that the victim returned to Delhi and came to the P.S. After recording of the victim's statement, the accused *Pavan Pal* was arrested. The victim was taken for her medical examination, wherein she refused to get a gynaecological examination. The victim refused to go to her parental house and was accordingly produced before the Child Welfare Committee, whereupon, with her consent, her custody was returned to her mother.

3. On 01.04.2013, the victim's statement under Section 164 Cr.P.C. came to be recorded, wherein for the first time, she stated that about three years ago, she had a love affair with the appellant, who happened to be a friend of *Pavan Pal*. She stated that physical relations were established between her and the appellant, however, owing to the appellant disclosing the same to his friends, she got upset and started talking with *Pavan Pal*. She further stated that no physical relations had been established between her and *Pavan Pal*.

4. In view of the aforesaid backdrop, the offence punishable under Section 376 IPC was added and the appellant was arrested.

5. As the accused *Pavan Pal* and the appellant herein denied all charges, the prosecution examined 22 witnesses in support of its case before the Trial Court. As noted above, the learned Trial Court acquitted accused *Pavan Pal* and therefore only relevant witnesses relating to the present appellant are discussed hereinafter.

6. The material witnesses were the victim, examined as PW-1; her mother, examined as PW-2; and, as the victim was stated to be a minor, her date of birth was proved through PW-3, who produced her admission form and a copy of her date of birth certificate. The other witnesses deposed as to various other aspects of the investigation as well as with respect to the acquitted accused *Pavan Pal*.

7. Learned counsel for the appellant assailed the impugned judgment and order on sentence by contending that the testimony of the victim does not inspire confidence as not only has she materially improved her statement, the name of the appellant itself figured for the first time two days after the recording of her statement under Section 161 Cr.P.C. He further stated that the victim's testimony contradicts the testimony of her mother on material aspects. Lastly, it was stated that the prosecution had failed to prove the exact date of birth of the victim, and all the more the victim herself has testified that all the acts were consensual and at no point in time did the appellant establish any sexual relations with her forcibly.

8. *Per contra,* learned APP for the State, duly assisted by the learned counsel for the victim, defended the impugned judgment by contending that since the victim was a minor, her consent is immaterial. She stated that

regardless of the victim refusing internal examination, for which reason no samples were collected for being sent to the FSL, her testimony alone is sufficient to uphold the conviction of the appellant. It is stated that as per the case of the prosecution, the victim was seventeen and a half years old on the date of the incident.

9. The victim was examined on 18.11.2013 as PW-1. On that day, she deposed that the date of birth recorded in the school records, being 15.02.1995, is incorrect, and her correct date of birth is 16.10.1995. She further deposed that about one and a half years ago, around the time of *Holi* festival, the appellant assured her that he would marry her and with her consent, sexual relations came to be established. After about 6/7 months, again on the assurance of marriage, consensual physical relations were established between her and the appellant. To test his promise, she lied to him about getting pregnant, upon which the appellant got upset and refused to marry her. Thereafter, the relations between them did not continue.

10. She further deposed that on 24.03.2013, she left her house on account of a quarrel with her parents. She asked the appellant to take her along, however, the appellant refused. Thereafter, she asked the accused *Pavan Pal*, who initially refused, but on persistent requests, he took her first to his cousin's house at Nangloi and then to the house of another cousin at Khajuri. She asked *Pavan* to marry her, however he also refused. *Pavan Pal* left her at Khajuri and came back to his own house. She remained there for 4/5 days and during that time, spoke with her mother on 2/3 occasions. Her mother requested her to come home and assured that her marriage with *Pavan Pal* would be performed. She stated that no physical relations were established between her and *Pavan Pal*.

The witness was cross-examined by the learned APP upon which she stated that relations with the appellant were established for the first time in 2011 around two days before *Holi*, and then again on 17.03.2011, at the house of the appellant. A suggestion was given to her regarding her date of birth being 15.02.1996, and the same was denied. She volunteered that her correct date of birth is 16.10.1995. She stated that for the purpose of securing admission, her incorrect date of birth was mentioned in the school records.

11. The mother of the child victim, appearing as PW-2, stated that at the time of her admission, she had submitted the date of birth certificate of the victim which was issued by the MCD. As the witness did not depose in accordance with her previous statement, she was cross-examined by the learned APP, during which she denied the suggestion that her daughter had told the police in her presence that two days prior to *Holi* in the year 2011, the appellant had taken the victim to his house and established physical relations with her on assurance of marriage. She also denied the suggestion that the appellant was arrested from his house. She admitted that she had assured the victim that she would arrange the victim's marriage with *Pavan Pal*.

12. The school record was produced by one *Anuj*, who exhibited the admission form and copy of the victim's date of birth certificate as PW-3/A and PW-3/B respectively. As per the school records, the recorded date of birth of the victim is 15.02.1996.

13. To appreciate the contentions on the aspect of age of the child victim, a perusal of the record reflects that in the proceedings held on 09.04.2014 before the Trial Court, one *Jatin Yadav* appeared from the Office of

Registrar (Births & Deaths), MCD and produced the Register of Birth from the year 1996 from the MCD records. The birth certificate produced at the time of the victim's admission in school, exhibited by prosecution witness PW-3, i.e., the teacher who had brought the school forms and said birth certificate, bore the birth certificate number 1234 and was dated 19.02.1996. The proceedings dated 09.04.2014 record that after going through the records, Mr. *Jatin Yadav* stated that the birth certificate filed along with the charge-sheet was a forged document as no such record existed in the MCD records. The extract of the proceedings dated 09.04.2014 are reproduced hereunder:-

> *"…**09.04.14***
> *Present: Sh. Mohd. Iqrar-Ld. APP for the State.*
> *Both the accused on bail.*
> *Sh.Anil Kumar Singh – learned counsel for both the accused.*
>
> *Sh.Jatin Yadav has appeared from the Office of Registrar (Births & Deaths), MCD. He has produced the register of births for the year 1996 from the MCD records. However, the witness states that no birth certificate bearing No.1234 dated 19.02.1996 is available on their records. On going through the copy of the birth certificate filed along with charge sheet, the witness states that this is a forged document. IO of the case, who is not present in the court today, is directed to explain as to from where the said certificate was obtained during the investigation and filed on record. In view of the aforesaid submissions of the witness, learned APP does not want to examine him as Prosecution Witness.*
>
> *Let notice be issued to the IO through the SHO concerned for the next date fixed.*
>
> *PW Ct.Het Ram is present. However, learned APP does not want to examine this witness who is accordingly dropped in view of request made.*
>
> *PW8 Pawan Singh examined and discharged.*
>
> *No other PW is present or served for today.*
>
> *As per report on summons issued to PW Babloo S/o Ram Dass,*

the said witness is presently confined in J/c in case FIR No. 32/11 PS Gulabi Bagh under section 363/366/376/342/323/506/34 IPC.

Let P/Ws be issued directing concerned Jail Supdt. to produce the above named PW Babloo S/o Ram Dass on next date.

Adjourn for PE on ***08.5.14.****"*

14. The entire fulcrum of the prosecution case claiming the prosecutrix to be a minor was dependent on the testimony of the mother of the victim and the school record. Concededly, the admission form was based on the date of birth certificate provided by the mother of the child victim which, as recorded in the aforesaid proceedings, was found to be forged. The prosecutrix claims her date of birth to be 16.10.1995, however except for her oral statement, there is no other corroborative evidence on record. Concededly, no bone ossification test of the victim was carried out.

Further, the name of the appellant was not spelt out in the first statement made by the victim on 30.03.2013, when she herself came to the P.S. and got her statement recorded under Section 161 Cr.PC. The name of the appellant figured for the first time on 01.04.2013, when the statement of the victim was recorded under Section 164 Cr.P.C. In the said statement, the prosecutrix has not given any specific date or even stated that the incident had occurred near the festival of *Holi*. She also did not specify as to when the second incident occurred, whereas in her testimony before the Court, she specified it to have occurred two days before *Holi* in the year 2011 and on 17.03.2011. The victim's mother during her testimony also denied the suggestion that the victim had stated so to the police officer in her presence. Even otherwise, the victim at no place has claimed that rape was committed, rather she has maintained that the physical relations established were consensual.

15. There being no incident stated in the first statement, no specific dates of the establishment of physical relations in the second statement, and none even in the third statement recorded under Section 161 Cr.P.C. (which was recorded after recording the statement under Section 164 Cr.P.C.), stating so for the first time in the Court's deposition amounts to material improvement.

On top of that, with the date of birth certificate of the victim not being proved, the whole edifice of the prosecution case falls. The prosecution, in the considered opinion of this Court, has failed to establish that the victim was a minor on the date of the incident. The Trial Court, despite recording in its proceedings that the date of birth certificate produced through PW-3 from the school record was found to be forged, manifestly erred in convicting the appellant relying on the same very certificate.

16. In view of the aforesaid discussion, the appeal succeeds; the impugned judgment and order on sentence are set aside and the appellant is acquitted.

17. The appeal stands disposed of in above terms.

18. The personal bond furnished by the appellant stands cancelled and his surety is discharged.

19. A copy of this judgment be communicated to the Trial Court and the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 16, 2025/*rd*