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

% *Date of decision: 07<sup>th</sup> May, 2024*

+ CRL.L.P. 67/2020

STATE

..... Petitioner

Through: Ms. Manjeet Arya, APP for the State  
with W/SI Shikshwati and W/SI  
Suman, Insp. Rajeev Kumar.

versus

ROSHAN

..... Respondent

Through: Mr. Harsh Prabhakar, Advocate  
(DHCLSC) with Mr. Anirudh  
Tanwar, Mr. Dhruv Chaudhary,  
Ms. Pallai Garg, Mr. Adeeb Ahmad  
and Ms. Eshita Pallavi, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. State has taken exception to impugned judgment<sup>1</sup> whereby accused (respondent herein) has been acquitted of all the charges.
2. Since the case pertains to a sexual assault on a child, such child witness would be referred to as 'victim' in the present judgment.
3. As per the prosecution story, father of the victim had lodged report with PS Dwarka on 06.07.2013 mentioning therein that he had three children (two daughters and one son). His one daughter was

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<sup>1</sup> Judgment dated 24.09.2019 passed by ASJ-01(POCSO), Dwarka Courts



already married and the other, i.e., victim was 15 years old and was studying in 10<sup>th</sup> class. On 05.07.2013, she went to the house of her grandparents, which was situated at the distance of 500 meters away from their house, but did not return. The father of the victim and his family searched for her but there was no clue. This compelled him to immediately report the matter to the police. However, in his report, he also expressed suspicion over the role and involvement of the respondent. The respondent was their tenant and he suspected that he might have enticed her away.

4. Subsequently, during investigation, the victim herself came at police station with her family on 14.08.2013 and got recorded her statement in which she alleged that she had been kidnapped and sexually assaulted by the respondent. According to her, the respondent had taken her away to Noida on the pretext of marrying her and made physical relation with her forcefully. Her statement was also got recorded under Section 164 Cr.P.C. It was also to the same effect. She also named one friend of respondent as co-accused who could not be apprehended.

5. It was in the aforesaid factual matrix that the respondent was arrested and charge-sheeted for commission of offences under Section 363/376/506 IPC and under Section 6 of Protection of Children from Sexual Offences Act (POCSO Act). He was charged for committing offences under Section 366/34 IPC and under Section 6 of POCSO Act read with Section 506 (Part II) IPC to which he pleaded not guilty and claimed trial.



6. Prosecution examined 14 witnesses. The victim was examined as PW1 and her father as PW2. In order to prove her age, the Principal of the concerned school was examined as PW4, who deposed that as per the admission record, her date of birth was 26.03.1998.

7. Learned Trial Court acquitted the respondent, primarily, on the following grounds: -

*(i) There was a doubt with respect to the exact age of the victim as in one document (Ex.PW1/D4), she claimed herself to be 19 years of age.*

*(ii) The victim had changed and improved her statement at every stage and, therefore, her evidence was not convincing.*

*(iii) There were material contradictions in the testimony of witnesses examined by the prosecution which also created doubt in the case of the prosecution.*

8. All in all, learned Trial Court came to the conclusion that the evidence led by the prosecution was not sufficient to prove the charges beyond reasonable doubt.

9. Such order is under challenge before us.

10. We have been taken through the testimony of the child victim and, indeed, her testimony does not seem to be convincing enough and it is difficult to believe that she had been kidnapped or enticed away or that the accused had made physical relation with her in a



forceful manner.

11. Though, she reiterated her version in examination-in-chief, in cross-examination, she claimed that they both had reached Noida at about 12 midnight. Thereafter, they boarded Metro and she admitted that she did not raise any alarm or informed anyone that she was being forcibly taken away by the accused. Thereafter, they went to Agra. However, she failed to recall as to where they stayed in Agra. Though, they had gone to Agra by bus, she admitted that she did not raise any hue and cry, while travelling in the bus.

12. Defence confronted her with various photographs and she admitted all such photographs (Ex.PW1/D1 to D3) claiming that these were taken at Taj Mahal, Agra and pertained to them. She admitted that these photographs were not taken under any force. She also deposed that she had neither raised any alarm nor informed anyone that she had been kidnapped or was under threat while they had visited Taj, Agra. She admitted that she did not inform to the Security or Police Officials present at the entrance gate of Taj, Agra about any such threat.

13. These pictures portray a different tale altogether.

14. Here we would like to mention that during the investigation stage, she had also implicated one Sarwan (friend of respondent) as co-accused but in cross-examination, she admitted that such other accused, i.e, Sarwan did not accompany them to Agra.



15. Things do not stop here.

16. After visiting Taj Mahal, they both went to Bihar. She admitted that the accused had purchased train-tickets for Bihar and they reached Bihar by train. Throughout such train journey, she remained mum. Had there been any kind of kidnapping or if she had been accompanying the accused unwillingly, she would have raised furore and commotion but she gladly accompanied him to his native place.

17. After reaching his native place, she stayed there and interacted with his family members. She also admitted in her cross-examination that in Bihar, they had gone to a temple where marriage was solemnized. She supplemented that she had taken seven *phas* around the fire and at the time of such marriage, *bhabhis*, *chachis*, elder cousin brother and friend of the accused were also present. She also admitted marriage certificate (Ex.PW1/D4) and admitted her photograph and signature over the same. Here we would like to take note of the fact that said document is not a marriage certificate but an affidavit, in which she had claimed that she was major and was entering into marriage with the accused voluntarily and with her own free will on 11.07.2013.

18. All in all, her testimony does not indicate or suggest anything, even remotely, which may indicate that she had been abducted or that she had been administered some intoxicating or sedative substance and enticed away. Photographs on record have been admitted by her and these photographs are enough to belie her version.



19. As per accused, they both were in love and had eloped together. According to him, there was never any kind of threat and rather the proposal of marriage had come from the side of victim only, to which he agreed. In his statement recorded under Section 313 Cr.P.C, when he was asked whether he wanted to say anything else, he answered as under:-

*“A: I was residing alongwith my family in the house of the child victim as tenant. The child victim was not happy at her home as her father wanted to get her married with an old man. She was in love with me and forced me to take her away. She had represented me that she had attained the age of majority. On the insistence of the child victim, I had accompanied her and solemnized marriage with her. No sexual relations were established between us. When we arrived at Delhi, the child victim had gone to meet her parents and thereafter, she was pressurized by her father to falsely implicate me in the present case. I had not done anything wrong with the child victim.”*

20. According to accused, though they had married but they never entered into any physical relationship. We may also note here that when the victim had entered into witness box and was cross-examined, she created a flutter by claiming that by ‘physical relationship’ she meant the ‘act of kissing’.

21. We are conscious of the fact that the consent of any child would be immaterial and, therefore, the consensual relationship with a minor would still be covered under the POCSO Act.



22. However, there is utter confusion with respect to the date of birth of the victim.

23. In her examination in chief, she claimed that her date of birth was 26.07.1998 but as per the school record, her date of birth is recorded as 26.03.1998. We have carefully gone through the school record which has been proved by the concerned Principal where the victim had studied. It is not clear as to on what such date of 26.03.1998 has been recorded as the date of birth of the victim. No document was produced or shown to the Court during the trial.

24. We may refer to *State v. Rohit 2024 SCC OnLine Del 1793* where we dealt with the similar issue regarding determination of age and observed that any entry with respect to the date of birth made in school can be said to have evidentiary value only when there is some definite material available on the basis of which such date was recorded.

25. There is also not enough of clarity as to when the victim had allegedly been assaulted or had gone missing.

26. In FIR, her father claimed that she was missing from 07.05.2013. Even if we assume it to be a typographical error and even if we accept that he wanted to indicate that his daughter had been kidnapped on 05.07.2013 instead of 07.05.2013, there is no clarification from the side of the prosecution as to why when the history was recorded by the concerned doctor at the time of gynaecological examination of the victim, it came to be recorded that



*she had eloped from home on 05.06.2013 with a boy Roshan Yadav with whom she got married on 11.06.2013; that thereafter, they started living together; that they had a verbal fight on 12.08.2013 and she returned home on 13.08.2013. All these facts have been recorded by the concerned doctor as per the information given by none other than the victim herself.*

27. Thus, the victim has, in fact, come up with conflicting versions and there is nothing which may indicate that she had been kidnapped or enticed away.

28. It, on the face of it, seems to be a case of elopement.

29. Since we have no hesitation in holding that her statement does not inspire any confidence, the learned Trial Court was fully justified in giving benefit of doubt to the accused. It appreciated and analysed the evidence in right perspective and there is nothing on record which may compel us to take a different view.

30. No order of acquittal should be interfered with when view taken by the Trial Court is found to be logical, reasonable and plausible one. The appellate court cannot reverse such finding even when two views were possible. Here, the reasoning given by the learned Trial Court is in consonance with the evidence on record and we are also persuaded to come to the same view.

31. In view of our foregoing discussion, we do not find it to be a fit case where State is entitled to leave to appeal. Resultantly, the leave





is declined.

32. The petition stands dismissed.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**(MANOJ JAIN)**  
**JUDGE**

**MAY 07, 2024**  
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