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

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*Reserved on: 30.10.2023
Pronounced on: 03.11.2023*

+ **CRL.A. 477/2023 & CRL.M.(BAIL) 825/2023**

MOHD. TASLIM ALI Appellant

Through: Mr. Mukesh Singh, Advocate

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Preeti Saini, P.S. Timarpur

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant appeal under Section 374(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of appellant seeking setting aside the judgment dated 29.03.2023 and order on sentence dated 28.04.2023 passed by learned Additional Sessions Judge-01(POCSO), District Central, Tis Hazari Court, Delhi pertaining to FIR bearing no. 821/2015, registered at Police Station Timarpur, Delhi for the offences punishable under Sections 363/376(2)(n)(i) of the Indian Penal Code,



1860 ('IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. Briefly stated, the facts of the present case are that on 27.10.2015, complainant 'SN' who is father of the victim had lodged a missing report of his daughter 'P' aged about 14 years, informing that she had gone to her school at Nehru Vihar on 26.10.2015 at about 7:30 AM, but had not returned home and had gone missing. He had also apprised the police that he had received a call from the victim 'P' on 07.12.2015 who had informed him that the accused i.e. appellant herein Mohd. Taslim Ali had kidnapped her and had kept her with him. The police had conducted search and victim and accused were brought to the police station. The statement of the victim under Section 161 Cr.P.C. was recorded wherein she had alleged that she knew the accused for the last one year as he was residing in their neighborhood. She had known him as she used to go to school at Nehru Vihar and the accused used to follow her and also proposed her for marriage. Thereafter, both of them started talking to each other and used to meet also. When the parents of the victim had come to know about it, they used to beat her. Thereafter, the accused had taken the victim with him from outside her school on 26.10.2015 and they both had started living in a rented accommodation. He had also established physical relations with her without her consent and when she had refused, the accused had told her that since they were to get married, there was no problem in establishing physical relations, and on this pretext, he used to establish physical relations with her daily. Thereafter, he had taken her to Katihar, Bihar where



both of them had performed marriage and had started living as husband and wife. On 14.01.2016, the police had recovered the victim and both were brought to the police station. Further, in her supplementary statement recorded under Section 161 of Cr.P.C. on 28.01.2016, the victim had informed the police that she and accused had been residing in a rented accommodation by changing their names on fake identities and she had done so at the asking of the accused. On the basis of her statement, Section 376 of IPC and Section 6 of POCSO Act were also added in the FIR.

3. Charges under Sections 363/376(2)(n)(i) of IPC and Section 6 of POCSO Act were framed against the accused to which he pleaded not guilty and claimed trial. The prosecution examined 16 witnesses. On the basis of their statements, and after conclusion of trial, the learned Trial Court convicted the accused/appellant under Sections 363/376(2)(n)(i) of IPC and Section 6 of POCSO Act and sentenced him to undergo rigorous imprisonment for ten years and fine of Rs. 2000/- and to undergo simple imprisonment for period of two months in default of payment of fine for the offence punishable under Section 6 of POCSO Act, and to undergo rigorous imprisonment for seven years and fine of Rs.1000/- and to undergo simple imprisonment for period of two months in default of payment of fine for the offence punishable under Section 363 of IPC.

4. Aggrieved by his conviction, the appellant has preferred the present appeal against the judgment dated 29.03.2023 and order on sentence dated 28.04.2023. The present appeal was admitted by this Court vide order dated 02.06.2023.



5. Learned counsel for the appellant states that the impugned judgments is liable to be set aside as it is against the law, equity, justice and fair play and is not based on correct appreciation of the facts of the case. It is stated that the learned Trial Court has failed to appreciate the evidence on record and has passed the impugned judgment in mechanical manner on the basis of conjectures and surmises. It is also stated that the learned Trial Court has grossly erred in not accepting the plea of juvenility on the basis of school certificate of the appellant, according to which she was a minor at the time of alleged occurrence. It is argued that the statements of the prosecution witnesses are full of contradictions, inconsistencies and discrepancies which are fatal for the prosecution's case, making it suspicious and doubtful. It is also argued that the learned Trial Court has failed to notice that the appellant was not aware that the victim was a minor as she was not carrying any Aadhaar Card or any other proof or documents and she had herself disclosed her age to be more than 18 years at the time of incident. It is also argued that that at the time of filing of the affidavit for the purpose of getting married to accused, the victim had disclosed her age to be more than 18 years and therefore, no weightage should have been given to the affidavit of age filed by the parents of the victim at the time of her admission in the school. Learned counsel for appellant further states that the relationship between the victim and the accused was consensual, the victim was major at the time of incident and the prosecution has failed to prove the contrary. It is also stated that the documents relied upon by the prosecution do not prove the age of the victim beyond



doubt to be less than 18 years and therefore, the judgment of the learned Trial Court be set aside.

6. Learned APP for the State, on the other hand, submits that the victim in this case was about 14 years of age at the time of incident. It is also argued that the statement of the victim reveals that she has categorically mentioned that the appellant had forced her to misrepresent her age and that the appellant was already married and had two children at the time of incident. It is stated that the learned Trial Court has passed a detailed judgment on the basis of correct appreciation of law and evidence and therefore, the present appeal be dismissed.

7. This Court has heard arguments addressed by learned counsel for the appellant and learned APP for the State, and has gone through the case file as well as the judgment of the learned Trial Court.

8. The argument of the learned counsel for the appellant that no case of kidnapping of the victim is made out since she was a major and had stayed with the appellant for two months with her consent is primarily based on his other argument that the age of the victim has not been proved beyond reasonable doubt and the learned Trial Court has failed to take note of the same.

9. After going through the record, this Court is of the opinion that the prosecution has proved the age of the victim on the basis of documents filed by her parents in the year 2007 at the time of admission in the school. The original record was produced by the school authorities before the Court which was duly proved on the basis of admission/withdrawal register (Ex.PW2/A) and admission



form of victim child (Ex.PW2/B). According to the affidavit given by the parents in the year 2007 when she was admitted in Class I, the date of birth of the victim has been shown as 13.02.2002.

10. This Court has also gone through the testimony of the victim which reveals that in deposition before the Court, she has clearly mentioned that the accused/appellant had not only established physical relations with her before taking her along with him to Ajmer where they had stayed in a hotel, but the accused had already established physical relations with her 5-6 times even prior to taking her along with him to Ajmer, and after they had left Delhi, he had established physical relations with her daily. She has also deposed that she had misrepresented her age to be 18 years in the affidavit for the purpose of marriage executed in Bihar, however, the person who was preparing the document had mentioned her age as 20 years. She has further categorically deposed that she was 16 years of age at that time but she had mentioned her age as 18 years as she was told that it will not be appropriate to mention her age to be less than 18 years in the documents which were prepared for marriage. The deposition of the father of the victim also shows that the victim was born in the year 2002. The mother of the victim herein has sworn on affidavit at the time of her admission in the school that her date of birth was 13.02.2002 and as observed by the learned Trial Court, there is nothing on record to prove that the victim was major at the time of incident and the age that has been mentioned in the affidavit has been incorrectly mentioned.



11. Furthermore, this Court also takes note of the fact that the victim herself states in her statement before the Trial Court that she was 16 years of age at the time when she had been taken to Ajmer by the appellant herein and that she had mentioned her age as 18 years at the time of incident at his asking since she was told that it will be inappropriate to disclose her age as less than 18 years. This Court also takes note of the fact that the victim has deposed that physical relations had taken place 5-6 times even before she was taken out of the lawful custody of her parents. This rather proves that the appellant was in physical relations with the minor child even when she was less than 14 years of age at the time of incident. The testimonies of the witnesses which are read together would thus lead to a conclusion that the oral as well as documentary evidence on record proves that the victim child was less than 18 years of age at the time of incident and that she was less than 14 years of age when physical relations were established for the first time by the accused with the victim.

12. This Court also takes note of the fact that the appellant was already married and had two children when he had established physical relations with the minor victim. The victim has deposed about the disturbing fact that the victim child was followed by the accused, who was already married and had two children, when she used to go to her school. Her studies were also affected as she has deposed that her parents used to scold her when they had come to know about her relationship with the accused and had stopped sending her to school for a short duration, but despite the same, the



accused had not stopped interacting with her. Thus, the appellant who was a major, and was not only married but had two children, used to follow minor victim despite the fact that she was probably only 12 years of age at the relevant time when he had established physical relations with her for the first time, as per testimony of the victim.

13. One of the arguments raised by learned counsel for the appellant was that the appellant could not have known the age of the victim to be less than 18 years as she was not carrying her Aadhaar Card with her. **This argument in itself is not only unconvincing but also absurd and merits outright rejection since it will be travesty of justice in case the Courts will start giving weightage to an argument that a person who is kidnapping and sexually assaulting a minor was not aware of the age of the victim since she was not carrying her Aadhaar Card with her. Accepting this argument would amount to holding that it was the duty of the girl kidnapped and sexually assaulted to have carried her Aadhaar card for the convenience of the accused. This observation of the Court has been invited by the accused himself by putting forth an absurd argument.**

14. As noted in the preceding paragraphs, the appellant herein was a married man with two children, and was following the victim child to the school and he was aware of the standard in which the victim was studying at the time of first establishing sexual relations with her. In this Court's opinion, there was no occasion for the accused to presume that the child studying in 7th or 8th standard could be a major.



15. The Court also notes that once, the prosecution had succeeded in proving that the victim was a child as per definition of Section 2(d) of POCSO Act, the consent of the minor is of no consequence as she was only 14 years of age at the time of incident and about 12 years of age when first sexual assault was committed upon her.

16. The testimonies of the witnesses also reveal that the appellant had planned as to how he will take the victim out of the lawful custody of her parents, and he had already told her two days in advance that when she will start for her school in the morning, he will take her along with him. Therefore, he had not only planned taking her out of the lawful custody of her parents when she was going to attend her school, but he had also taken her to Ajmer where he had stayed in a hotel for some time and when she had resisted established physical relations, he had informed that since they would be getting married, there would be no problem. The statement/testimony of the victim herself that she was forced to inform about her age on the lower side also points out that it was the appellant who had planned the entire journey and the story. The victim child also has deposed that they were living under fake identity in Nangloi, Delhi. Thus, the conduct of the appellant of living with the victim under a fake identity in a rented accommodation, is proved by the statement of the landlord.

17. The statement also shows that the own family of the appellant i.e. his wife and two minor children were living in Delhi while the appellant had chosen to live in another location in Delhi itself with the minor victim after kidnapping her and continuously sexually



assaulting her at different locations in Delhi itself. The victim and accused were recovered not as though the accused had himself surrendered or disclosed his whereabouts to the authorities, but it was the victim who had informed her parents by calling them that she had been kept by the accused with him at Delhi in a rented accommodation when the police had recovered them.

18. The **plea for leniency** based on the accused's marital status and responsibility for two children does not find favour with this Court. It is disheartening to note that the accused, even while being in a relationship with a 14-year-old girl from the same locality, was aware about his responsibility towards his wife and children, but he chose to establish physical relations with the victim, thereafter, he had even married her, and they had continued to live in the same city under fake identities at different locations. This clearly demonstrates that the appellant had completely forgotten about his lawfully married wife and two children from his marriage who were his prime responsibility. To now take shelter under garb of his responsibility towards his wife and children, thus, is nothing but sham.

19. Thus, this Court is not inclined to accept the argument that the accused needs to take care of his family and lenient view be taken while deciding the sentence awarded to him.

20. Moreover, this Court is also disturbed with the facts of the present case that the studies of the minor victim, who was regularly attending her school and tuition classes, were affected due to the present incident in which the appellant had taken her out of the custody of her parents. **The parents of the victim were**



understandably disturbed due to the minor victim's friendship with a married man with two children while she was still about 13 years of age and was studying in school. Being her best well wishers they had dissuaded her from her association with the appellant. They had however remained unsuccessful in their attempts. The victim child was unfortunately forced to leave her studies and school, and she mentions this in her statement to the Magistrate candidly that her life has been spoilt due to this incident as she had to leave her studies. At this juncture, this Court again notes that it was the accused who had made the plan for her to come to her school and from there, he would take her to Ajmer. He was, therefore, also responsible for a break in her studies having persuaded the victim child to go with him while he had already on many occasions sexually assaulted her.

21. The **disturbing fact in this case of persuading the minor victim to leave her studies**, to elope, and get married to him while the accused was already married and had two children together with the fact that the victim was of impressionable age is deeply concerning, as the victim had to leave her studies due to this offence. Offences like the one before this Court today have profound social implications. In cases such as these, one witnesses the rising incidents of kidnapping of minor girls, who are subjected to sexual assault under the guise of performance of marriage. The impressionable minds of the minor victims are profoundly impacted, as they lack the capacity to make informed decisions at the tender ages of 12 or 14. **These girls are misled into thinking that they are entering into a marital union, and the sexual assault is often**



projected by the assaulter as marital physical union to coax the victim to accept it without resistance. The consequences of such acts extend beyond the individual victims; they cause ripples through society by pulling these girls away from their peer groups, studies and their lawful guardianship. They are disengaged from their studies and are thus denied the opportunity to pursue the careers they might have otherwise chosen in case they would have continued with their studies. Thus, on the one hand, such incidents deprive females of the career opportunity and standing on their own feet and be educated, on the other, the psychological trauma continues for a lifetime. This sentiment is also reflected in the statement of the victim recorded under Section 164 of Cr.P.C., that she considers her life to have been spoilt entirely due to this incident as she had to leave her studies.

22. The criminal justice system needs to have **social responsibility approach**, to meet the challenges which are posed to the society due to acts of criminal offenders. The criminal justice system also includes obligation to ensure through its judgments that the victims of crime are protected in an individual case; however, the philosophical elements of criminal justice system has to operate with the commitment to send a message to the society, that while sharing responsibility in punishing offenders of a criminal act, while administering justice, the judge also remains conscious of the fact that its judgments even while punishing offenders will have an impact on the society, as a whole. **Therefore, the judgments in such**



cases have to go beyond individual victims, while ensuring that societal interests are also not forgotten. The judgments have an impact on the society as a whole, as the Judges through their judgments, send a message to society at large, that the criminal system, while ensuring fair trial and hearing, remains aware of the challenges faced by the society and the victims.

23. This Court thus notes that when a girl has to leave her school and studies, the offender who is responsible for commission of offence of kidnapping and sexually assaulting her not only breaks laws but also the career, future and dreams of a victim child.

24. The punishment of the offender is one aspect of criminal law which punishes the offender for consequences of his acts, the deterrent that a judgment acts as against others is another crucial aspect of the criminal justice system. In this regard, this Court notes the peculiar facts of this case and the statement given by the victim to the Magistrate which has struck this Court repeatedly while adjudicating the present case that her life was spoilt as there was a break in her studies.

25. When a girl is forced to abandon her education due to such incidents as the present one, it causes a profound setback not only to an individual but to the society as a whole. In discussions surrounding the empowerment of women, education is rightly recognized as a fundamental pillar. However, when such incidents occur that force a girl to abandon her studies, the very notion of empowerment is compromised and society at large bears the consequences.



26. In the grand tapestry of societal progress, education acts as a thread that weaves together the fabric of empowerment. When this thread is frayed due to cases that force girls to abandon their studies, the very foundation of societal advancement is compromised. Creating a safe and supportive environment for girls to pursue their education is a collective responsibility that extends beyond individual incidents, criminal cases and victims.

27. Therefore, in view of the reasons stated in the preceding paragraphs, this Court finds no reasons to interfere with the impugned judgment dated 29.03.2023 passed by learned Trial Court which is based on correct facts, appreciation of evidence and the judicial precedents or to take a lenient view and interfere with the sentence awarded to the appellant herein vide order on sentence dated 28.04.2023.

28. Accordingly, the present appeal alongwith pending applications stands dismissed.

29. Copy of this judgment be forwarded to the concerned Jail Superintendent for communication to the appellant who is in judicial custody.

30. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 3, 2023/ns