



2025:DHC:9355



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 27.10.2025*+ **CRL.A. 155/2007**

UDAI PAL

.....Appellant

Through: Mr. Rajesh Kumar Passey,
Advocate

versus

STATE

.....Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with Ms.
Puja Mann, Mr. Vipin Kumar
Yadav, Advocates and SI
Vishvendra Singh**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The present appeal has been filed by the appellant, Udaipal, under Section 374 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], seeking setting aside the judgment of conviction dated 22.05.2006 [hereafter '*impugned judgment*'] and the order on sentence dated 27.05.2006 [hereafter '*impugned order on sentence*'] passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi [hereafter '*Trial Court*'] in Sessions Case No. 40/2006, arising out of FIR No. 426/2005, registered at Police Station Mayur Vihar, Delhi, for offences punishable under



2025:DHC:9355



Sections 363/366/376 of the Indian Penal Code, 1860 [hereafter '*IPC*']. By the impugned judgment, the appellant was convicted for the offence punishable under Section 376 of IPC.

2. The brief facts, as borne out from the record, are that on 11.11.2005, the prosecutrix, a minor girl, went missing from her house. A missing report was lodged on 14.11.2005, but when she could not be traced, the present FIR came to be registered on 29.11.2005. During investigation, the police apprehended the appellant Udaipal and recovered the prosecutrix from his house (*jhuggi*) located near the Delhi–Faridabad border, in Faridabad, Haryana. The prosecutrix, upon recovery, made a statement before the Investigating Officer (I.O.) as well as before the learned Magistrate, wherein she stated that she had gone with the appellant of her own on 11.11.2005 at about 5:30 PM, had married him, and thereafter lived with him as his wife. During the course of investigation, the prosecution obtained documentary proof of her age from the school records, which reflected her date of birth as 15.04.1994. Accordingly, on the date of her disappearance, she was about 11 years and 7 months old. After completion of investigation, a chargesheet was filed, and the learned Trial Court framed charges against the appellant for commission of offence punishable under Sections 363, 366, and 376 of IPC.

3. The prosecution examined nine witnesses in support of its case. The prosecutrix was examined as PW-1, the complainant Mahipal as PW-2, complainant's wife Maiti Devi as PW-3, ASI



2025:DHC:9355



Kishan Pal Singh as PW-4, Smt. Chitralkha (Headmistress of the school, to prove age of prosecutrix) as PW-5, Dr. Deepa Seth (who medically examined the prosecutrix) as PW-6, Dr. Sushil Kumar (who medically examined the accused) as PW-7, the learned Magistrate Sh. B.S. Chumbak as PW-8, and the I.O. SI Onkar Singh as PW-9. The statement of the accused was recorded under Section 313 of Cr.P.C., wherein he denied the allegations and claimed innocence. No defence evidence was adduced on his behalf.

4. Upon conclusion of the trial, the learned Trial Court, *vide* the impugned judgment dated 22.05.2006, found the appellant guilty of committing rape under Section 376 of IPC, and *vide* order dated 27.05.2006, sentenced him to undergo rigorous imprisonment for a period of five years, along with a fine of ₹200, and in default thereof, to undergo simple imprisonment for one month.

5. The present appeal was admitted by this Court on 16.03.2007, and *vide* order dated 21.01.2008, the sentence of the appellant was suspended during pendency of the appeal.

6. The learned counsel appearing for the appellant has assailed the impugned judgment on multiple grounds. It is contended that PW-2 Mahipal, the *mausa* of the prosecutrix, wanted to marry her to one Vinod, who was the brother of his brother-in-law, but the prosecutrix was allegedly in love with the appellant for the past two years. When she expressed unwillingness to marry Vinod and insisted on marrying the appellant, both of them left Delhi together for Faridabad, where they subsequently surrendered before the



2025:DHC:9355



police. It is urged that if she was considered major for purposes of marriage with Vinod, she could not suddenly be treated as minor when she married the appellant. It is further argued that during her deposition before the learned Trial Court on 02.05.2006, the prosecutrix herself stated on oath that her date of birth was 05.04.1988, and that her school record incorrectly reflected her date of birth as 15.04.1994. She further deposed that PW-2 Mahipal had deliberately got her age recorded as lower than her actual age, showing her as 7 years old at the time of admission, whereas she was actually 13 years old at that time. She also stated that at the time she left home with the appellant, she was 18 years of age. It is argued that PW-2 Mahipal is an interested witness, and his testimony is not free from bias as he was pressurizing the prosecutrix to marry his relative Vinod.

7. The learned counsel appearing for the appellant also questions the reliability of the school record produced to prove the prosecutrix's age. It is argued that the certificate (Ex. PW-2/C) issued by PW-5 Smt. Chitralekha was based solely on the entry made in the school register on the strength of an affidavit submitted by PW-2 Mahipal, who had no personal knowledge of the prosecutrix's exact date of birth. Further, the said affidavit was neither produced nor proved before the Trial Court, nor were the original school admission registers placed on record. Thus, it is contended that the document relied upon by the prosecution cannot be treated as conclusive proof of age. It is further contended that the I.O. (PW-9) failed to record the statement of the prosecutrix's father regarding her age and did not



2025:DHC:9355



conduct any bone ossification test, which could have provided an independent scientific determination of her age. It is also argued that there was unexplained delay in lodging the FIR as though the prosecutrix went missing on 11.11.2005, the missing report was lodged only on 14.11.2005, and the FIR was registered as late as 29.11.2005, giving ample time to fabricate documents and manipulate the age records. On these grounds, it is urged that the impugned judgment suffers from grave infirmities, the findings of the learned Trial Court are perverse, and the conviction deserves to be set aside. Accordingly, the appellant prays for acquittal.

8. *Per contra*, the learned Additional Public Prosecutor for the State argues that the impugned judgment is well-reasoned and based on correct appreciation of evidence. It is argued that the prosecutrix as well as the appellant have both admitted to having established sexual relations, and it has been duly proved before the learned Trial Court that the prosecutrix was below the age of consent at the time of the incident, being 11 years and 7 months old as per the school record. Consequently, her consent, even if assumed, was legally irrelevant as per Section 375 of IPC. It is therefore contended that the conviction of the appellant under Section 376 of IPC is fully justified and calls for no interference by this Court

9. This Court has **heard** arguments addressed by the learned counsel for the appellant and the learned APP for the State, and has perused the material available on record.



2025:DHC:9355



10. The present case is premised upon certain admitted facts and a few contested issues. It is not in dispute that on 11.11.2005, the prosecutrix had left her residence at Trilokpuri, Delhi, where she had been residing for about eight years with her *mausa* (maternal uncle by marriage), Mahipal (PW-2). It further came on record that she had left home to join the company of the appellant Udaipal, with whom she had developed a romantic relationship. Thereafter, both had travelled to Village Meelak and subsequently to Faridabad, where they had started living together in the appellant's *jhuggi* near the Delhi–Faridabad border. Both the appellant and the prosecutrix had admitted that they had been living together as husband and wife after solemnizing marriage and had engaged in sexual relations.

11. The charges framed against the appellant were for kidnapping the prosecutrix from the lawful custody of her guardian and for committing rape upon her. The learned Trial Court, upon appreciation of the evidence, found no basis to convict the appellant for the offence of kidnapping. It was observed that the prosecutrix had voluntarily left the custody of PW-2 Mahipal and had gone with the appellant on her own, being in love with him, and there was no material to suggest that the appellant had enticed or kidnapped her. However, since the fact of sexual intercourse between the two stood admitted, and as the learned Trial Court concluded that the prosecutrix was below the age of consent, the appellant was convicted for the offence punishable under Section 376 of IPC.



2025:DHC:9355



12. The principal issue that now arises for consideration before this Court is whether the prosecution had been able to prove beyond reasonable doubt that the prosecutrix was below the age of consent at the time of the alleged offence.

13. On this aspect, this Court has heard the learned counsel for the appellant as well as the learned APP for the State at length, and has perused the record with care. This Court notes that the learned Trial Court has noted in paragraph 9 of the impugned judgment that the prosecutrix has made inconsistent statements regarding her age before different authorities i.e., before the doctor at the time of her medical examination, her age had been disclosed as 14 years; before the learned Magistrate, it had been recorded as 16 years; and in her examination-in-chief, she had disclosed her date of birth as 15.04.1988 (making her about 17 years and 7 months old on the date of incident); and in her cross-examination, she had stated that she was 18 years old at the time of incident. In this background, the learned Trial Court held that the prosecutrix was not disclosing her true age, apparently in an attempt to shield the appellant/accused from being convicted for the offence of rape.

14. It is important to remember that **the alleged offence was committed in the year 2005, when the age of consent under Section 375 of IPC was 16 years, and not 18 years as amended later in 2013.** Therefore, for conviction, the prosecution was required to prove that the prosecutrix was below 16 years of age.



2025:DHC:9355



15. The learned Trial Court has relied upon the testimonies of PW-5 Smt. Chitralekha, Headmistress of the school where the prosecutrix had studied, and PW-2 Mahipal, her *mausa*, to conclude that the prosecutrix was below the age of consent and was about 11 years and 7 months old at the time of commission of alleged offence, her date of birth being 15.04.1994.

16. This Court notes that Smt. Chitralekha (PW-5) has deposed before the learned Trial Court that she had issued certificate Ex. PW-2/C after perusing the admission register and other records of the school, which reflected the date of birth of the prosecutrix as 15.04.1994. It is relevant to note that the said certificate had been prepared by her on 14.11.2005, i.e., after the prosecutrix had gone missing, and that she had handed over the same to the complainant PW-2 Mahipal, who had in turn given it to the I.O. During her cross-examination, PW-5 has, however, failed to specify the basis on which the date of birth had been recorded in the school register and had initially sought time to produce the relevant record. The record of the Court does not reflect that it had been subsequently produced since her further testimony recorded on 08.05.2006 mentions that she had not brought the record she had sought time to produce, however, he had only stated that the date of birth of the prosecutrix had been recorded in the school register on the basis of an affidavit furnished by PW-2 Mahipal, and that no municipal or birth certificate had been demanded by the school at the time of admission. She has further stated that the school authorities had not independently verified the date of birth mentioned in the said affidavit. She however failed to



2025:DHC:9355



produce this record i.e. either the Register or the Affidavit filed by PW-2. It is not clear as to why in case the said record existed, why it was not produced before the Court. Needless to say, it was the most crucial piece of evidence since the outcome of the case depended on the age of consent as relevant on the date of incident which was 16 years. The further deposition of this witness that in her experience, parents or guardians often reduce the age of a child at the time of school admission, has to be considered while deciding as to whether the prosecution was able to prove the age of the victim beyond reasonable doubt or not. The deposition of the witness, who had been relied upon by the prosecution to prove the age of the victim further damaged the case of the prosecution as in her cross-examination, she admitted that PW-2 Mahipal had got recorded date of birth of the prosecutrix by approximation. This admission also corroborates the statement of the victim herself that PW Mahipal had not got her correct age recorded, in the school record.

17. Adverting to the testimony of PW-2 Mahipal, he has deposed that the prosecutrix was his niece and that on the day she had left home, she was around 12 years of age. He has further stated that he had lodged a missing complaint on 14.11.2005, and when she could not be traced, he had later got the FIR registered against the appellant, whom he suspected of having kidnapped her. He has also stated that he had handed over the date of birth certificate Ex. PW-2/C to the police. In his cross-examination, PW-2 has admitted that the prosecutrix was born in her native village in Shahjahanpur, Uttar Pradesh, and not at his residence in Delhi; that he was unaware

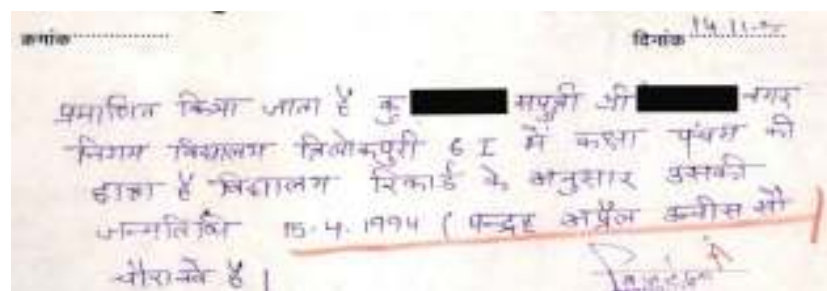


2025:DHC:9355



whether her parents had reported her birth to the village authorities or chowkidar; that he had not adopted the prosecutrix formally and held no written authority to keep her; and that the date of birth in school records had been mentioned by him on the basis of information allegedly obtained from her parents. He has, however, also admitted that no affidavit of the parents with respect to her age had been filed and that he had not even asked for such an affidavit.

18. From the above, it is evident that the prosecutrix had been admitted to school at the instance of PW-2 Mahipal, who had got her date of birth recorded as 15.04.1994. The learned Trial Court in the impugned judgment has discussed the law of Section 35 of the Indian Evidence Act, 1872, regarding the admissibility of school admission registers, but what appears to have been overlooked is that neither the original school admission register nor its certified copy had ever been placed before the Court. The only document produced was a certificate Ex. PW-2/C, prepared by PW-5 allegedly on the basis of school records, which mentioned as under:



19. Such a certificate by itself does not meet the standard of proof required for admissibility under Section 35 of the Evidence Act, as it cannot be treated as a public record or as a certified extract from an



2025:DHC:9355



official school admission register, especially as in the present case, when neither the admission register of the school, nor the affidavit allegedly filed with the school on the basis of which, the student was entered in the school register were produced before the Court.

20. The learned Trial Court has placed reliance on decision in ***Harpal Singh v. State of Himachal Pradesh: (1981) 1 SCC 560***, wherein the Hon'ble Supreme Court held that a certified copy of an entry in a government school admission register is admissible under Section 35 of the Evidence Act. There is no dispute with respect to this legal proposition. However, in the present case, neither the original admission register nor its certified copy, or the affidavit filed by the guardian declaring the date of birth of the child given to the school at the time of the admission, had been produced or proved before the Court. Similarly, reliance on ***Umesh Chandra v. State of Rajasthan: (1982) 2 SCC 202*** by the learned Trial Court is also misplaced, since in that case as well, the original school records had been duly exhibited in evidence, which is not the case here.

21. In contrast, it would be relevant to take note of the three-Judge Bench decision of the Hon'ble Supreme Court in ***Manak Chand v. State of Haryana: 2023 SCC OnLine SC 1397***, wherein it was held that where contradictions existed regarding the age of the prosecutrix and where the school register entry had not been made on the statement of her parents, the prosecution evidence regarding age could not be relied upon, especially in the absence of any ossification test. The Supreme Court further observed that even when the school



2025:DHC:9355



register itself is produced, its evidentiary value must be tested on surrounding circumstances. *However*, in the present case, even the school admission register was not produced, nor the affidavit tendered by PW-2 Mahipal in the school.

22. It is also significant that when the prosecutrix was recovered by the police on 08.12.2005 and produced for medical examination on 09.12.2005, her age had been recorded as 14 years in the MLC, prepared in the presence of her father. This is inconsistent with the prosecution's case that she was only 11 years and 7 months old at that time. The I.O. (PW-9) has admitted in cross-examination that he had neither verified the age of the prosecutrix from her father nor recorded his statement under Section 161 of Cr.P.C. Thus, the father of the prosecutrix, in whose presence the age of prosecutrix was mentioned as 14 years in the MLC, was not examined by the I.O. and not cited as a prosecution witness. The I.O. of the case (PW-9) has further admitted that he had not verified the original school records and had relied solely on the certificate handed over to him by PW-2 Mahipal.

23. In *Satpal Singh v. State of Haryana*: (2010) 8 SCC 714, the Hon'ble Supreme Court *inter alia* held that where the primary school register itself had not been produced and proved, the age allegedly mentioned in the said document could not be accepted as conclusive.

24. In *Manak Chand v. State of Haryana* (*supra*), the Hon'ble Supreme Court had also taken a note of the fact that no ossification test for determination of the age of prosecutrix was conducted even



2025:DHC:9355



though there were contradictions in the age of the prosecutrix and also considering the fact that the clinical examination of the prosecutrix therein had revealed that her secondary sexual characteristics were well developed and she was a well-built adult female. In the present case too, the MLC mentions that the secondary sexual characters of the prosecutrix were well developed and that her uterus was found to be 'just bulky'. However no bone classification test was conducted in the present case. In case of *Manak Chand v. State of Haryana* (*supra*), the Supreme Court in similar circumstances, had observed that a bone ossification test ought to have been conducted in order to reach some reliable conclusion as to the age of the prosecutrix.

25. From the overall analysis of the evidence, it is clear that the I.O. had not made proper inquiries regarding the age of the prosecutrix. The date of birth of the prosecutrix claimed as 15.04.1994 by the prosecution had been recorded in the school on the strength of an affidavit allegedly given by PW-2 Mahipal, without any supporting proof from her parents or any official record. Most importantly, neither the original school register nor the affidavit tendered by the PW-2 before school, nor their certified copies had been produced before the Trial Court. The entire case regarding the age of the prosecutrix rested solely on the certificate Ex. PW-2/C, which cannot be regarded as reliable proof of age. Furthermore, no ossification test had been conducted to resolve the inconsistencies in her age. Considering that the incident took place in 2005, when the statutory age of consent was 16 years, and in light of the absence of



2025:DHC:9355



conclusive evidence to prove that the prosecutrix was below 16 years at that time, especially when the prosecutrix herself claims that she was above the said age, this Court finds that the prosecution has failed to prove the age of prosecutrix beyond reasonable doubt.

26. Accordingly, this Court holds that the conviction of the appellant under Section 376 of IPC cannot be sustained as he deserves to be extended the benefit of doubt. The impugned judgment and order on sentence are therefore set aside, and the appellant is acquitted of all charges.

27. Bail bond stands cancelled; surety stands discharged.

28. The appeal is allowed in above terms and disposed of.

29. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

OCTOBER 27, 2025/ns