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

% ***Reserved on: 13th November, 2025***
Pronounced on: 22nd December, 2025

\+ **CRL.A.1580/2025**

STATE (NCT) OF DELHI
437, Lawyer's Chamber Block-1,
High Court of Delhi, New Delhi .....Petitioner
Through: Mr. Shoaib Haider, APP for the State with SI Achla PS Ranhola.

versus

UMESH KUMAR
S/o Sh. Dalveer Singh
R/o Village Makrand Garhi,
P.O Hasanpur, PS Nouhajhil,
District Mathura, U.P. ....Respondent
Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Criminal Appeal under Section 378(1) Cr.P.C has been filed on behalf of the Petitioner/State to challenge the Judgment dated 25.03.2019 of the learned ASJ who has acquitted the Respondent Umesh Kumar under *Section 363/366 Indian Penal Code,* 1860 (*hereinafter referred to as 'IPC'*) in Sessions Case No.53/2018 in case FIR No.196/2013 P.S. Ranhola.

2. The case of the Prosecution is that one Mr. A.U, father of the Prosecutrix lodged a missing Complaint on 08.07.2013 that his daughter 'A @ C' aged 14 years was not found in the house in the intervening night of 07.07.2013 at 02:00 A.M. She could not be traced despite best efforts. On

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his Complaint, DD No.32A dated 08.07.2023 was registered on which present FIR No.196/2013 under Section 363 IPC was registered on 08.07.2013.

3. During the investigation, on 12.07.2013 the Prosecutrix was found on Uttam Nagar Bus Terminal. Her Statement under Section 161 Cr.P.C was recorded, wherein she stated that the Accused had repeatedly forced her for marriage. In the midnight of 07.07.2013, he had come to her house and induced her to accompany him on the pretext of marriage. She remained at his house till about 3:00 A.M and on her refusal, he left her at Uttam Nagar. Her Statement under Section 164 Cr.P.C was also recorded.

4. Accused was arrested and statements of the witnesses were recorded. On completion of investigations, Chargesheet was filed for the offence under Section 363/366 IPC.

5. *The Charges were framed under Sections 363 and 366, on 28.03.2014 to which the Respondent pleaded not guilty.*

6. The Prosecution in support of its case examined **nine witnesses.**

7. ***PW1, the Prosecutrix*** who deposed about the incident, as stated in the Complaint. She proved her Statement under Section 164 Cr.P.C as Ex.PW1/A.

8. ***PW2 Smt. Alka Koundanya,*** Principal, Rajdhani Public School, Vikas Nagar, Hastsal, proved the School record of the Prosecutrix which is Ex.PW2/A and Ex.PW2/B. The Affidavit filed by the father of the child at the time of her admission in the School is Ex.PW2/C.

9. ***PW3, the M.M*** proved the Statement of the Prosecutrix under Section 164 Cr.P.C dated 16.07.2013 which is Ex.PW1/A.

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10. ***PW7 AU father of the Prosecutrix***, had deposed about the entire incident and about making the Complaint to the parents on which FIR Ex.PW4/B was registered.

11. ***PW4 ASI Virender Kumar*** was the Duty Officer who registered the FIR Ex.PW4/B.

12. ***PW5 Sh. Harlal Yadav*** was the owner of the house in which the Accused was residing as a tenant. He deposed that after registration of the case, Uncle and father of the victim had come to his residence making an enquiry about the Respondent and he assured full assistance to them.

13. ***PW6 Shiv Kumar*** was the owner who had rented out the house to the Respondent in May or June, 2013.

14. ***PW9 SI Praveen*** was the initial Investigating Officer who got the Statement of the Prosecutrix recorded. Thereafter, the investigation was got handed over to ***PW8 SI Binod,*** Investigating Officer who completed the investigations and filed the Chargesheet.

15. The Statement of the Respondent was recorded under ***Section 313 Cr.P.C*** in which he denied all the incriminating evidence and claimed his innocence.

16. The learned ASJ in its detailed ***judgment dated 25.03.2019*** held that the Prosecution had failed to prove the basic ingredients of offence under Section 363/366 IPC and the Accused was given benefit of doubt and acquitted.

17. The Judgment has been ***challenged by the State on the ground*** the evidence led by the Prosecution has not been appreciated properly which has led to the acquittal of the Accused. Vital pieces of evidence have been ignored. The minor contradictions and improvements which were not fatal to

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the case of the Prosecution, have been over-emphasized to give the benefit to the Respondent. The Prosecutrix had deposed that the Accused did *Jabardasti* (established sexual relationship forcibly), but this aspect has not been considered. Moreover, the Prosecutrix was less than 16 years of age at the time of incident and her consent, if any, was of no consequence.

18. Furthermore, the documents of the School first attended were proved by PW2. Even if there was any cutting or correction made in the school record regarding the date of birth of the Prosecutrix from 22.09.1998 to 21.09.1999, the same was explained by PW2. Even if the corrected date of 1999 was taken, the Prosecutrix was less than 16 years at the time of the incident.

19. Rule 12 of Juvenile Justice (Care & Protection of the Children) Rules, 2007 framed under Juvenile Justice (Care & Protection of the Children), 2000, has not been followed. The incriminating evidence has been ignored.

20. *Hence, a prayer is made that the Judgment be set aside and the Respondent be acquitted.*

21. *The Respondent was served and he had put an appearance in the Court, but thereafter he failed to appear.*

Submissions heard and record perused.

22. The ***first aspect*** which is disputed, is the age of the child. The learned ASJ in the detailed judgment held that there was no cogent proof of the date of birth of the child.

23. The Prosecution in support of its case had examined *PW2 Smt. Alka Koundanya, Principal, Rajdhani Public School, Vikas Nagar Hastsal,* New Delhi, who had proved the Admission and Withdrawal School Register, copy of which is Ex.PW2/A and the Admission Form is Ex.PW2/B. The

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Affidavit of the father of the Prosecutrix is Ex.PW2/C and the copy of the Result Sheet of the year 2011-12 pertaining to the Prosecutrix, is Ex.PW2/D.

24. The perusal of the Admission/Withdrawal Register Ex.PW2/A as well as the Admission Form Ex.PW2/B reflects that the date of birth of the child was written as 22.09.1998 and subsequently, it was corrected to 21.09.1999. It is pertinent to observe that in the Application for Admission to Class I, initially the date of birth was mentioned as 22.09.1998, but an endorsement was made that the Provisional Admission without any document had been given and 15 days period was given to submit the proper document.

25. The Affidavit Ex.PW2/C was thereafter, submitted by the father on 08.12.2006, certifying the age of the Prosecutrix as 21.09.1999. Thereafter, the date of birth had been corrected in the school records as 21.09.1999.

26. Though, there is no binding proof of the Certificate of the age of the child at the time of admission in the School, but it cannot be overlooked that the school records reflected her correct age as 21.09.1999. This correction is quite comprehendible that it had been corrected on the subsequent filing of the Affidavit of the father.

27. Though, the father as PW1 had deposed that he was not having any knowledge about the age of his children, but it cannot be overlooked that this Affidavit is dated 08.12.2006 and there was no reason for the father to have given a wrong date of birth of the child. It being the document pertaining to the school of the child wherein the corrected date of birth is noted as 21.09.1999, it cannot be said that there was no evidence whatsoever led by the Prosecution to prove the age of the Prosecutrix.

28. Whether the date of birth of the child is taken as 22.09.1998 or 21.09.1999, she was less than 18 years on the date of incident i.e.

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07.07.2013. It is also pertinent to mention that in the Statement under Section 161 Cr.P.C as well as under Section 164 Cr.P.C, the Prosecutrix had given her age as 16 years. It has been sufficiently established by the Prosecution that the Prosecutrix was below the age of 18 years and therefore, the POCSO Act was applicable.

29. *The Respondent has been charged with the offence of kidnapping with an intent to marry the Prosecutrix punishable under Section 363/366 IPC.*

30. The first material witness examined by the Prosecution is PW7, Mr. AU, father of the Prosecutrix. He deposed that in the middle of the night on 07.07.2013 at about 02:00 A.M., he woke up and found that his daughter was not in the room. He searched for her and even asked the wife about her whereabouts. He made efforts to trace the daughter, after which he thought that his child has died. In the morning at 10:00 A.M he went to PS Ranhola and made his Complaint, on which FIR Ex.PW4/B was registered.

31. He further deposed that his nephew Chottu informed him that his daughter used to talk to Respondent who lived in the house opposite to their house. He contacted the ACP Rajouri Garden and expressed his suspicion. The daughter was recovered after 2-3 days who informed him that she had gone with Umesh. Pertinently, in his cross-examination he stated that he did not know that Umesh residing opposite to their house, about which he came to know from his nephew Chottu.

32. The testimony of PW7 the father, therefore, establishes that he had merely registered the missing Report in respect of his daughter and that he had no idea about the person who may have taken her. The suspicion was cast on Umesh on the telling of Chottu, but this Chottu had not been made a

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witness. Be as it may, it is on the suspicion that the Respondent was arrested subsequently.

33. The second witness who is material is **PW1 the Prosecutrix.** She deposed that Umesh was their neighbour and she had become friendly with him and fallen in love. He used to ask her to marry him. On 07.07.2013, in the night time, the Accused had called her and told that he wanted to marry her and he was standing outside the house of the Prosecutrix. She enquired as to why was he standing out, on which he stated he stated that he wanted to marry her, but she refused. However, the Respondent convinced her and she agreed to accompany him. She went to the house of the Respondent where she remained till 03:00 A.M. Thereafter, the Respondent took her and left her in the area of Uttam Nagar and went away.

34. The Prosecutrix had deposed in her cross-examination, that she had been called on the mobile by the Respondent, while he was standing outside and she on his insistence, accompanied him to his house. However, she has made some significant admissions in her cross-examination. She deposed that she had no mobile number at the time of incident; only her father was having a mobile phone. She further admitted that she had no mobile through which she could talk to Umesh. She was unable to tell the mobile number on which the Respondent had called at the time of incident. She further admitted that it had never happened that Umesh called her on the mobile phone of her father or that she had talked to him through his mobile. She clarified that she had never provided the mobile phone number of her father to anybody except to the school friends who used to call her on the father's mobile.

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35. Thus, what emerges from her cross-examination is that her claim that she was called by the Respondent, is patently incorrect. She did not have any mobile phone of her own but in the family only her father possessed one. The Respondent Umesh admittedly did not call on the mobile phone of her father, which proves that he had not called her on the mobile or asked her to come out of the house. *It all rather points out that she herself left the house in the middle of the night and went to the house of the Accused.*

36. Another significant fact which emerges is that she had claimed that Respondent had been forcing her to marry; if so was the intent, Umesh would not had left her near Uttam Nagar at about 03:00 A.M. The very act that she was left at Uttam Nagar by the Respondent, further establishes that he had no intent to marry her but because she was not inclined to go back home, he left her at Uttam Nagar.

37. To bring home the offence under **Section 363 IPC**, there are two essential ingredients; ***one*** is that she should be below the age of 15 years and ***secondly,*** she must have been "*taken away"* or "*enticed*" by the Accused. In the present case, while her age is proved to be 13-14 years at the time of incident, the requisite ingredients of *taking away* or *enticing*, is conspicuously missing.

38. In the case of *S. Vardarajan vs. State of Madras*, AIR 1965 SC 942, it was observed that the distinction between "*taking"* and allowing the minor to accompany a person, must be borne in mind. These two expressions are not synonymous. In the said case, minor had left her father's protection knowing and having full capacity to know the full import of what she was doing voluntarily, to join the accused persons. It was held that in such a

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situation, it cannot be said that she had been taken away or lured out of the keeping of the lawful guardian.

39. In the present case, the evidence as discussed above, clearly establishes that she was neither lured nor enticed on the pretext of marriage. Rather, the evidence indicates that she herself went to the house of the Accused, since she as per her own admission had been in love with him. She also admitted in her cross-examination that Accused did not pressurize her to leave her house. She deposed in her testimony as well as in the Statement under Section 161 and 164 Cr.P.C that she did not want to go back to her house, she was left near Uttam Nagar area by the Respondent at about 03:00 A.M. While she was sitting near the Uttam Nagar Metro Station, she met Lucky and she went with him to his house, where she stayed for about three days. She left the house of Lucky and came to Uttam Nagar, where she was apprehended by the Police.

40. Her evidence reflects that she herself had left the parental home and there was no kidnapping in terms of Section 363 IPC nor was there any intent of the Respondent to marry her making it an offence under Section 366 IPC. The offence under Section 363 and 366 IPC have not been established by the Prosecution.

41. Before concluding, it is also pertinent to note that though she never stated so in her statement under Section 161 or 164 Cr.P.C, she for the first time in her examination in chief stated that "*Accused Umesh did Jabardasti with me at his house. By 'Jabardasti', I mean, he forcibly established sexual relations with me*".

42. It has been rightly observed by the learned ASJ that the Prosecutrix had improved her statement and had given different versions in her three

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statements; two recorded by the Police and the learned MM and in the testimony recorded in the Court. There is no medical also corroborating her assertions that she was raped.

43. It is clearly evident that her testimony of alleged sexual relationship, is an afterthought brought for the first time in the Court in her testimony. The testimony of the Prosecutrix is inconsistent in her versions, and is therefore, not reliable.

44. In the case of *Raj Kumar vs. State* 1997 (2) SCC 292, the Supreme Court held that where the Prosecution witness is absolutely inconsistent and has been changing the stand from time to time, such witness cannot be regarded as reliable and trustworthy witness of the occurrence.

45. There are material improvements and contradictions in the testimony of the Prosecutrix as has been rightly observed by the learned ASJ. The Prosecution evidence fails to prove the offence of Section 363/366 IPC against the Respondent, beyond reasonable doubt. The benefit of doubt has been rightly extended to the Respondent.

46. There is no infirmity in the impugned judgment and the Appeal is hereby **dismissed**.

47. The Appeal stands disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 22, 2025
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