



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

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Judgment Reserved on: 18.02.2026
Judgment pronounced on: 23.02.2026

+ **CRL.A. 173/2020**

AMIT

.....Appellant

Through: **Mr. Adit S. Pujari, Advocate**
(DHCLSC) with Mr. Bhavesh Seth,
Advocate

versus

STATE

.....Respondent

Through: **Mr. Utkarsh, APP for the State with**
SI Geetam Singh.
Mr. Vaibhav Tomar, Ms. Heena
Khan, Mr. Prabhjot Singh Dhillon and
Mr. Hriman Dhaka, Advocates for
Prosecutrix

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374(2) read with Section 383 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by accused no. 1(A1) in Sessions Case No. 1653/2016 (Old Case No. 169/2013) on the file of Additional Session Judge-01,



(POCSO), South-East District, Saket Courts, New Delhi, assailing the judgment dated 04.10.2019 and order on sentence dated 18.10.2019 as per which he has been convicted and sentenced for the offences punishable under Section 376 of the Indian Penal Code, 1860 (the IPC) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 24.07.2013 at about 04:00 pm, A1 and accused no. 2 (A2), in furtherance of their common intention, kidnapped PW5 and PW9 from their lawful guardianship and took them to Suratgarh, Rajasthan, where A1 committed penetrative sexual assault on PW5. It is also alleged that accused no. 3 (A3) wrongfully confined PW5 and PW9 at his house and abetted the commission of the penetrative sexual assault. Hence, the accused persons are alleged to have committed the offences punishable under Sections 363, 366A, 368, 376 read with 34 IPC and Sections 4 and 17 of the PoCSO Act.

3. On the basis of Ext. PW1/A FIS of PW1, given on



25.07.2013, Crime No. 244 of 2013, Badarpur Police Station, that is, Ext. PW16/A FIR was registered by PW16, Assistant Sub Inspector. PW17 conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report before the court, alleging the commission of the offences punishable under the aforementioned Sections.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court as per two separate orders dated 21.11.2013, framed a Charge under Sections 363, 366A, 376 read with 34 IPC and Sections 4 and 17 of the PoCSO Act against A1; Sections 363, 366A read with 34 IPC and Section 17 of the PoCSO Act against A2 and Section 368 IPC and Section 17 of the PoCSO Act against A3, which was read over and explained to the accused persons, to which they pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 17 were examined



and Exts. PW1/A-B, PW1/DA, PW2/A, PW3/A, PW4/A, PW5/A, Mark X, PW7/A, PW8/A-B, PW9/A-B, Mark A, PW12/A, PW13/A, PW14/A, PW15/A-D, PW17/A-I and Mark 17A were marked.

6. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. They denied all those circumstances and maintained their innocence.

7. After questioning the accused persons under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not *ipso facto* vitiate the proceedings unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused persons (see **Moidu K. versus State of Kerala, 2009 (3) KHC**



89; 2009 SCC OnLine Ker 2888). In the case on hand, the accused persons have no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to them.

8. No oral and documentary evidence was adduced by the accused persons.

9. Upon consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 04.10.2019, held A1 guilty of the offences punishable under Section 376IPC and Section 4 of the PoCSO Act. A1 to A3 have been acquitted under Section 235(1) Cr.P.C of the charges under Section 363, 366A, 368 read with 34 IPC and Section 17 of the PoCSO Act. The trial court, *vide* order on sentence dated 18.10.2019, sentenced A1 to rigorous imprisonment for a period of ten years and fine of ₹10,000/- and in default of payment of fine, to simple imprisonment for one month for the offence punishable under Section 376 IPC. Benefit under Section 428 Cr.P.C has been granted. Aggrieved, A1 has come up in



appeal.

10. It was submitted by the learned counsel for A1 that PW5 admitted in her testimony that she was in a relationship with A1 and that a marriage ceremony had taken place between them. PW5 was more than 15 years of age at the time of the incident. Since the incident occurred on 24.07.2013, which is before the pronouncement of the Apex Court's dictum in **Independent Thought v. Union of India(2017) 10 SCC 800**, Exception 2 to Section 375 IPC was applicable, under which sexual intercourse by a husband with his wife, the wife not being under 15 years of age, did not constitute rape. Reliance was placed on the dictum in **Islam v. State of Uttar Pradesh, 2025 SCC OnLine All 5974**.

11. It was submitted by the learned *Amicus Curiae* appearing for PW5 that the alleged marriage was not a valid marriage but a child marriage, which is voidable at the instance of the victim. PW5 in her testimony deposed that she does not consider A1 to be her husband and that she does not want to live with him as his



wife. It was further submitted that the religion of A1 has not been established as he has a Hindu name, but his father's name suggests that he is a Christian and hence, such a marriage cannot be legally recognised. Reliance was placed on **Gullipilli Sowria Raj v. Bandaru Pavani, (2009) 1 SCC 714** and **Vishwanath Ahirwar v. State of Uttar Pradesh, (2023) 1 HCC (All) 48**.

12. The learned Additional Public Prosecutor submitted that there is no infirmity in the impugned judgment calling for an interference by this Court.

13. Heard both sides and perused materials on record.

14. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellant/A1 by the trial court are sustainable or not.

15. The law was set in motion by Ext. PW1/A FIS of PW1, namely, the brother of PW5 and PW9 on 25.07.2013, in which he has stated that his sisters (PW5 and PW9) had gone missing since 24.07.2013.



16. Ext. PW5/A 164 statement of PW5 is seen recorded on 03.08.2013. In her statement, PW5 has stated thus: She left her home with her sister on 24.07.2013. She loves Amit (A1). He is known to her for last 3 months. She told Amit to take her away from home. Bhoop Singh (A2), Amit's friend, also came. All of them went to Ganganagar by train. He put his private part inside her private part. We had sex once, and then we came to Delhi.

17. PW9, sister of PW5, in her Ext. PW8/B 164 statement states thus: She left her house with her sister (PW5) in the afternoon of 24.07.2013. They went along with Amit (A1), who said that he would meet them outside the house. They went to Palwal and then took a train to Ganganagar because Amit (A1) told them that his friend lives in Suratgarh. Her sister (PW5) and Amit are having an affair. Amit's brother told him on the phone to come to Delhi so they came to Delhi and then the police apprehended them.

18. PW5 when examined deposed that at A1's request, she



went to Palwal along with her sister PW9 and Bhoop Singh (A2) for an excursion. They travelled first to Palwal by auto, then proceeded to Ganga Nagar by train, and thereafter to Surat Garh by bus. At Surat Garh, they stayed at the house of Sunil (A3), who is related to Bhoop Singh (A2). Amit (A1) had physical relations with her like a husband with wife. Amit (A1) thereafter returned to Delhi. They stayed at Surat Garh for about 8 to 9 days. Amit (A1), Sunil (A3), and Bhoop Singh (A2) were employed at Surat Garh and used to go out for work during the day. One night, she stayed alone in a room with Amit (A1), while other family members slept in another room. Amit (A1) had physical relations with her on the said day. A marriage ceremony was also performed between her and Amit (A1) at Surat Garh, though she does not remember the exact date. PW5 further deposed that she does not consider Amit (A1) to be her husband and does not wish to live with him. After about ten days, while they were returning to Delhi, the police apprehended them at the Railway Station. PW5 admitted that when



she was taken for medical examination, she refused to undergo it.

18.1. PW5, in her cross-examination, admitted that on 24.07.2013, she went gone with Amit (A1) voluntarily, as he told her they would go on an excursion. Amit (A1) took her and her sister PW9 to Palwal in an auto. A1 did not force or compel them to accompany him in the auto. PW5 deposed that her marriage with A1 was solemnised in a temple at Surat Garh. She could not recall the exact date of their marriage. PW5 admitted that the marriage was performed with her consent and willingness. In the cross examination, PW5 also has a case that A1 had physical relations with her forcibly and without her consent. According to PW5, she was disturbed and scared, and hence did not go for medical examination. She denied the suggestion that no medical examination was done because A1 did not have physical relations with her.

19. PW9 deposed that on 24.07.2013, she and PW5, her sister, left their house and went along with A1 to Palwal and took a



train to Shri Ganga Nagar. They met Bhoop Singh @ Bhagwan Singh (A2) at Saathfoota road, who also accompanied them. From Shri Ganga Nagar, they went to Surat Garh and met Sunil (A3). They stayed at Sunil's (A3) house. After about 6 to 7 days, Amit (A1) returned to Delhi as he had some urgent work. A1 was arrested in Delhi by the police. When Bhoop Singh (A2) was bringing them back to Delhi, the police met them at the railway station of Surat Garh. PW9 admitted that she refused her medical examination.

19.1. During her cross-examination, PW9 admitted that PW5 was having an affair with Amit (A1) and they had planned to elope. PW9 admitted that Bhairo (A2) helped them speak to their parents on the phone whenever they asked him to connect them to their home. PW9 deposed that she did not see A1 and her sister having any physical relations.

20. PW10, mother of PW5 and PW9, deposed that there is an age difference of approximately two and a half years between her



two daughters. She denied any affair between PW5 and A1.

21. The challenge in this appeal is limited to the allegation of rape and penetrative sexual assault punishable under Section 376 IPC and Section 4 of the PoCSO Act against A1. All the accused persons, including A1, have been acquitted of the Charge of kidnapping, abetment, and confinement.

22. Section 375 IPC defines the offence of rape. It provides that sexual intercourse amounts to rape if it is committed against a woman's will, without her consent, with consent obtained by fear or misconception of fact, with consent given by a woman who is incapable of understanding the nature and consequences of the act, or with or without her consent when she is under the prescribed age.

23. The learned counsel for the appellant/A1 submitted that the case on hand would fall within Exception 2 of Section 375 IPC as it stood before the decision in **Independent Thought** (*supra*). Exception 2 as it stood then provided that sexual intercourse by a



2026:DHC:1557



man with his own wife, the wife not being under fifteen years of age, was not rape. The prosecution version itself indicates that a marriage ceremony was performed between A1 and PW5, and the age of PW5 was above fifteen years at the relevant time, the act of sexual intercourse would *prima facie* fall within Exception 2 to Section 375 IPC, as it then existed. Since the date of the incident in the present case is before the decision in **Independent Thought** (*supra*), the ratio cannot be applied retrospectively.

24. A perusal of Ext. PW15/D birth certificate of PW5 indicates that PW5 was born on 05.02.1998 and therefore was aged 15 years and 5 months at the time of the incident. Therefore, it is proven that PW5 was above 15 years of age at the time of the incident.

25. Coming to the aspect of marriage, PW5 herself admits that she and A1 had undergone a ceremony of marriage in a temple at Surat. It is true that PW9 her sister does not speak of it. But PW5, the victim herself says that her marriage with A1 had been



2026:DHC:1557



solemnised. There is no case for the prosecution that the marriage had not been solemnised as per the rites and customs of the community to which they belong. PW5 admittedly was aged 15 years at the time of marriage, apparently a minor. Section 2(a) of the Prohibition of Child Marriage Act, 2006 (the PCM Act) defines a child as a person who, if a male, has not completed 21 years of age and if a female who has not completed 18 years of age. Section 2(b) defines child marriage as a marriage to which either of the contracting parties is a child. Apparently PW5 was a child when the marriage was solemnised. Section 3 of the PCM Act reads thus –

“3. Child marriages to be voidable at the option of contracting party being a child.—(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.



(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.”

(Emphasis Supplied)

Reading Section 3 of the PCM Act makes it clear that a child marriage whether solemnised before or after the commencement of the act would be voidable at the option of the party who was a child at the time of the marriage. The proviso makes it clear that



the contracting party to the marriage who was a child at the time of the marriage, has to move a petition for annulling the marriage before the District Court concerned. Therefore, a person who wants to avoid the marriage on the ground that it is voidable, will have to follow the procedure contemplated under the proviso and not otherwise. PW5 has no case that any application has been moved under Section 3 of the PCM Act.

26. The testimony of PW5 and PW9 makes it clear that the former did have an affair with A1 and that she had voluntarily eloped with A1. In the 164 statement, PW5 has no case of forcible sexual intercourse by A1. PW5 in the box also admitted that the relationship was consensual. However, on further cross examination she deposed that A1 had forcibly established sexual relations with her. It is clear that PW5 being a minor, her consent is immaterial. However, apart from the testimony of PW5, there is no other evidence including medical evidence to support her version. It is certainly true that for a conviction of an offence under



Section 375, the sole testimony of the victim alone be sufficient provided it is trustworthy and credible.

27. In this context, I refer to exhibit PW2/A, the MLC of PW1. The column relating to the particulars of injuries reads thus –

“Alleged H/o absconding from her home on 24.07.2013 with her sister without her parent’s knowledge.

Their parents lodge a FIR regarding them missing on 25.07.2013. They went to Suratgarh with their neighbour Amit and Bhoop Singh and returning to home on 01.08.2013, when police found them on railway station.

No H/o sexual assault/rape.

Victim not giving consent for gynaecological examination.”

(Emphasis supplied)

28. In addition to this, PW9, the sister of PW5 deposed that she along with PW5 and A1 were in the same room and that they were sleeping in the same cot. But she never saw A1 having sexual intercourse with PW5, her sister. PW5 does not give any cogent reason(s) as to why she refused medical examination. Therefore, on an entire reading of the materials on record, I find that the prosecution has not been able to prove the offence of rape beyond



reasonable doubt and that so A1/the appellant is entitled to the benefit of doubt.

29. In the result, the appeal is allowed, and the impugned judgment is set aside. The appellant/A1 is acquitted under Section 235(1) Cr.P.C. of all the offences charged against him. He is set at liberty and his bail bond shall stand cancelled.

30. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 23, 2026/ER/RS