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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 4th February, 2026**Uploaded on: 7th February, 2026*

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CRL.A. 761/2017

STATE (NCT OF DELHI)

.....Appellant

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav, Adv.
SI Babita Kumari, PS Aman Vihar

versus

MIRAJ @ IMRAJ

.....Respondent

Through: Respondent in person.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE MADHU JAIN****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the State assailing the judgement dated 6th August, 2016 passed by the ASJ-01, (North West), Rohini, District Courts, New Delhi by which the Respondent has been acquitted by the Trial Court for charges under Sections 376/354(D)/506 of the Indian Penal Code, 1860 (*hereinafter*, 'IPC') and Sections 4/12 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter*, 'POCSO Act') in *Sessions Case No. 190/14*.

Factual Background

3. It is the case of the Prosecutrix that she and the accused were working together in a factory. The Accused would attempt to talk to her several times



and used to also follow her, when she used to leave the factory. The Prosecutrix did not inform her parents about the said conduct as she was afraid that they would compel her to leave the job. According to the Prosecutrix, the alleged incident occurred on 19th August, 2014 when she had taken leave from the factory, as she was not feeling well. On that said date, the Accused is stated to have visited the residence of the prosecutrix at about 9 - 9:30 AM in the morning. It is the allegation of the Prosecutrix that the Accused bolted the door from inside and raped her. The sister of the Prosecutrix happened to reach the residence for some work, the Accused was still present at the residence and he was hiding under the bed. The sister of the Prosecutrix saw the accused, she had bolted the door from outside and had called someone from the neighbourhood for help. When the door was unbolted, the Accused is stated to have escaped.

4. It is the further case of the Prosecutrix that the incident was informed to the father of the Prosecutrix after a couple days. Thereafter, on 24th August, 2014, the father of the Prosecutrix made a call to the P.S. Aman Vihar, stating that the accused had raped her daughter. The said information was recorded in DD No. 18 A at P.S. Aman Vihar. The father of the Prosecutrix then reached P.S. Aman Vihar along with his daughters *i.e*, the Prosecutrix and elder daughter. Inquiries were made by the Investigating Officer and the girl was sent for medical examination to SGM Hospital and MLC was prepared. Pursuant thereto, the statement of Prosecutrix was recorded under Section 164 of Cr.P.C and complaint was filed by the father of the Prosecutrix that the Accused had raped his daughter on 19th August, 2014, *i.e.*, 6 days before the filing of the complaint. The ***FIR NO. 916/2014*** was registered at P.S. Aman Vihar.



5. The accused was arrested upon being identified by the Prosecutrix, on 24th August, 2014. Thereafter, charges were framed against the Accused for offences punishable under Section 11/12 of POCSO Act, alternatively under Sections 354-D of IPC and 3(a) and Section 4 of the POCSO Act, alternatively under Sections 376(2) (i) of IPC and 506 of IPC *vide* order on charge dated 13th February, 2015.

Proceedings before the Trial Court

6. In order to prove the charges against the Accused, 15 witnesses were examined by the prosecution, out of which certain key witnesses have confirmed the incident which has taken place. The key witnesses are as follows:

- (i) PW-5, The Prosecutrix,
- (ii) PW-6, Doctor at the SGM Hospital,
- (iii) PW-7, Doctor at the SGM Hospital,
- (iv) PW 9, Sister of the Prosecutrix,
- (v) PW 13, father of the Prosecutrix,
- (vi) PW 14, Independent witness.

7. However, in cross-examination, PW-14 denied that the accused was the same person who came out of the residence when the incident took place. Moreover, he also stated that the estimated age of the Prosecutrix, who was inside the room, would be around 18 years.

8. In order to prove the age of the Prosecutrix, the prosecution had also relied upon the testimony of PW-2, Mr. Rajendra Gautam, lab Assistant, Govt. Girls. Sr. Secondary School, JJ Colony, Nangloi, Delhi. PW-2 stated that the date of birth of the Prosecutrix was 12th December, 1999 which was recorded on the basis of an affidavit given by the father of the Prosecutrix.



9. After the prosecution evidence, the defence did not lead any evidence. Arguments were heard and the Trial Court acquitted the Accused *vide* the judgment dated 6th August, 2016 passed by the ASJ-01, (North West), Rohini, District Courts, New Delhi.

Findings of the Trial Court

10. On the basis of all the evidence which was recorded, and the arguments that were advanced, the Trial Court came to the various conclusions.

Age of the Prosecutrix

11. The Trial Court came to the conclusion that the Prosecution has not been able to prove that the age of the Prosecutrix is less than 18 years of age and that the Prosecutrix is a child within the meaning of Section 2(d) of the POCSO Act. In this regard, the reasoning given by the Trial Court is as under:

“23. In cases involving sexual assault, the age of the prosecutrix plays a vital role, the question of consent will very much depend upon the age of the prosecutrix. In the present case, to prove the age of prosecutrix the prosecution has relied upon both the Oral as well as Documentary evidence.

24. The prosecution has examined PW-2, who produced the record from the school where the prosecutrix had studied. At the time of admission of the prosecutrix in the said school in 6th class, her father had got recorded her date of birth as 12.12.1999, on the basis of an affidavit which is Ex. PW 2/D inter alia stating therein that the prosecutrix had not studied in any Govt./ recognized school and she had studied at home privately upto 5th class. The father of the prosecutrix was examined in the matter as PW-13 and he disowned this affidavit and admitted that the prosecutrix had studied at Maina Devi children Academy, Diwan Bazar, Gorakhpur, U.P. upto 8th standard. The application through which PW-13 had sought admission of the prosecutrix in the school is Ex. PW



2/C whereby he had communicated to the school that the prosecutrix had not studied in any school and also mentioned about an affidavit (Ex. PW 2/D) in this regard. There is a transfer certificate of the prosecutrix on record as Ex. PW 2/E which clearly goes on to show that PW-13 had sworn a false affidavit with regard to the age of the prosecutrix. In his evidence PW-13 has stated that immediately after the birth of prosecutrix he had got her horoscope (Janampatri) made but a copy thereof which he placed on record as Ex. PW 3/DX-1 goes on to show that the same was got prepared by him after the filing of charge sheet in the matter and he has duly admitted this fact in the later part of his cross-examination. Therefore, the recording of the date of birth of the prosecutrix in the school record by PW-13 cannot be taken as an authentic proof of her correct date of birth. In the case of Birdi Mal Singhavi vs. Anand Purohit, 1988 Supp. SCC 601, it has been held that no evidentiary value can be attached to Date of Birth entry in the absence of material on the basis of which, such entry was made.

25. Seeing the matter from another angle will also take us to the same conclusion. Admittedly the prosecutrix has two elder sisters and two younger brothers. The IO should have obtained their documents with regard to age and could have easily compared the ages of all the siblings and then some authenticity could have been lent to the date of birth of the prosecutrix lying mentioned in her school record. PW 14 Sh. Sandeep @ Bunty who was the neighbour of the prosecutrix and had opened the door of the house on 19.08.2014 has categorically stated that the prosecutrix was around 18 years of age at the time of incident. As per prosecutrix herself she was gainfully employed in a factory where accused was also employed. This fact also goes on to show that the prosecutrix was a major as no employer would run a risk of employing a minor in his factory in the teeth of the stringent Labour Laws. Therefore, the prosecution has not been able to prove the fact that the prosecutrix was a child within the meaning of Section 2



(d) of the Act.”

(ii) Delay in reporting the matter to Police

12. The Trial Court held that the Prosecution has not been able to offer any reasonable explanation for a delay of 5 days in reporting the incident to the Police. In this regard, the findings of the Trial Court are as under:

“32. Adverting to the facts of the present case. The accused had allegedly entered into the house of prosecutrix and had committed penetrative sexual assault upon her on 19.08.2014 between 9-9:30 a.m. to 11 a.m. He was still there in the house when PW-9 had reached there and knocked at the door whereafter the accused had concealed himself beneath the bed but she managed to notice his presence. She raised alarm, bolted the door from outside and got the attention of the people of neighbourhood invited about the presence of accused in her house. She got the door opened through PW-14 Sandeep @ Bunty, however the accused managed to run away from there after the door was opened. PW-9 has admitted in her evidence that she had come to know about the commission of penetrative sexual assault upon the prosecutrix by the accused on that very day itself. She has further admitted that she had made a call to her father on his mobile phone regarding the incident but strangely she further says that she did not communicate him about the commission of penetrative sexual assault upon the prosecutrix by the accused because of fear. The explanation which has been offered by PW-9 and PW-13 in not reporting the matter to the police from 19.08.2014 till 24.08.2014 are as under:-

“PW-9

xxx

I informed him about the incident of entering a boy in our home, but I did not tell the fact of rape to him out of fear. The neighbours were asking my father to lodge a report, but my father had waited for my mother and my two married elder sisters and after their



arrival, we all had a talk with each other and then finally decided to lodge a complaint.

xxx”

PW-13

“xxx

I made inquiry from my daughter R, but she could not tell anything to me initially. On 23.08.2014, one of my relatives had visited my house with whom, I had discussed about the said incident, who had a talk with my both daughters and came to know that the said boy had threatened them not to disclose to anything to anyone, otherwise, he would kill their father and both brothers. On 24.08.2014, it was Sunday. My said relative Sh. Krishan Mohan Pandey and myself took both my daughters to police station.

xxx”

33. PW-9 has stated that although the neighbours had pressed hard to report the matter to the police but her father wanted his wife and two married elder daughters to come from village and the matter would be reported only after consulting them.

34. Whereas PW-13 in his evidence in this regard has stated that on 23.08.2014 one of his relatives namely Sh. Krishan Mohan Pandey had visited his house with whom he had discussed about the incident and thereafter he and his said relative had spoken to the prosecutrix and PW-9 and only thereafter he along with both of his daughters had gone to PS on 24.08.2014 at about 6 p.m.

35. It is worth noticing that the prosecutrix in her statement U/S 164 CrPC Ex. PW 5/B had stated that she got the present case registered against the accused at the instance of her father. The stand of the prosecutrix in her evidence is that she had disclosed to PW-9 about the commission of penetrative sexual assault upon her by the accused only on 23.08.2014 in the evening, who in turn had communicated the same



to PW-13, who had thereafter taken both of them to PS on 24.08.2014 and reported the matter.

36. There is a clear contradiction in the explanations for the aforesaid delay offered by prosecutrix, PW 9 and PW – 13. PW-9 has not spoken a word about their relative having visited their house and advising them to report the matter to the police. Whereas PW – 13 has not spoken anything about he having decided that the matter would be reported to the police only after the arrival at home of his wife and two married daughters.

37. Therefore, the prosecution has miserably failed in offering any reasonable explanation for the delay of 5 days in reporting the matter to the police.”

(iii) Conduct of the Prosecutrix

13. While taking into consideration the conduct of the Prosecutrix, the Trial Court considered that the Accused person was known to the Prosecutrix. Moreover, when the Prosecutrix was confronted with photographs showcasing her and the Accused in an intimate position, she added that the photographs were clicked 4 to 5 days prior to the incident. Additionally, the Court also considered that during her counselling with the Child Welfare Committee on 25th August, 2014, she had probably disclosed that she had friendship with the accused. Moreover, the Court also noted that when the 164 Cr.P.C statement of the Prosecutrix was being recorded, her father kept sitting with her, probably to make sure that the Prosecutrix deposed in a certain way. Therefore, the Trial Court concluded that the possibility of the Accused and Prosecutrix having a consensual relationship on the date of the incident cannot be ruled out. In this regard, the Trial Court has observed as under:

“40. In cases of sexual assault, evidence with



respect to consent cannot be obtained by direct evidence but same can be inferred from the surrounding circumstances enveloping the occurrence. Admittedly the accused was known to the prosecutrix as well as PW-9 as he had been working in the same factory where the prosecutrix had been working. The prosecutrix in her evidence has leveled allegations of stalking against the accused whereas in her cross-examination in the first line itself she had stated that she did not know the accused and had never talked to him. When she was confronted with a photograph Ex. PW5/DX-1 depicting her and accused in an intimate position then she hastened to add that the said photograph was got clicked at Rajdhani Studio about 4-5 days prior to the date of incident where she had gone along with the accused. She was also confronted with a small love letter Ex. PW 5/DX-2 to have been written by her to the accused. She denied the same to be in her handwriting. On the direction of the court she was asked to write two lines, the same is part of record. A bare comparison of the peculiarity of writing of few words which are common in both the aforesaid documents reveals that there is strong possibility that this love letter is in the handwriting of the prosecutrix, however I refrain from concluding that it is in all probabilities in the handwriting of prosecutrix. She denied the suggestion of the defence that she had been in love with the accused and wanted to get married to him. She further denied the suggestion that on the date of incident she herself had called the accused at her house but on account of PW-9 having accidentally reached there and finding both of them in the house the accused was falsely implicated in the present matter at the instance of her father. It is relevant to note that on 25.08.2014 the prosecutrix was produced before Child Welfare Committee (CWC)



where she was counseled by the experts in children rights, there she had probably disclosed that she had been having friendship with the accused as in the proceedings of CWC Ex. PW 15/A at the time of her counselling she was advised “to mend her ways and not to keep friendship with the boys”. This coupled with the fact that PW-13 remained sitting with her at the time of recording of her statement U/S 164 CrPC probably to make sure that she deposed in a particular fashion makes the deposition of prosecutrix unworthy of credence. In the last line of her aforesaid statement the prosecutrix stated that she had filed this case on the directions of her father. The conduct of the prosecutrix, PW-9 and PW-13 is shrouded in suspicion in not reporting the matter to the police on 19.08.2014 itself, if it was so serious. Therefore, the possibility of the coloured version of the prosecutrix regarding commission of penetrative sexual assault upon her by the accused cannot be ruled out.

41. I am conscious of the law that the conviction can be based on the sole testimony of prosecutrix if it inspires the confidence of the court and there is no need for any independent corroboration of her version in that case. I am equally conscious of the law that, “in a case of rape the evidence of the Prosecutrix must be given predominant consideration but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which governs the appreciation of evidence in a criminal matter(ref.:Tameezuddin@TammuVs.State (NCT of Delhi(2009) 15 SCC566).

42. In this case the sole independent witness PW-



14 has not supported the case of prosecution with regard to the identity of accused. As far as the allegations of commission of penetrative sexual assault upon her are concerned only prosecutrix could have deposed about it as no one else except her had seen the accused committing the same. PW-9, PW-13 and PW-14 were not present in the room when the alleged incident took place. Therefore, the possibility of the accused and prosecutrix having only spent sometime together with their consent inside the room on the date of incident cannot be ruled out. The prosecutrix has also not offered any explanation as to how she had the knowledge about the address of accused, if she did not have acquaintance with him. Therefore, it is clearly evident that the conduct of the prosecutrix does not satisfy the criteria laid down by the Hon'ble Supreme court in Rai Sandeep @ Deepu (supra).”

(iv) Medical and Forensic Evidence

14. The Trial Court considered that the medical examination of the prosecutrix revealed no injuries on her, which indicates that no force was used against her. During the internal gynecological examination, only a torn hymen was observed, which could be due to several reasons. The Trial Court also considered the testimony of PW-7 Dr. Shamita Goel, who had also deposed that that hymen could have been torn on account of other activities also. Therefore, the Trial Court concluded that merely on the account of torn hymen, it cannot be presumed that the Prosecutrix was subjected to sexual assault. In this regard, the findings of the Trial Court are as under:

“43. In the medical examination of the prosecutrix no injury was found upon her person thereby giving an indication that no force was used against her. In her internal gynecological examination only her



*hymen was found torn. It is common knowledge that in a person who is almost an adult the hymen can get torn on account of playing, cycling, doing vigorous exercises etc. Admittedly the prosecutrix had been working in a shoe factory where she had to work hard and the possibility of her hymen getting torn on account of her work can also be not ruled out. PW-7 Dr. Samita Goel, who had conducted the internal gynecological examination of the prosecutrix has also deposed about the hymen in the same fashion. **Therefore, merely on account of torn hymen it cannot be presumed that the prosecutrix was subjected to sexual assault. The FSL report totally exonerates the accused.***

Proceedings before the Court

15. Initially, on 1st August, 2017, the matter was listed as ***Crl.L.P. 291/2017***. The Court had allowed the leave to appeal on behalf of the state and had directed the appeal to be numbered. Thereafter, the matter was to be listed in due course.

16. Today, the matter has been heard at length. Mr. Ritesh Kumar Bahri, Id. APP, for the State has made the following submissions:

- (i) It is vehemently argued that the Prosecutrix's statement is sufficient to convict the accused.
- (ii) It is also submitted that the school records were sufficient evidence to ascertain the date of birth of the Prosecutrix and the Trial Court was wrong in disregarding the same.
- (iii) Moreover, it is also submitted that the Prosecutrix's father had clearly confirmed the date of birth of the Prosecutrix as being 12th December, 1999. Therefore, the acquittal of the Accused by the Trial Court deserves to be set



aside and he deserves to be convicted.

(iv) Further, Id. APP also submits that key witnesses have confirmed the presence of the accused on the date of incident and the MLC also proves that the rape was in fact committed. It is contended that the MLC clearly records that the hymen was torn and there was tenderness in the private parts of the Prosecutrix.

(v) Finally, it is submitted that, in the given circumstances, since the Prosecutrix was studying in the 6th standard at the relevant time when the incident occurred, the clear conclusion would be that even if the relationship was consensual, the same would be punishable under the provisions of the POCSO Act.

17. The Respondent is present in person. Upon a query from the Court, he submits that he is presently living in Darbhanga, Bihar and that he is married and has three children. Upon further query, he asserts that he is not aware of the whereabouts of the Prosecutrix.

Analysis and Findings

18. The Court has considered the matter. The incident itself appears to have been proved from the evidence on record. However, the Trial Court has given detailed findings in respect of the age of the prosecutrix, the conduct of the prosecutrix, as also the delay in reporting the matter.

19. The Trial Court has disbelieved the school records in determining the age of the Prosecutrix, as the affidavit by which the father of the Prosecutrix had gotten her age recorded in the school records, was itself held to be false.

20. Additionally, the father of the Prosecutrix had also produced the horoscope of the Prosecutrix *i.e.*, *Janampatri* which he claimed to have been prepared after the birth of the Prosecutrix. However, based on the evidence,



the Trial Court has found that the *Janampatri* was prepared after the filing of the chargesheet.

21. Moreover, the Trial Court has also considered that no attempt was made by the prosecution to establish that age of the Prosecutrix as that being a minor. The Trial Court considered that the prosecution could have analysed the age of the other siblings and their identity cards etc., to lend some authenticity to the age of the Prosecutrix. Further the Prosecutrix was earlier studying in the village in 8th standard and was thereafter transferred to 6th standard in this school. Even if the incident was proved, the Trial Court came to the conclusion that the age having not been proved, the accused does not deserve to be convicted.

22. Insofar as the incident is concerned, the Trial Court has rightly considered that the prosecution has not offered any reasonable explanation for a delay of five days by the Prosecutrix and father of the Prosecutrix, in reporting the present incident.

23. Further, the Trial Court has also considered the conduct of the Prosecutrix, wherein she was confronted with the photographs where she was found in an intimate position with the Accused. She had admitted that the said photograph was clicked four to five days prior to the date of incident where she had gone with the Accused.

24. After perusing the evidence on record, the Trial Court has acquitted the Accused and observed as under:

“44. Suspicion, however grave it may be cannot take the place of proof, and there is a large difference between something that “may be” proved and “will be proved”. In criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof.



This is for reason that mental distance between “maybe” and “must be” is quite large and divides vague conjectures from sure conclusions. In a criminal case, court has duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied, in such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touch stone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well the quality and credibility of evidence brought on record. The court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of the case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt but a fair doubt that is based upon reason and common sense.

45. In view of the above discussion it shall be highly unsafe to convict the accused in the matter on the basis of such a shaky material. The accused is accordingly granted benefit of doubt and he stands acquitted. He is in judicial custody. He be released forthwith, if not required to be detained in any other case or proceedings.”

25. Thus, the Court finds no infirmity with reasoning of the Trial Court in respect of the incident, the conduct of the Prosecutrix, and the possibility of a consensual relationship with the Accused at the time of the incident.

26. Moreover, in a situation where the Prosecution has not been able to establish the age of the Prosecutrix beyond reasonable doubt, the benefit of



doubt ought to be given to the Accused. In this regard, the Supreme Court in ***Rajak Mohammad v. State of Himachal Pradesh (2018) 9 SCC 248***, had held as follows:

“4. In view of the above, the focal point for decision would be the age of the prosecutrix in order to determine as to whether she was a major so as to give her consent.

5. In this regard, we have considered the evidence and materials on record. The age of the prosecutrix has been sought to be proved by the prosecution by bringing on record the School Admission Form (Exhibit PW5/A) and the certificate (Exhibit PW5/B) issued by one Jasdeep Kaur (P.W.5), JBT Teacher of Government School Dungi Plate. P.W.5 in her deposition has stated that the 4 writings in the School Admission Form (Exhibit PW5/A) are in her handwriting and the signature affixed is that of the mother of the prosecutrix. In cross-examination, P.W.5 had stated that the details mentioned in Exhibit PW5/A have been obtained from the School Leaving Certificate issued by the Government Primary School, Tambol. The certificate issued by the Government Primary School Tambol on the basis of which the details in the Admission form (Exhibit PW5/A) was filled up by P.W.5 has not been exhibited by the prosecution. Nothing hinges on the document exhibited by the prosecution as Exhibit PW5/B as that is the consequential certificate issued on the basis of the entries in Exhibit PW5/A. The mother of the prosecutrix who had allegedly signed Exhibit PW5/A has not been examined by the prosecution.

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7. While it is correct that the age determined on the basis of a radiological examination may not an accurate determination and sufficient margin either way has to be allowed, **yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of**



the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.

8. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.

9. We will, therefore, have to conclude that the accused appellant deserves to be acquitted on the benefit of doubt. We, consequently, set aside the order of the High Court and the conviction recorded as well as the sentence imposed and acquit the accused appellant of the offences alleged. We further direct that the accused appellant be released from custody forthwith unless his custody is required in connection with any other case.”

27. Additionally, in the case of *State v. Tofil Ahmad, 2024 SCC OnLine Del 5403*, a Co-ordinate Bench of this Court has categorically observed that in the absence of any primary material on the basis of which the date of birth of the Prosecutrix has been recorded, the said date of birth mentioned in a School Register cannot be taken as sacrosanct. This view has also been followed by this Court in its judgment dated 24th September, 2024 passed in *CRL.L.P. 69/2023* titled *State v. Rajiv @ Raju*. Relevant portion of the said judgement is extracted herein below:

“7. This Court also notices that in the school records i.e., admission form and school leaving certificate, which were produced by PW-1 Ms. Seema Puri, Vice Principal of Sarvodaya Kanya Vidyalaya, Ashok Vihar, Delhi, the date of birth of the survivor is mentioned as 13th July 1998, however, except the admission form and school leaving certificate, there is no other document on record to



establish the date of birth of the survivor. Neither the mother nor the father of the survivor have given any oral evidence as about the date of birth of the survivor.

*8. It is the settled legal position that a mere school record without being supported by any credible or verifiable document cannot be held to be conclusive proof of age, as held in **State v. Tofil Ahmad [2024 SCC OnLine Del 5403]**, extracted hereinunder*

*35. Further, in **State v. Shailesh Kumar (2019 SCC OnLine Del 8318)**, the ld. Division Bench was dealing with a similar situation wherein the Court was considering an issue regarding the determining the age of the survivor. Following the decision of the Supreme Court in **Jarnail Singh v. State of Haryana (2013) 7 SCC 263**, the ld. Division Bench held that no probative value can be attached to a record unless and until the parents or guardians are examined or the person on whose information the entry may have been made, is examined. The relevant portion of the said decision reads as follows: “18. It is well settled that an entry of the date of birth made in the school admission register would have evidentiary value only if there is material available based on which the age was so recorded. In the case of *Brij Mohan Singh v. Priya Brat Narain Sinha* reported as AIR 1965 SC 282, the Supreme Court held that an entry of birth recorded in the school register maintained by an illiterate Chowkidar, was not admissible and had no probative value within the meaning of Section 35 of the Indian Evidence Act.*

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20. The probative value of the entry regarding the date of birth made in a school register has come up for consideration by the Supreme Court and the High Courts in several other



cases and the common view expressed is that no probative value can be attached to such a record unless and until the parents are examined or the person on whose information the entry may have been made, is examined.

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24. *In the absence of any primary material based on which the age of the victim was recorded in the school register, it is not possible to accept her date of birth as 10.01.2000. Moreover, even the teacher from the school in question, who had appeared as PW-3, had stated that he had given a handwritten document to the police on 17.12.2014 (Ex.PW3/C), wherein he had recorded that when a child attains the age of 5+ years, the parents approach the school for their admission. If one goes by the said statement, then the testimony of the victim's father to the effect that he had got her admitted in class-I when she was about 3 -4 years, cannot be accepted, as it is premised on mere guess work"*

28. The judgment in *Tofil Ahmad (Supra)* as also *State v. Rajiv @ Raju (Supra)* has been recently reiterated by this Court in *Crl.A 1327/2015* titled *State v. Sonu @ Parminder* wherein also the issue of age determination was involved.

29. Therefore, in view of the doubt surrounding the date of birth of the Prosecutrix and the failure to conclusively establish that she was a minor at the relevant time, the Court is not inclined to interfere with the findings of the Trial Court in the present appeal.

30. Accordingly, the judgment of the Trial Court is upheld. The accused is



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discharged.

31. The appeal is disposed of in these terms. Pending applications, if any are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**MADHU JAIN
JUDGE**

FEBRUARY 4, 2026/ys/sm