

(2025) 10 DEL CK 1246
In the Delhi High Court
Case No : Criminal Appeal No. 102 Of 2021

Raju	Vs	APPELLANT
State (Gnct Of Delhi)		RESPONDENT

Date of Decision : 08-10-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 481
Code of Criminal Procedure, 1973 — Section 164, 313, 428
Indian Penal Code, 1860 — Section 71, 363, 366, 376
Protection of Children from Sexual Offences Act, 2012 — Section 4, 42
Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 94

Citation : (2025) 10 DEL CK 1246

Hon'ble Judges : Vivek Chaudhary, J;Manoj Jain, J

Bench : Division Bench

Advocate : Anwesh Madhukar, Ishat Singh Bhati, Prachi Nirwan, Gaurav Chahal, Ritesh Kumar Bahri, Vinesh Kumar, Inderjeet Sidhu, Lalit Chaudhary, A Atri

Final Decision : Allowed

Judgement

Manoj Jain, J

1. Appellant challenges his conviction under Section 4 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and
2. Since matter pertains to a sexual assault committed, allegedly, upon a minor girl, such victim would be referred to as 'Miss A' in the present judgment.
3. Let us take note of the relevant facts.
4. On 21.06.2014, father of 'Miss A' reported to the police that his daughter, aged 14 years, was missing. He also suspected that she (Miss A) had been enticed away by accused Raju (appellant herein).
5. FIR for commission of offence under Section 363 IPC was registered and investigation was initiated.

6. Initially, there was no clue about either of them.
7. Eventually, on 06.07.2014, PW11 Kamal Singh (father of accused Raju) produced his son Raju as well as 'Miss A' before the police.
8. Statement of 'Miss A' was got recorded under Section 164 Cr.P.C. and she was got medically examined. She was also produced before Child Welfare Committee (CWC) which directed her custody to be handed over to her parents. Since there was not enough of clarity with respect to her exact age, pursuant to further directions given by CWC, her bone age ossification test was got carried out which indicated her age to be between 17 to 18 years.
9. After completion of necessary investigation, chargesheet was filed before the concerned Court.
10. Accused was charged for commission of offences under Section 363, 366, 376 IPC and Section 4 of POCSO Act to which he pleaded not guilty and claimed trial.
11. Prosecution examined 18 witnesses in order to substantiate said charges.
12. Accused, in his statement under Section 313 Cr.P.C., pleaded innocence and claimed that he had been falsely implicated in the matter.
13. He, however, did not lead any evidence in defence.
14. Learned Trial Court came to the conclusion that at the time of alleged occurrence of offence, i.e. on 20.06.2014, 'Miss A' was minor and that she had been taken away forcibly by the accused from the custody of her parents with the intention of subjecting her to illicit intercourse and forcible marriage. It also held that she had been taken to one village situated in Amritsar, Punjab where she was sexually assaulted. Observing that prosecution had been able to bring home the charges against the accused, he was sentenced as under: -

Offence

Substantive Sentence

Fine

In-default Sentence

Section 4 POCSO Act

RI for Life

Rs.20,000/-

2 months SI

Section 363 IPC

7 years

Rs.10,000/-

1 month SI

Section 366 IPC

10 years

Rs.10,000/-

1 month SI

15. Since the convict had been sentenced for commission of offence under Section 4 of POCSO Act, no separate sentence under Section 376 IPC was awarded in view of bar contained under Section 42 of POCSO Act and Section 71 of IPC.

16. All the sentences were, however, directed to run concurrently and benefit of Section 428 Cr.P.C. was also extended to accused.

17. As regards compensation, learned Trial Court directed the concerned District Legal Services Authority (DLSA) to make provision of Rs.5,00,000/- as compensation towards restorative and compensatory justice to 'Miss A' with direction to reimburse the same, with one month.

18. In the present appeal, the challenge is to order dated 04.07.2020 (order on conviction) and order dated 25.07.2020 (order on sentence).

19. Sh. Anwesh Madhukar, learned legal aid counsel for the appellant has submitted that certain vital aspects have been overlooked by the learned Trial Court and, therefore, the impugned order of conviction is not sustainable. His prime contentions can be enumerated as under: -

(i) There is no proof with respect to the exact date of birth of ?Miss A? and since the learned Trial Court had disbelieved the school record, her age could not have been taken as 14 years, merely, on the basis of oral utterances of her parents before the learned Trial Court.

(ii) The bone age ossification test report, clearly, suggested her age as 17-18 years and such aspect has not been, appropriately, appreciated by the learned Trial Court and the benefit of margin of error has also not been given. Wherever the age is, eventually, determined on bone age ossification report, while considering the upper age given in the reference range, the margin of error of further two years is also required to be applied and, thus, at the alleged date of commission of offence, ?Miss A? was major and, therefore, the accused could not have been held guilty under POCSO Act.

(iii) Moreover, ?Miss A? herself had given her age as 19 years when she appeared before the concerned Magisterial Court for recording of her statement under Section 164 Cr.P.C. and such fact has not even been considered by the learned Trial Court.

(iv) There is nothing to indicate that 'Miss A' was ever enticed away or kidnapped from her lawful guardianship and if her version is to be believed, then it was, clearly, a case of elopement and that there was never any angle of any threat or intimidation as she had left Delhi for Punjab in a train and in her deposition, she, categorically, deposed that she never raised any alarm.

(v) Testimony of 'Miss A', even otherwise, does not inspire any confidence and does not suggest commission of any offence. Moreover, her MLC is also not suggestive of any sexual assault as no external or internal injury was noticed during her such examination.

(vi) There are contradictions amongst the statement of victim and her parents.

(vii) Several public witnesses have not supported the case of prosecution and such fact has also not been appreciated by the learned Trial Court.

20. Thus, it has been argued that the prosecution has failed to discharge its primary onus and since the prosecution's story was not only inconsistent and illogical but unbelievable as well, the benefit of doubt should have been given to the accused. Reliance has been placed upon Court on its Own Motion vs. State of NCT of Delhi: 2024 SCC OnLine Del 4484; Sanjeev Kumar Gupta vs. State of U.P. & Anr.: (2019) 12 SCC 370; Rajak Mohammad vs. State of Himachal Pradesh: (2018) 9 SCC 248; Parag Bhati (Juvenile) Through Legal Guardian- Mother- Rajni Bhati vs. State of Uttar Pradesh & Anr.: (2016) 12 SCC 744; Madan Mohan Singh & Ors. vs. Rajini Kant & Anr.: (2010) 9 SCC 209 and Abuzar Hossain Alias Gulam Hossain vs. State of West Bengal: (2012) 10 SCC 489.

21. All such contentions have been refuted by learned Additional P.P. for the State and also by learned counsel for 'Miss A'.

22. Sh. Ritesh Kumar Bahri, learned APP for the State submits that statement of 'Miss A' remained consistent throughout and whatever she had stated in her statement before the police and also in her statement made under Section 164 Cr.P.C. was reiterated by her in the witness box and, therefore, the learned Trial Court was justified in holding accused guilty. He also submits that the age of 'Miss A' was, rightly, held as around 14 years at the time of offence and even if the bone age ossification report was to be given any preference, 'Miss A' was still minor at the relevant time. It is admitted that though as per her version, she had been taken to Punjab in a train but at that time, she was minor and was under threat of the accused and, therefore, even if she did not raise any hue and cry, it would not mean that there was no angle of kidnapping or that she was a consenting party.

23. Ms. Inderjeet Sidhu, learned counsel for the victim has also supported the abovesaid stand taken by the prosecution. She also informs that, unfortunately, in the interregnum, 'Miss A' died on account of electrocution. She also raised grievance that despite there being a categoric direction, the compensation amount had not been disbursed by the concerned DLSA.

24. The entire appeal revolves around two important aspects.

25. Firstly, what was the exact age of 'Miss A' at the time of commission of offence and secondly, whether it was a case of kidnapping or whether it was a case of consensual elopement.

26. Let us first analyze the aspect related to her age.

27. Since the date of offence is 20.06.2014, we have to take note of Juvenile Justice (Care and Protection of Children) Act, 2000 and Juvenile Justice (Care and Protection of Children) Rules, 2007. As per Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007, whenever any child or juvenile is brought before Child Welfare Committee or Juvenile Justice Board or any Court, it shall undertake the process of age determination by seeking evidence and as per procedure, the first preference has to be given to a matriculation or equivalent certificate, if available; and in the absence whereof; the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; the birth certificate given by a corporation or a municipal authority or a panchayat. In absence of any such document or record, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In *Jarnail Singh vs. State of Haryana*: (2013) 7 SCC 263, Supreme Court laid down that the procedure prescribed for determining the age of a child in conflict with law, was also equally applicable for determining the age of a victim of a crime.

28. Thus, the preference has to be in the same order.

29. Firstly, to school record; secondly to birth certificate and lastly to bone age ossification test. The position is almost the same under the new Act i.e. Juvenile Justice (Care and Protection of Children) Act, 2015 and reference be made to its Section 94.

30. Though, the preference has to be given in said sequence, but not before recording due and complete satisfaction in this regard.

31. There is no absolute rule that the document, having higher preference, has to be taken as a gospel truth, even if it is found to be somewhat shaky, suspicious or unconvincing. In *Suresh vs. State of Uttar Pradesh* and *Anr*: 2025 SCC OnLine SC 1579, Supreme Court has observed that though the issue of juvenility, indubitably and primarily has to be determined as per the relevant provisions of the Juvenile Justice Act and the Rules framed thereunder, as applicable at the relevant time, yet under appropriate circumstances and with justifiable reasons, the Court examining the issue has the discretion to take other relevant materials and factors into account, for ultimately the cause of justice has to prevail. In *Madan Mohan Singh* (supra) also, Supreme Court observed that a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case while supplementing that the authenticity of

the entries would depend on whose information such entries stood recorded and what was his source of information. It held that for determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded.

32. Thus perceptibly, any such document has to be of unimpeachable nature. The Court may, however, for reasons to be recorded, discard such document of higher preference, if the contents thereof stand falsified or belied.

33. Admittedly, there was not enough of clarity about her exact age and, therefore only, CWC directed for conducting her ossification test.

34. There are different versions appearing about her age.

35. When FIR was registered, her age was revealed as 14 years by her father.

36. When 'Miss A' appeared before the learned Metropolitan Magistrate for recording of statement under Section 164 Cr.P.C., in her such statement (Ex.PW1/A), she, herself, gave her age as 19 years.

37. As noted, CWC ordered for her ossification test as it was not sure about her exact age. The bone age ossification report indicated her age to be about 17 years to 18 years and such report has been proved as Mark PW8/1.

38. The prosecution, however, heavily, relied upon school record (Ex.PW9/D) wherein her date of birth is recorded as 10.02.2004.

39. However, if such date of birth of school record is assumed to be true, she was only ten years of age when she had gone missing. It does not synchronize with the age given in the FIR.

40. During the trial, her parents, in respective deposition, claimed her age to be around 13 to 14 years at the time, she had gone missing.

41. Miss A also claimed so, in the witness box.

42. We are conscious of the fact that if there is a school record, such school record has to be given preference and ossification test report can be pressed into service only when there is no school record or birth certificate.

43. However, as noted already, the school record should be believable and authentic. As per school record, her date of birth is 10.02.2004 and, therefore, at the time of alleged incident she was hardly ten. This does not seem believable as parents of 'Miss A', themselves, categorically deposed that she was 13 or 14 years of age at the time of the alleged incident. Even when FIR was registered, the age of Miss A was revealed as 14 years by her father. Moreover, the age has been got recorded in school on tentative basis as the affidavit (Ex PW9/B) of her

father is to the effect that he had no documentary proof about her age. He, however, created a flutter by deposing in his cross-examination that the birth certificates of all his children, as prepared by MCD, were lying in his home and he could even produce the same. This is in contrast with his own affidavit which he had submitted in the school for seeking admission of his daughter. Fact remains that no such birth certificate has seen light of the day.

44. The gap of around four years assumes significance in the present context, therefore.

45. Needless to emphasis, parents are in the best position to apprise about the correct age of their child. Here, they do not seem to be sure and the school record does not match with their deposition. No Birth Certificate, despite being available, was produced, either.

46. Curiously, learned Trial Court also recorded that when 'Miss A' was admitted in school, her said date of birth (10.02.2004) was recorded, merely, on the basis of affidavit furnished by the father of 'Miss A' and not on the basis of any hospital record or municipal Birth Certificate. Thus, while, in a way, dumping the school record, the learned Trial Court gave preference to the oral deposition of 'Miss A' and her parents and believing such oral testimony, it was concluded that her age was 14 years at the time of offence.

47. Such approach was not appropriate from any angle whatsoever.

48. If, for any reason, the learned Trial Court had rejected and disbelieved the school record, it should have rather fallen back on the bone age ossification test report, instead of giving preference to the oral testimony of 'Miss A' and her parents.

49. The ossification test (Mark PW8/1) had been conducted by Safdarjung Hospital, New Delhi and as per report dated 14.07.2014, her radiological bone age was found more than 17 years and less than 18 years.

50. It is not very much comprehensible as to why such Radiologist of AIIMS was not examined and why such report was merely tendered in evidence by the concerned I.O.

51. Importantly, it has not been given any exhibit number either.

52. The prosecution could not have been selective in its approach and to ensure fair trial, it should have called the concerned Doctor in witness box to prove such report in accordance with law.

53. However, despite said omission, such document, forming part of chargesheet, can be read in evidence, for the benefit of accused.

54. The legal position in this regard is settled in terms of the answer given to a Reference in Court on its Own Motion Versus State of NCT of Delhi: 2024 SCC OnLine Del 4484. Such Reference was answered by the Division Bench of this

Court, of which, one of us (Manoj Jain, J.) was a member, in the following terms:-

"46. As an upshot of our foregoing discussion, the Reference is answered as under: -

(i) Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?

Ans: In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on 'bone age ossification report', the upper age given in 'reference range' be considered as age of the victim.

(ii) Whether the principle of 'margin of error' is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.

Ans: Yes. The margin of error of two years is further required to be applied."

55. This Court, while answering the Reference, had taken note of various precedents on the issue involved and also referred to one judgment of Supreme Court in *Rajak Mohammad v. State of Himachal Pradesh*: 2018 SCC OnLine SC 1222, wherein Supreme Court had observed that though the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, the doubt, if any with respect to the correct age of the prosecutrix, naturally, must go in favour of the accused. This Court, while answering said Reference, observed as under: -

"23. We cannot be oblivious of the fact that we are following adversarial system of law where the presumption of innocence is indispensable philosophy. Though in any criminal trial, the endeavour is to reach the truth, in adversarial system, the judge generally acts like an umpire who watches whether the prosecution has been able to prove the case beyond reasonable doubt or not. Since the adversarial system in India is based on the 'innocence of the accused', the burden of proof, generally, falls on prosecution. Our criminal system prescribes that a case against any accused has to be proved beyond doubt. Meaning thereby, if there is an element of doubt, such benefit has to go to the accused."

56. Since the school record had been, virtually, disbelieved and discarded by the learned Trial Court and no Birth Certificate given by any Corporation or Municipal Authority or Panchayat was ever produced, the age was required to be determined on the basis of ossification report. While taking into consideration any such ossification report, the benefit of margin of error of two years was also required to be applied and, therefore, clearly, 'Miss A' was major at the time when she had gone missing from her house.

57. Coming to the other important aspect of kidnapping, let's now evaluate testimony of 'Miss A'.

58. 'Miss A' graced the witness box as PW-1 and when accused was shown to her during recording of her deposition, she identified him by claiming that he was the same person who took her to his Mausi's house. As regards the incident in question, she claimed that she was playing in park when accused took her away after tying her mouth. He took her in a car/autorickshaw and then he took her to the station and made her sit in a train and took her to his Mausi's house where she had been beaten up and where he committed a wrong act upon her. According to her, she was kept there for 4-5 days and thereafter, father of the accused came there and brought them to Delhi.

59. As already noticed above, 'Miss A' had already attained the age of discretion when she had gone missing on 20.06.2014. Her testimony that her mouth was tied down and that she was taken in a car/autorickshaw and then in a train in a forceful manner, does not seem to be convincing and credible. If the accused was having any malafide intention, he would not have dared to take her in a public transport under public gaze in a broad daylight.

60. In her cross-examination, Miss A admitted that there were many other passengers present in the train and she did not raise any alarm when she was taken to bus stand/railway station. Though, she volunteered that no such alarm was raised by her as the accused had threatened her but her such version does not seem to be realistic at all. In the history given by her before the concerned doctor of AIIMS, she rather claimed that she had been taken away to Mathura but such fact has not been revealed by her in her deposition recorded before the Court. When her statement was recorded by NGO Prayas, she, in her such statement, revealed that she knew the accused for last one year and used to like him. She also revealed that she also knew that the accused was earlier married and had a daughter from such marriage also. She also divulged that they both used to meet and their such meeting was not in the knowledge of any of her family members.

61. As per the observations of the concerned official of Prayas, NGO, 'Miss A' merely wanted to go back to her home and did not want any action of any sort against the accused though, at the same time, she did not want to remain in any further relationship with him.

62. Such observations of Prayas, NGO cannot also be disregarded.

63. Fact remains that the testimony of 'Miss A' does not seem to be of sterling quality. If the accused had any malafide intention and wanted to kidnap her and wanted to take her away in a forcible manner, he would have, rather, done the same in a clandestine manner and would not have taken her in public transport to various places including Mathura and Chandigarh. Moreover, if, at all, the intention of the accused was other than bonafide, he would have certainly not taken her to the house of his own close relative i.e. Mausi. Therefore, quite palpably, it seems to be a case of elopement and consensual relationship.

64. Unfortunately, neither 'Miss A' nor the accused could muster enough courage

and reveal the truth before the Court.

65. Such relationship was never admitted by either of two.

66. The prosecution examined several such relatives of the accused at whose place, the accused had allegedly taken her but fact remains that all these relatives of accused, including father of accused, have not supported the case of prosecution and are in complete denial mode. 'Miss A', who went missing on 20.06.2014, was, eventually, brought back to Delhi by the father of the accused only on 06.07.2014 and even the father of accused has not uttered anything in this regard.

67. The intervening gap is of more than two weeks and during such interregnum, there was no protest from the side of 'Miss A'. This is despite the fact that she undertook journey along with the accused in public transport i.e. bus and train and travelled different cities and also, as alleged, she resided in a village where Mausi of the accused had been residing.

68. They seem to have married, if statement made by her during the investigation, is to be believed.

69. In *Tameezuddin @ Tammu Vs. State (NCT of Delhi)*: (2009) 15 SCC 566, Supreme Court observed that though it was true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that such evidence had to be accepted even if the story was improbable and belied logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. In *Rajak Mohammad (supra)*, the prosecutrix moved freely with the accused for around 12 days and despite the fact she came in contact of many persons at different times, she made no complaint of any criminal act on the part of accused and, therefore, the Supreme Court was compelled to hold that the possibility of her being a consenting party could not be ruled out. Reference in this regard be also made to *Tilku alias Tilak Singh vs. State of Uttarakhand*: 2025 SCC OnLine SC 353 and *Shyam and Another vs. State of Maharashtra*: 1995 SCC (Cri) 851.

70. There is no other witness of prosecution who may throw light with respect to the manner in which 'Miss A' was taken away.

71. The parents of 'Miss A' also do not have any knowledge in this regard.

72. In *State of Karnataka Vs. Sureshababu*: 1993 SCC Online SC 295, Supreme Court has observed that when age is in doubt, the question of taking away from lawful guardianship does not arise. Here, whereas, as per ossification report, she was major when she had, allegedly, gone missing.

73. Be that as it may, the cumulative impact of the material brought on record not only indicates 'Miss A' to be major at the relevant time, it also suggests that there was no act of kidnapping or abduction in a forcible manner.

74. In view of our foregoing discussion, it would be highly unsafe to maintain

conviction merely on the basis of testimony of Miss A, which does not inspire much confidence.

75. Resultantly, while granting benefit of doubt to accused, the appeal succeeds and the accused is acquitted of all the charges against him.

76. Appellant be released from jail forthwith, if not required otherwise.

77. However, keeping in view the provision contained under Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the appellant, before his release, shall furnish personal bond in a sum of Rs.15,000/- with one surety of like amount before the concerned Superintendent Jail, undertaking therein that in the event of receipt of any notice of filing of Special Leave Petition against the instant judgment, he shall appear before the Supreme Court. Such bond shall be effective for a period of six months.

78. A copy of this judgment, alongwith Trial Court Record (TCR) be sent to learned Trial Court.

79. A copy of this judgment be sent forthwith to concerned Jail Superintendent for information and quick compliance.