

(2026) 03 DEL CK 0573
In the Delhi High Court
Case No : Criminal Appeal No. 264 Of 2021

State	Vs	APPELLANT
Kuldeep		RESPONDENT

Date of Decision : 25-03-2026

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 164, 313, 378, 386
Indian Penal Code, 1860 — Section 342, 363, 366, 376, 506
Protection of Children from Sexual Offences Act, 2012 — Section 4

Citation : (2026) 03 DEL CK 0573

Hon'ble Judges : Navin Chawla, J; Ravinder Dudeja, J

Bench : Division Bench

Advocate : Aman Usman, Manvendra Yadav, Saurabh Kansal, Pallavi Sharma
Kansal, Pratham Malik, Vanshika Kapoor

Final Decision : Dismissed

Judgement

Ravinder Dudeja, J

1. State takes exception to the judgment dated 20th July, 2019, whereby, respondent Kuldeep has been acquitted of all the charges levelled against him.
2. The brief facts of the case, as per charge sheet, are that on 23rd January, 2013, father of the prosecutrix 'P' (name withheld), came at Police Station Nand Nagri and lodged a complaint that his daughter has been lured away by some unknown person. He stated in such complaint that he is a driver and had gone to Gauhati with his truck and upon coming back, he was informed by his wife that on 10th January, 2013, she left for work at 11.00 am, and in the evening when she returned back, she found the prosecutrix missing from the house. His wife made efforts to search her at her relatives places but could not find any clue. On the basis of the aforesaid complaint, an FIR was registered under Section 363 of the Indian Penal Code, 1860 ["IPC"].
3. During investigation, the photograph of the prosecutrix was uploaded on Zip-

net, wireless message was flashed and 'Hue & Cry' notice was published. In order to trace the prosecutrix, the mobile number, from which the prosecutrix had made call at her home, was kept on surveillance. It was found that the location of the aforesaid number was at Lohgarh Gate, Amritsar and the same was in the name of Ram Kumar, son of Hari Ram.

4. On 26th January, 2013, SI Rajeev (PW-11) along with the parents of the victim and Constable Ram Kishan (PW-3) went to Amritsar. On enquiry, Ram Kumar informed that the phone was being used by Rani, wife of Jairaj, resident of Rajeev Nagar, Lohgarh Gate, Amritsar.

5. On 27th January, 2013, prosecutrix 'P' was recovered from Rajeev Nagar, Lohgarh Gate, Amritsar on the pointing out of her father. Respondent Kuldeep was apprehended on the pointing out of prosecutrix 'P' from Railway Station, Amritsar. On 28th January, 2013, prosecutrix and respondent Kuldeep were brought at PS Nand Nagri. They were got medically examined. The exhibits were seized. Statements of prosecutrix were recorded under Section 161 & 164 of the Code of Criminal Procedure ["Cr.P.C."]. Respondent was subsequently arrested. On 29th January, 2013, prosecutrix was produced before Child Welfare Committee ["CWC"], Dilshad Garden and by the orders of CWC, she was handed over to her parents. Exhibits were sent to Forensic Science Laboratory ["FSL"], Rohini. Statements of witnesses were recorded. The date of birth proof of the prosecutrix was collected. On completion of investigation, charge sheet was filed against respondent Kuldeep under Sections 363/366/342/376/506 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 ["POCSO"].

6. Charges under Section 363/366/342/506 and under Section 376 IPC read with Section 4 of POCSO Act were framed against the respondent, to which, he pleaded not guilty and claimed trial.

7. In order to bring home guilt of the respondent, prosecution examined 12 witnesses. Statement of respondent was recorded under Section 313 Cr.P.C. He denied the incriminating evidence appearing on record against him. He claimed that he was innocent and was falsely implicated. He stated that he had never gone to Amritsar nor had taken or called the victim to Amritsar. He further stated that the mother of the victim had demanded Rs. 20,000/- from him and on his refusal, the victim and her family falsely implicated him in this case. According to him, he was arrested by the police in Delhi. He refused to lead any evidence in his defence.

8. After considering the evidence on record and hearing the rival submissions, the learned trial court vide its judgment dated 20th July, 2019, acquitted the respondent.

9. Mr. Usman, learned Additional Public Prosecutor ["APP"] for the State, submitted that the impugned judgment passed by the learned trial court is manifestly erroneous, contrary to law and against the facts and evidence on

record. It was submitted that prosecution case stood fully established through the testimony of prosecutrix (PW-1), who unequivocally supported the prosecution version and duly corroborated her earlier statement recorded under Section 164 Cr.P.C before the learned Magistrate. It was argued that learned trial court fell in error in disregarding her testimony on the basis of minor contradictions and alleged improvements, which were natural and insignificant, particularly, when the witness had consistently maintained that she was kidnapped under threat and subjected to sexual intercourse by the respondent. He further submits that as per the testimonies of the parents of the prosecutrix, the age of the prosecutrix was 16-16½years at the time of incident, which fact is corroborated by the date of birth as recorded in the birth certificate Ex. PW-4/X2. Thus, prosecutrix was minor at the time of commission of the offence.

10. We have considered the submissions made.

11. In the cases of kidnapping and rape, the prime question for consideration always remains the age of the prosecutrix. The age is most relevant because the age of the prosecutrix is a vital factor to find out if she was having the capacity to give consent to go with the accused or indulge in sexual act.

12. Prosecution has built its case on the basis that prosecutrix was aged about 16½years at the time of incident. Since she was less than 18 years of age, she was not in a position to give consent to the accused to take her away from the custody of her parents. As proof of her age, prosecution places strong reliance upon the testimonies of the father (PW-4), mother (PW-5) and the birth certificate Ex. PW-4/X2. 13. As per birth certificate Ex. PW-4/X2, the date of birth recorded is 21st July, 1997. In order to prove the birth certificate, prosecution examined PW-10 Shri Niwas, Public Health Inspector and Incharge Record Keeper, Birth & Death, North Zone, MCD. He could not produce the original birth register regarding the birth certificate of the prosecutrix, as according to him, the said record got lost while shifting the office from Nand Nagri Centre to Shahdara North Zone. The copy of the birth certificate, placed on record, is therefore not proved and is of no help in proving the age of the prosecutrix.

14. In his examination in chief, father of the prosecutrix (PW-4) stated that the age of the prosecutrix was 16½years at the time of incident, but in cross examination, when asked, he could not tell the date of birth of his daughter. He stated that he does not have the MCD hospital record regarding date of birth/age of his daughter. According to him, his wife had gone to the school at the time of her admission with her Janam Patri as age proof. He further stated that the Janam Patri was got prepared by his wife from the dispensary at Nand Nagri at the time of her birth. Admittedly, Janam Patri cannot be considered as proof of date of birth, and therefore the age, if any, recorded in the school record on the basis of Janam Patri, also cannot be considered as proof of age of the prosecutrix. In further cross examination, PW-4 was confronted with "Jachcha Bachcha Raksha Card" (Vaccination Card) of the prosecutrix, which is Ex.

PW-4/DX1. The date of birth recorded in Ex. PW-4/DX1 is not legible. PW-4 stated in cross examination that he cannot tell the date of birth of the prosecutrix, mentioned in Ex. PW-4/X3. Be that as it may, even the "Jachcha Bachcha Raksha Card" cannot be treated as the proof of date of birth of the prosecutrix.

15. The mother of the prosecutrix (PW-5) deposed in her examination in chief that the age of the prosecutrix was 16 years. However, in cross examination, she failed to tell her date of birth. Undoubtedly, parents are the best persons to tell the age of their children, but given the circumstances where neither PW-4 nor PW-5 could tell the date of birth of the prosecutrix and in the absence of any authentic document of the age proof having been proved on record, we are of the view that prosecution has failed to prove that the prosecutrix was a minor at the time of incident, and therefore that being so, POCSO Act shall also have no applicability.

16. The learned counsel for the respondent also submitted that there are contradictions in the testimonies of the witnesses. The story propounded with regard to the manner in which the prosecutrix was kidnapped from Delhi under threat and called at Amritsar where she was confined and raped, is improbable and full of contradictions. It is argued that the judgment of acquittal, passed by the learned trial court, is just and appropriate after due consideration of the evidence on record and therefore does not call for any interference.

17. We find merit in the above submission. The testimony of the prosecutrix in sexual offences is of utmost importance. By now, it is well settled that unless there are compelling reasons which necessitate looking for corroboration of the statement of the prosecutrix, the Courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to her statement before relying upon the same as a whole, in such cases, would literally amount to adding insult to injury. The victim of rape is not an accomplice and her evidence can be acted upon without corroboration. If evidence is reliable and inspires confidence, conviction can be based on the sole testimony of the prosecutrix. Hence, the deposition of the prosecutrix has to be looked as a whole to find out whether the same has ring of truth.

18. Prosecutrix stepped in the witness box as PW-1 and deposed that on 10th January 2013, she made a call, which got connected on a wrong number. Thereafter, she started receiving calls from the said number. She improved her statement by further stating that it all started prior to 10th January, 2013. The person who called from that number, had told his name as Sachin. According to her, on 10th January 2013, the caller directed her that she should go to the place as per his direction, otherwise, he would kill his family members or her school-going younger brother. She was also directed to carry Rs. 3 lakhs. She was directed by the caller to board a bus from

Kashmere Gate, which goes to Amritsar. According to her, she acted as directed and boarded the bus and reached Amritsar on 11th January, 2013 at 8.30 am. On reaching Amritsar, she told the caller that she was standing near Lohya Gate. An ECO van of white colour, in which, Moti Chachi, one another lady and three boys came. On a specific question put by the learned Prosecutor, she stated that the person who had called her on phone and whose name was Sachin, was also present in that van. She identified the respondent as the same person who had called her on phone. She further deposed that she was made to sit in the van and a handkerchief was put on her face, due to which, she lost her senses. When she regained her senses, she found herself on a cot in the room and her hands were lying tied with the cot. She further deposed that respondent and his Chachi used to come to the room and as and when she asked that she should be taken to her home, she was beaten up by the respondent. She was made to do a lot of work. Respondent told her that he was preparing her video and therefore she should look cheerful. She deposed that respondent tried to kill her with knives and threatened to kill her parents. She further deposed that respondent used to do "Galat Kaam" with her everyday. When asked to explain, she clarified that after removing her clothes, respondent used to have physical relations with her as husband and wife. She stated that respondent used to beat her and did not allow her to come to Delhi and that once a call came at his Chachi's number, at that time, he was uttering that he was calling from police station.

19. In reply to a leading question put by the learned Prosecutor, she admitted that respondent had put 'Sindoor' on her forehead and also gave her 'Chuda', asking her to behave and tell everyone that they were husband and wife. He forcibly took a photograph with her and got a video recording made. She further deposed that once accused had left his phone in the room from which she called her parents, requesting her mother to rescue her from there.

20. It has been further deposed by PW-1 that on 27th January, 2013, someone knocked the door, and on opening the door, police officials were found standing. The respondent ran away. The police apprehended the Chachi of respondent as also her younger son. They were taken to Police Station at Amritsar. Thereafter, the respondent was produced by his family members at the police station. Police had then interrogated the respondent. Thereafter, they had gone to railway station and came to Delhi by train.

21. If the testimony of PW-1 is to be believed, her acquaintance with the respondent was only through mobile phone. In her cross examination, she stated that she had spoken with the respondent before 10th January 2013 on a number of occasions. They were having conversations for about 15 days or 01 month prior to 10th January, 2013. She admitted that she used to call him on phone and also sent SMS's to him. In further cross examination, she stated that she started calling the respondent as "Babu" or "Husband". However, she

volunteered to add that it was under threat. She admitted that she had not made any complaint to the police that respondent used to force her to call him "Babu" or "Husband". She stated in cross examination that there were four tenants in the house where she was residing, but she did not make any complaint to any such person regarding threats from the respondent. She stated that the expenses for travelling to Amritsar were taken by her as advance from her employer on the pretext of shopping. She made no complaint to her employer. She could not tell the cost of ticket to Amritsar. She admitted that she had not given the ticket to the police. She also admitted that she had not disclosed to anyone including her friends, relatives and employer that she was going to Amritsar. She admitted that she has number of relatives staying in Punjab and Amritsar but had not contacted any of them to tell that she was in Amritsar. She stated in cross examination that respondent had taken her to Sheetla Mandir. She further stated that she has no knowledge that if anyone had beaten or threatened her mother or brother. She admitted that she had not made any complaint to the police, relative or any other person at Golden Temple. She admitted that she made no effort to run away from Amritsar. She admitted that in the video clipping shown to her, she was looking happy, even though, she claimed that the same was because of threat from the respondent.

22. A perusal of the testimony of the prosecutrix reveals that respondent had not used any physical force to kidnap the prosecutrix from Delhi to Amritsar. Rather, he was not even present in Delhi. The evidence also indicates that she had travelled to Amritsar alone by bus and thus was not under any physical threat. The story propounded that due to threats from the respondent on mobile phone, she was forced to leave the house and go to Amritsar, appears to be improbable, inasmuch as, she had no physical contact with the respondent prior to the occurrence. She could have made complaint to her mother, relatives or the police with regard to the threats, if any, from the respondent. While staying at Amritsar, she did not reach out for help or raise hue and cry and did not try to run away from the house of the respondent. The MLC mentions "novisible fresh external injury", thereby, negating the story of the prosecutrix regarding beatings endured by her and presence of blisters on her hands. It is not her case that she was all the times confined in a room. She had ample opportunity to make good her escape, while she was taken to Golden Temple or Sheetla Mandir. She could have attracted the attention of the passersby and made complaints to them. While such conduct by itself may not be determinative, it becomes relevant when considered along with other circumstances.

23. In her cross examination, the prosecutrix stated that in 2012- 2013, she used to go to a factory at Village Mandoli and used to do the work of dye stamping and received Rs. 3000/- per month as salary. She stated she was regular in her job at Mandoli till 4-5 months back. She admitted that she had gone for her job for the complete month of January 2013 without break and got complete salary of Rs. 3000/-. If she attended the work during the entire month

of January 2013, the story put-forth by her of going to Amritsar under threat, forcible confinement and rape, is improbable and cannot be believed.

24. Hence, upon careful scrutiny of the testimony of the prosecutrix, we find that her testimony does not inspire confidence required to treat it as one of sterling quality. Her deposition is marked by material contradictions, improvements and inconsistencies on core aspects of the prosecution case, particularly regarding the circumstances in which she left home, her prior contact with the accused/respondent, and the events allegedly constituting the offence. These discrepancies are not minor variations but go to the root of the prosecution case, thereby, rendering her version unreliable and unfit, so as to base the conviction solely on her testimony.

25. The evidence shows that prosecutrix was recovered from a house at Amritsar, while respondent was not present there. As per the testimony of the prosecutrix, the respondent was produced by his family members at the police station, while as per the father of the prosecutrix (PW-4), Constable Ram Kishan (PW-3) and SI Rajeev (PW-11), he was apprehended from Railway Station, Amritsar during search on the pointing out of the prosecutrix. To the contrary, the mother of the prosecutrix (PW-5) deposed that respondent was apprehended while they had come to Railway Station, Amritsar for boarding train to Delhi. Thus, the place and manner of arrest of the respondent is also doubtful.

26. Prosecutrix deposed in her testimony that the appellant had left his phone in the room, from which, she called her parents, requesting her mother to rescue her from there. The mother of the prosecutrix deposed that she received call from her daughter who was uttering "Mujhe Bachalo, Mujhe Bachalo". She could not speak anything else. When her husband returned from his job, she told him about the call received from the prosecutrix, and thereafter, she along with her husband went to the police station and lodged a report with the police. However, the father of the prosecutrix (PW-4) deposed as if he attended the call of prosecutrix. According to him, his daughter informed him on telephone that she was living with the appellant in the area of Lohagate, Amritsar. As per PW-11 SI Rajiv, he had put the mobile No. 9781246116 on tracking in the ACP Office. From the CDR, he found that the mobile number, from which the victim had made call at her house, was in the name of Ram Kumar, son of Hari Ram, resident of House No. 2221/11, Gali Abal, PS Lohgate, Amritsar and the location of the said number was found in Lohgate, Amritsar. The call detail record and the location report is Mark A (colly). PW-11 further deposed that on 27th January, 2013, they met Ram Kumar at House No. 2221/11, and on interrogation, he disclosed that the aforesaid number belongs to him, but for a long time, the said number was being used by one lady Ms. Rani, who resides at Rajeev Nagar, Lohgarh Gate, Amritsar. Prosecution neither proved the Customer Application Form nor examined the service provider to confirm that mobile No. 9781246116 was registered in the name of Ram Kumar. The CDR and the location chart have also not been duly

proved on record. Ram Kumar has also not been examined to confirm that the aforesaid number belonged to him or that the same was being used by Ms. Rani. No evidence has been placed on record as to what connection was there between Rani and Ram Kumar and whether the appellant made phone call from the mobile number being used by Rani. Thus, it may be seen that the investigation has been conducted in a slipshod manner, which makes the prosecution case doubtful, the benefit of which goes to the appellant.

27. The law governing appeals against acquittal is well established. The appellate court can re-appreciate the evidence and shall interfere only when the findings of the Trial Court are perverse, manifestly illegal, or grossly unjust. The Supreme Court in *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 observed that the presumption of innocence in favour of the accused stands reinforced by an order of acquittal, and unless the conclusions drawn by the Trial Court are perverse, manifestly illegal, or wholly unreasonable, the appellate court ought not to substitute its own view merely because another view is possible. The relevant portion of the judgment reads as under:-

"69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;

- (ii) The trial court's decision was based on an erroneous view of law;

- (iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
- (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- (v) The trial court's judgment was manifestly unjust and unreasonable;
- (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.
- (vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached— one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

28. Similarly, in *Chandrappa & Ors. v. State of Karnataka*, (2007) 4 SCC 415, the Hon'ble Apex Court held that in cases of acquittal, there is a double presumption in favour of the accused. The relevant portion of the judgment reads as under:-

"16. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court."

29. Upon a holistic appreciation of the evidence, we find that the view taken by the learned Trial Court is a plausible and reasonable one based on the material on record. The prosecution has failed to prove the guilt of the respondent beyond reasonable doubt. The findings of the Trial Court do not suffer from perversity or illegality warranting interference.

30. Consequently, the appeal is dismissed and the impugned judgment dated 20th July, 2019 passed by the learned trial court acquitting the respondent is affirmed.

31. Pending applications, if any, also stand disposed of.

32. The Bail Bond and the Surety submitted by the respondent are hereby discharged.