IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:23.06.2025

\+ **CRL.A. 856/2023 & CRL.M.(BAIL) 1426/2023**

PREM SHANKAR@ RAJU .....Appellant

versus

STATE OF NCT OF DELHI .....Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ishaan Kumar, Adv.

For the Respondent : Mr. Aashneet Singh, APP for the State with SI Rinki, PS SP Badli.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed challenging the judgement of conviction dated 19.05.2023 (hereafter '**impugned judgement**') and order on sentence dated 21.07.2023 (hereafter '**impugned order on sentence**') passed by the learned Additional Sessions Judge ('**ASJ**'), (POCSO), Rohini Courts, Delhi,in Sessions Case No. 377/2017arising out of FIR No. 288/2017 dated 31.03.2017 registered at Samaipur Badli.

2. The learned ASJ by the impugned judgement, convicted the appellant for the offences under Section 376 (2)(i) of the Indian Penal

Code, 1860 (‘**IPC**’) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (‘**POCSO**’).

3. By the impugned order on sentence the appellant was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹5,000/- for the offence under Section 376 (2)(i) of the IPC, and in default of payment of fine, to undergo simple imprisonment for a period of 5 days. The benefit of Section 428 of The Code of Criminal Procedure, 1973 **(‘CrPC’),** has been granted to the appellant.

Brief Facts

4. The FIR No. 288/2017 was registered under Section 363 of the IPC, based on a complaint dated 31.03.2017given by Sh. ‘L’ claiming that on 30.03.2017 his minor daughter ‘S’ aged 15 years, had left the home for school at around 9:45 am and had not returned since.The victim was recovered with the appellant in Shahupura, Ballabhgarh, Faridabad, Haryana on 28.04.2017.

5. As per the statement of the victimrecorded by the Police, she had gone to her school to collect her result on 30.03.217 when the appellant, who is her maternal uncle’s son, met her at the underpass and asked her to visit Kalkaji Temple with him after assuring that they will be back by 2 pm. She stated that they took the metro and went to Kalkaji whereafter at 2 pm she asked the appellant to drop her but he kept delaying on one pretext or another. She stated that around 9:30 pm she reached the house of the appellant at Prahaladpur, where he gave her a cold drink with some stupefying substance, that made her unconscious. She stated that when she woke up, she was unclothed.

She stated that the appellant threatened her that if she returned home her parents will not accept her for being a disgrace to her family. It is stated that the appellant kept her there for three days, after which, on 03.04.2017 he took her to a rented room in Shahupura and forcibly made physical relations with her till 24.04.2017, whereafter she was recovered on 28.04.2017.

6. The minor victim supported the case of the prosecution in her statement under Section 164 of the CrPC.She was medically examined at Dr BSA Hospital and the exhibits were collected. The FSL result revealed presence of semen on the *salwar* of the victim, the DNA of which matches that of the appellant.

7. After completion of investigation, chargesheet was filed under Sections 363/366/376/328 of the IPC and Section 6 of the POCSO Act.Charges were framed against the appellant for the offences under Sections 363/366/342/328/506/376(2) (n) of the IPC and Section 6 of the POCSO Act*vide* order dated 03.08.2017. However, *vide* order dated 16.05.2023, these charges were amended and the offence under Section 376(2)(i) of the IPC was added to the trial of the appellant.

8. The learned ASJ in the impugned judgement acquitted the appellant for the offences under Sections 363/366/328/342/506/376(2)(n) of the IPC and Section 6 of the POCSO Act, on the grounds that the prosecution was not able to prove the role played by the appellant in the aforesaid offences.It was observed that the victim had been consistent regarding the fact that she was subjected to sexual intercourse and that no explanation was given

by the appellant in regard to how his semen was found on the *salwar* of the victimand why she was recovered at his instanceafter she went missing. It was held that despite the fact that the sexual relationship between the appellant and the victim appeared to be consensual, the case would fall under the definition of rape under Section 375 of the IPC, owing to the fact that the victim was a minor at the time of the incident. The appellant was convicted under Section 376 (2) (i) of the IPC and under Section 4 of the POCSO Act.

9. The prosecution cited 20 witnesses in support of its case, out of which14 witnesses were examined. The said 14 witnesses included the victim (PW-1), the victim's mother (PW-4) since the victim's father expired before his statement could be recorded,the Doctors at BSA Hospital (PW-3 and PW-6), the Junior Forensic/ Chemical Examiner (Biology) (PW-7), the Investigating Officer (PW-14)and other official witnesses. The prosecution also relied upon, *inter alia*, the seized clothes of the victim being Ex. PW1/B, the school record of the victim and the certificate issued by the Vice Principal of the victim's school being Ex. PW2/A to Ex PW2/E, the first and second MLC of the victim being Ex. PW3/A and Ex. PW6/A respectively, the missing report registered by the father of the victim being Ex. PW4/A, the FSL Report being Ex. PW7/A, the *roznamcha* entries being Ex. PX3 and Ex. PX4 when the victim was recovered in the company of the accused, and the medical and exhibits collected from the appellant being Ex. PX5 and Ex. PW14/C.

10. The appellant denied the allegations in his statement under Section 313 of the CrPC and contested that he was being falsely implicated in the present case.

11. The learned ASJ convicted the appellant of the offences under Section 376 (2)(i) of the IPC and Section 4 of the POCSO Act, taking into consideration the documents of the victim from her school wherein the date of birth of the victim is stated to be 05.10.2001, the testimony of the prosecution witnesses, especially, the victim and her mother, the FSL result as well as the recovery of the victim from the company of the appellant recordedin the *roznamcha* entries.

12. Learned Counsel for the appellant submitted that there are material inconsistencies and improvements in the statements of the victim. He submits that although the victim admitted that she was seen by the neighbours in Prahladpur and claimed to ask for help from some woman, however no independent witness from the vicinity was cited as a witness to corroborate the case of the prosecution.

13. He placed reliance on the judgement passed by the Hon'ble Apex Court in ***Rahul v. State (NCT of Delhi)*:(2023) 1 SCC 83** to state that the seizure memo of the clothes of the victim does not bear any date and that there is an unexplained delay in depositing the sealed parcels to FSL and therefore the prosecution had missed an important link. He argued that even otherwise the scientific evidence is not the proof of the culpability of the appellant when the same fails to corroborate with other evidence. [Ref: ***Harbeer Singh v. Sheeshpal* : (2016) 16 SCC 418**]

14. He submitted thatthe learned ASJ erred in not granting benefit of doubt to the appellant and convicting him mechanically without appreciating that the prosecution has been unable to establish its case beyond reasonable doubt and that the burden of the same is not upon the appellant to have proved his innocence beyond reasonable doubt.

15. *Per contra*, the learned Additional Public Prosecutor for theState vehemently contested that the testimonies of the witnesses including that of the minor victim, had supported the case of the prosecution and the same alone is sufficient to confirm the conviction of the accused. He submitted that the school record of the victim clearly reveals that the victim was 15 year of age at the time of the incident and therefore the learned ASJ has rightly passed the impugned judgement convicting the appellant for the offences under Section 376 (2)(i) of the IPC and Section 4 of thePOCSO Act.

Analysis

16. At the outset, it is relevant to note that while dealing with an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction, this Court is required to reappreciate the evidence in its entirety and apply its mind independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi & Ors. v. The State of Madhya Pradesh :*****Criminal Appeal No. 1350/2021** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

> *"9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required*

to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in ***Majjal v State of Haryaya*** *[(2013) 6 SCC 799] , where the Court held:*

> *'6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.*
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> *7.* ***It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic****. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.' "*

(emphasis supplied)

17. In the present case, the allegations levelled against the appellant are serious in nature. It is the case of the prosecution that the appellant sexually assaulted the victim, who was 15 years old at the time of the incident.

18. It is relevant to note that the appellant has been convicted for the offence under Section 4 of thePOCSO Act and Section 376(2)(i) of IPC.

19. Section 4 of POCSO Act prescribes the punishment for penetrative sexual assault and attracts the presumption under Section 29 of the POCSO Act. The same reads as under:

> *"29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."*

20. It is trite law that the said presumption only comes into play once the prosecution is able to establish foundational facts and it can be rebutted by placing evidence or by discrediting the witnesses through cross-examination as well. [Ref. ***Altaf Ahmed v. State (GNCTD of Delhi)*: 2020 SCC OnLine Del 1938**]

21. In the present case, the prosecution has sought to establish its case essentially through the evidence of the victim as well as scientific evidence.

22. It is imperative to peruse the statements tendered by the witnesses. In the complaint it was stated that the minor daughter of the complainant/ father of the victim, had gone to the school on

30.03.2017 and had not returned since. When the victim was recovered at the instance of the appellant, she stated to the Police that the appellant is her maternal uncle's son, who had met her on 30.03.2017, when she had left her house to go to the school to collect her result. She stated that the appellant took her to Kalkaji Temple and thereafter he refused to drop her back to her house and instead took her to his house in Prahladpur, where he gave her some stupefying substance in a drink which made her unconscious. She stated that she woke up without any clothes on. She stated that the appellant threatened her that now she will not be in a position to go to her house as her parents will not accept her. She stated that the appellant thereafter took her to Shahupura where he used to lock her and do inappropriate acts with her. She stated that the last incident had taken place on 24.04.2017.

23. In her statement under Section 164 of the CrPC, the victim stated that when she was going to her school, she met the appellant who asked her to go with him to Kalkaji Mandir as he had informed her mother, believing which she left with him to Lotus Temple. She stated that after spending time there, the appellant took her to Prahladpur, where he gave her a cold drink which made her unconscious and when she woke up she did not have a single piece of cloth on her. She stated that she was kept in Prahladpur for three days whereafter the appellant took her to Shahupura and forcefully kept her there in a rented room.

24. During her examination on 28.11.2017, the victim (PW1)supported the case of the prosecution. She deposed that the

appellant took her to Kalkaji on 30.03.2017 when she was returning from school after collecting her result. She stated that the appellant kept avoiding her request to drop her back home and later at night he took her to his house where he made her drink a cold drink, which made her unconscious and when she woke up she found herself disrobed. She stated that the appellant kept her there for three days, after which on 03.04.2017, he took her to Shahupura and forcefully kept her there for almost a month, till she was recovered on 28.04.2017. She further added that the appellant had sexually assaulted her about 3-4 times in that duration.

25. PW4 is the mother of the victim, who identified the missing report being Ex. PW4/A registered by her husband, as he had passed away before his examination. She identified the thumb print of her late husband, given on the application for medically examining the victim for the second time being Ex. PW4/B.

26. PW14 is the Investigating Officer who deposed about the recovery of the victim at the instance of the appellant as well as his arrest. He deposed that the victim was identified with the help of a photograph provided by her parents.He further deposed regarding the medical examination of the victim and registration of FIR. He stated that the age of the minor victim was confirmed upon collection of documents from school records, in which her date of birth is 05.10.2001 (Ex. PW2/A to Ex PW2/E).

27. In the cross-examination of PW1 and PW4, the appellant suggested that the present case has been filed on account of previous

monetary dispute with the victim's parents. It was observed that no evidence was led by the appellant in regard to the claim that there was previous monetary dispute with the victim's parents and therefore he failed to discharge the burden under Section 29 of the POCSO Act.

28. Even if it is assumed, for the sake of arguments, that the parents of the victim had a monetary dispute with the appellant, it is also relevant to note that the victim in the present case was a minor girl at the time of the incident. In such circumstances it is difficult to fathom as to why the parents would instigate their minor girl child to falsely allege commission of such grave offenceupon her, which may cause serious repercussions to her life, image and mental state.

29. The learned ASJ while acquitting the appellant for the offences under Sections 363/366/328/342/506/376(2)(n) of the IPC and Section 6 of the POCSO Act, noted the inconsistencies in the statement of the victim. It was observed that the victim admitted during her cross-examination that the neighbors in Prahladpur had seen her go in and out the house along with the appellant and were aware of the fact that she was his cousin. The applicant being forcefully kept by the appellant for three days, without having raised any alarm to the neighbors was highly improbable in the opinion of the learned ASJ. It was noted that the while the victim claimed that she did not have access to her phone, it was revealed that the phone of the victim was active and that the victim was in touch with her friend, who shared the details with the victim's father, which led to her recovery. It was also noted that the victim had improvised her testimony in regard to

receiving death threats by the appellant, whereas in her statement to the Police, she had stated that she did not return home as her family would not accept her. Moreover, contrary to her claims she did not testify that she was raped by the appellant in Shahupura, and that even in her medical examination she only mentioned a single occasion of sexual assault by the appellant in Prahladpur and not repeated acts of sexual assault, as claimed by her.

30. Even though there are inconsistencies in the statement of the victim, as noted above, which make it apparent that the victim had willingly accompanied the appellant and shared consensual relations with him, however, unequivocally the victim was a minor at the time of the commission of the offence and her consent is irrelevant.

31. The FSL result being Ex. PW7/A reveals that semen was detected on the *salwar* of the victim and the DNA matches that of the accused. The said *salwar* has been duly identified by the victim as well as the mother of the victim. Moreover, PW 7 being the Forensic/ Chemical Examiner, has deposed that the DNA profiling performed on the two exhibits, i.e., blood sample of accused, which was collected from Dr. BSA Hospital during his examination, and *salwar* of victim collected on the day of her recovery, are sufficient to conclude that biological stains present on the *salwar* of the victim matches the DNA present in the blood sample.

32. In this regard, the entire statement of the minor victim cannot be disregarded in view of minor inconsistencies. The only relevant aspect

in the present case is that the appellant established sexual relations with the victim who was a minor at the time.

33. Inconsistencies in the evidence does not come in defence of the appellant in view of the established facts that the victim was a minor at the time of the incident, the appellant's semen was found present on the *salwar* of the victim and the fact that she was recovered at his instance after almost a month of her disappearance. Minor discrepancies in relation to the statements made by the victim, though duly noted, are not such that cast a doubt over the charge under Section 376(2)(i) of the IPC. The said factor has to be established by showing motive for false implication, which the defence has failed to show in the present case, as noted above.

34. On careful examination, victim's statements are consistent on the point that the appellant took her to Kalkaji and she stayed with her and established sexual relations. She further stated that the appellant kept her there for three days whereafter he took her to Shahupura and kept her there, till she was recovered by the Police on 28.04.2017. As already discussed above, the minor inconsistencies in the statement of the victim does not outrightly disregard her entire statement. The statement still inspires confidence for the purpose of ascertaining that sexual relations was in fact established between the appellant and the victim.

35. The age of the victim has not been challenged by the appellant in the present case. It has been argued on behalf of the appellant that the victim's evidence suffers from material improvements and the

same does not inspire confidence. It has been argued that there are also contradictions between the evidence of the victim given before the police and before the learned Court and no independent witness had been produced by the prosecution to corroborate the statement of the victim.

36. It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same. The law on this aspect was discussed in detail by the Hon'ble Apex Court by ***Nirmal Premkumar v. State : 2024 SCC OnLine SC 260***. The relevant portion of the same is produced hereunder:

> *"11.* ***Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.***
> *12. In Ganesan v. State4 , this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.*
> *13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in* ***Rai Sandeep v. State (NCT of Delhi)5*** *. The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:*
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> > *"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what*

would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(underlining ours, for emphasis)

14. In ***Krishan Kumar Malik v. State of Haryana6*** *, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:*

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and

should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."

15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high.The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."

(emphasis supplied)

37. The argument of the appellant that the seizure memo of the clothes of the victim does not bear any date and that there is an unexplained delay in depositing the sealed parcels to FSL, does not warrant any adverse infernce. The entry of three different sets of articles being, biological samples of the accused, clothes of the victim and personal search articles of the accused were made in Entry bearing No. 4896/2017 dated 28.04.2017. It is also rightly noted by the learned ASJ that the movement of these exhibits in a sealed condition, from

the IOs to the *malkhana* and then to the FSL has been duly proved through PW12, PW14, PW10, PW8 and PW13.

38. Furthermore, the learned ASJ has already dealt with a similar argument of the appellant that the same entry for the three articles reflects that the clothes of the victim had not been deposited in the *malkhana* on 28.04.2017 and the same were deliberately included in the same entry later on. The learned ASJ rightly considered the explanation given by the PW13 that separate serial numbers were not given to the *pullandas* received by him at different times of the day on 28.04.2017 because all *pullandas* were pertaining to the same FIR and even the perusal of the entries does not reflect any suspicious modification and the same appear to be enumerated in sequence.

39. The learned ASJ rightly determined that, although the sexual relationship between the appellant and the victim appeared to be consensual, the case would nevertheless be classified as rape since the victim was a minor at the time of the incident. The Hon'ble Apex Court in ***Satish Kumar Jayanti Lal Dabgar v. State of Gujarat* : (2015) 7 SCC 359**, refused to even consider the consent of the minor as a mitigating circumstance in the case. The Hon'ble Court affirmed the legal protection provided to minors under the IPC and while reinforcing the seriousness of the approach ought to be taken by the judiciary in cases of sexual offences against minors, also set a precedent for the sanctity of consent. It was held as under:

> *11. ...Believing in the authenticity of these documents, the trial court concluded that as per Ext. 40 read with Ext. 26, the date of birth of the prosecutrix was 28-9-1988 and entry to this effect was made in the*

register on 1-10-1988 which clearly evinced that the prosecutrix was less than 16 years of age (in fact even less than 15 years) on 1-9-1993 when she was taken away by the appellant. ***Having regard to her age, the trial court concluded that it was a case of kidnapping as her consent was immaterial inasmuch as being a minor she was not capable of giving any consent at that age. Likewise, since sexual intercourse had been virtually admitted and proved as well by medical evidence, the same would clearly amount to rape. Apart from the admission of the accused himself, the factum of sexual intercourse was proved by medical examination and Dr Raj Kamal, who had examined the victim as well as the accused, had deposed to this effect.***

xxxx xxxx xxxx

14. ***The first thing which is to be borne in mind is that the prosecutrix was less than 16 years of age. On this fact, clause sixthly of Section 375 IPC would get attracted making her consent for sexual intercourse as immaterial and inconsequential. It reads as follows:***

*"**375. Rape**.—A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions—*

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Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

15. ***The legislature has introduced the aforesaid provision with sound rationale and there is an important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is civil law or criminal law, the consent of a minor is not treated as valid consent. Here the provision is concerning a girl child who is not only minor but less than 16 years of age. A minor girl can be easily lured into giving consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age. Even when there is a consent of a girl below 16 years, the other partner in the sexual act is treated as criminal who has committed the offence of rape. The law leaves no choice to him and he cannot plead that the act was consensual. A fortiori, the so-called consent of the prosecutrix below 16 years of age cannot be treated as mitigating circumstance.***

> *16. Once we put the things in right perspective in the manner stated above, we have to treat it as a case where the appellant has committed rape of a minor girl which is regarded as a heinous crime.* ***Such an act of sexual assault has to be abhorred. If the consent of minor is treated as a mitigating circumstance, it may lead to disastrous consequences.*** *This view of ours gets strengthened when we keep in mind the letter and spirit behind the Protection of Children from Sexual Offences Act, 2012."*
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> (emphasis supplied)

40. Pertinently, the age of the victim has not been challenged by the appellant. The appellant was consequently convicted under Section 376(2)(i) of the IPC and Section 4 of the POCSO Act.

41. In view of the same, the testimony of the witnesses and the evidence led by the prosecution, inspires confidence and the appellant has been unable to show that the version of the victim that the appellant had sexual intercourse with her in Prahladpur, is false. In such circumstances, the foundational facts stand proved by the prosecution through the evidence of the victim and other witnesses as well as scientific evidence, and the appellant has not been able to create any doubt to rebut the presumption under Section 29 of the POCSO Act.

42. Insofar as the sentence of the appellant is concerned, in theopinion of this Court, the learned ASJ has already taken into account the mitigating circumstances in favour of the appellant, such as being a young boy of 20 years of age and a first time offender, however, the seriousness of the offence cannot be ignored. The appellant was sentenced toundergo the minimum period of sentence of ten years under Section 376 (2) (i) of the IPC. This Court finds the

quantum of sentence to be proportional with the crime as has been committed by the appellant.

43. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned judgment and order on sentence.

44. The appeal is dismissed in the aforesaid terms. Pending application stands disposed of.

AMIT MAHAJAN, J

JUNE 23, 2025