



2026:DHC:7273



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

Date of reserving order: 03.08.2026

Date of decision: 31.08.2026

IN THE MATTER OF:

+ CRL.A. 839/2008

JAGDISH @ JAGGA

.....Appellant

Through: Ms. Astha, (DHCLSC), Adv.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for
the State with SI Ashish Sharma, PS
Nand Nagri.

Mr. Yuvansh Mittar, (DHCLSC) for
R-2.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. On 08.07.2003 at about 02:00 PM, the prosecutrix was allegedly kidnapped by four persons, namely, Jagdish @ Jagga, Deepak @ Chiku, Anwar @ Guddu and one unknown person, from her house bearing No. G-4/68 Sunder Nagari and was taken initially to a cinema hall where all the aforesaid four accused persons and the prosecutrix enjoyed the movie, namely, 'Andaaz' and thereafter, all except Jagdish @ Jagga went away on the pretext of arranging some money and did not return. Jagdish @ Jagga took the prosecutrix to a relative's place where, according to the allegations, he committed rape upon the victim / prosecutrix.



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2. On the other hand, finding that the prosecutrix is missing, her father lodged a complaint after initially trying to trace out the prosecutrix since the prosecutrix was taken away in the presence of his another daughter, namely, Hema aged about 10 years. The police, thus, registered an FIR (Ex.PW-1/A) on the basis of the report lodged by the father of the prosecutrix on 09.07.2003 (Ex.PW-1/A).

3. The prosecutrix and the said Jagdish @ Jagga were caught by the father of the prosecutrix, along with the policeman, who were in search of the prosecutrix. Against the backdrop of these facts and circumstances, the FIR (Ex.PW-1/A), which was registered on 09.07.2003, culminated into a chargesheet after requisites of the investigation. To the charges framed under Section 366/34 IPC (Indian Penal Code, 1860) all the three i.e. Jagdish @ Jagga, Deepak @ Chiku and Anwar @ Guddu pleaded not guilty and so was the stand of Jagdish @ Jagga against whom a separate charge under Section 376 IPC was also framed.

4. Notwithstanding the fact that the accused persons pleaded not guilty, the learned Trial Court after examining 16 prosecution witnesses, taking into account the statement of accused persons and the evidence brought on record as DW-1 (Aslam) and DW-2 (Pushpa), came to the conclusion that except Jagdish @ Jagga, the other two have no active role and were given benefit of doubt and were acquitted of charge, whereas Jagdish @ Jagga, was held guilty under both the charges i.e. under Section 366 IPC and 376 IPC and was sentenced to undergo Rigorous Imprisonment (RI) for 10 years each in respect of both the offences i.e. Section 366 and 376 IPC and was further ordered to pay a sum of Rs. 5,000/- each as fine for both the offences and in default of which, he was further directed to undergo Simple Imprisonment (SI) for 01 year each.



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5. The aforesaid judgment of conviction dated 07.01.2006 and the punishment awarded through order on sentence dated 09.01.2006 paved the way for the instant appeal whereby the Appellant has assailed the conviction by asserting that he did not either kidnapped or committed rape upon the victim. He has been falsely implicated in this case as he was working with the father of the prosecutrix in his factory and had demanded his remuneration for two months, which was due and that is why the father of the prosecutrix has falsely implicated him in this case. He brought evidence in his defence where Pushpa (DW-2) endorsed the fact that she had accompanied the Appellant to claim the money which was due but the father of the prosecutrix instead of paying remuneration, threatened to teach them a lesson.

6. Learned counsel for the Appellant against the backdrop of the aforesaid facts submitted that the prosecutrix went along with the Appellant of her own as she was in love with him and given the fact that her age in terms of the Ossification Test (Ex.PW-6/A) being between 14 to 16 years and considering the margin of error of two years (+ -) to be read in favour of the Appellant, she was almost major and can be taken as 18 years of age. Therefore, the Appellant cannot be held responsible for kidnapping her for the purpose of seducing or otherwise.

7. It is further submitted that the testimony of the prosecutrix is otherwise not reliable and, therefore, corroboration to the same is required, which is not there and as such it would be unsafe to hold the Appellant responsible for any offence. In addition to that it is further asserted that on behalf of the counsel for the Appellant that the broader picture is to be appreciated taking into account the conduct of the prosecutrix, the ground reality of the society and the surrounding circumstances in which the offence



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allegedly took place. It is elaborated that the offence of kidnapping cannot take place in view of the fact that the prosecutrix along with her sister and brother was present in her own house in a thickly populated area. It was not possible to entice or take away the prosecutrix unless she willingly of her own accompanied the Appellant. In such circumstances, the Appellant could neither have abducted her by dragging out forcibly from the house of the prosecutrix where her sister aged about 10 years too was present.

8. The circumstances clearly and loudly say that the Appellant could not have forcibly taken away the prosecutrix and she had all the reasons, and opportunities to avoid going with the Appellant. The younger sister of the prosecutrix certainly observed all these and could have informed the neighbours apart from parents etc. that Appellant had taken away prosecutrix forcibly. Incidentally she also has been examined as PW-2 and relevant part of her testimony goes as under:

“...I am studying in IV class. Name of my sister is ‘P’ (prosecutrix), All the three accused persons namely Jagga, Guddu and Cheeku came to our house many days ago. They took away ‘P’ (prosecutrix) after calling her. At that time, my mother had gone to school and my Papa had gone to his job. My mother came and I narrated the above said facts to her...”

9. This clearly highlight the fact that the prosecutrix was not forcibly taken away rather she, according to PW-2, was called and thereafter the prosecutrix went with them. This cannot be treated as kidnapping as the prosecutrix has all the reasons to not respond to the call given by the Appellant and in any case could have very well not accompanied him. Similarly, the Appellant, his associates, who now stand acquitted, and the prosecutrix had gone to a cinema hall to watch a movie, where lot of public presence can very well be imagined but she did not raise any alarm which is



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indicative of the fact that no force was used and that she was a willing party. There is no evidence that she was lured being a minor, inasmuch as the PW-2 has stated that the Appellant had called her. Mere calling does not amount to the luring or enticing anybody including the prosecutrix herein for the purpose of the offence of kidnapping and certainly this is not a case of abduction either.

10. The prosecutrix has travelled from Cinema Hall to the house of the sister of the Appellant and if it was under some kind of force, the prosecutrix has all the reasons to raise alarm and seek help from the fellow passengers/persons. Presence of police cannot be ruled out at the cinema hall, if for some reason, was not available at Bus Station or in the public transport, which was used by the Appellant to transport the prosecutrix.

11. In this context learned counsel for the Appellant has also drawn the attention of the Court to the alleged history recorded by the doctor in the MLC (Ex.PW-5/A) where it is reflected that the prosecutrix herself went away with her lover and it has been pointed out that there were no sexual contact, as noted by the doctor. However, the hymen was found torn. Whether it was an old tear or recent one is not clear as neither it is recorded in the MLC (Ex.PW-5/A) nor the doctor deposed when examined in the Court. Learned counsel for the Appellant, thus, sought that the Appellant cannot be held responsible for any offence. Learned counsel for the Appellant has placed reliance on the following judgments:

- a) ***State (GNCT of Delhi) v. Vipin @ Lalla***, 2025 SCC OnLine SC 78
- b) ***Ashok Kumar v. State***, (2007)1 JCC 273
- c) ***Harun and Anr. v. State***, 2026 SCC OnLine Del 3898.

12. Learned APP, on the other hand, came up with the plea that the prosecutrix was minor on the day when the incident took place and her



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consent, even if implicit is inconsequential. Learned APP has further pointed out that the date of birth (D.O.B.) of the prosecutrix should be taken as has been provided in the Municipal Records and in this context learned APP has pointed out to the testimony of (PW-14) Shri P.S. Sharma, Sub Registrar, Shahdara, who produced the Municipal Record of birth of prosecutrix and according to the same she was born on 05.12.1988, copy of the relevant entry in this regard is PW-14/A. According to which the name of the prosecutrix is there at Sl. No. 3780 of the Birth Register reflecting the address and the names of the parents of the prosecutrix and the D.O.B. according to this is 05.12.1988. The age according to this D.O.B should be calculated as on 08.07.2003 and that comes to 14 years 06 months 02 days.

13. It is asserted on behalf of the learned APP that in view of these facts the prosecutrix is apparently less than 16 years of age and that takes away the strength and substance from the arguments of the learned counsel for the Appellant. Learned APP further submitted that in view of clear and categorical deposition by the victim that she was forcibly raped and the corroboration to the same is reflected in the MLC through the torn hymen, which leaves no escape route for the Appellant. He has been rightly held guilty by the learned Trial Court through the Impugned Judgment, therefore, the appeal should be dismissed.

14. While countering to the contentions of the learned APP, it is submitted by the counsel for the Appellant, that the requirement of law in terms of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'J.J. Act') and Rule 12 of Juvenile Justice Model Rules, 2007. It is the birth certificate which is relevant and not the D.O.B register. As such, there is no conclusive evidence in terms of Section 94 of the J.J. Act and that is the reason why even the Investigating



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Agency has gone for the Ossification Test, therefore, the age is in terms of the Ossification Test (Ex.PW-6/A) should be taken into consideration and that makes the prosecutrix major.

15. Having considered the submissions made and going through the record, it appears that the issue of age has been blown out of the portions. Even if the prosecutrix was major, still her consent was not there and that makes the Appellant responsible on the face of it. However, in the absence of any other testimony on record, which is normal in such cases, the testimony of the prosecutrix needs to be scrutinized and scanned very meticulously so as to rule out any possibility of same being not correct.

16. No corroboration to the testimony of the victim is there as she, while being examined by the doctor did not tell about commission of rape but the doctor in view of the nature of allegations in the FIR has taken all precautions and a sexual assault kit was seemingly prepared and sent for forensic examination but nothing against the Appellant is there in FSL report either inasmuch as semen could not be detected on the exhibits sent for examination.

17. Certain other lapses have been pointed out by the learned counsel for the Appellant that the Investigating Officer did not prepare the site plan of the place of kidnapping and recovery of the prosecutrix nor the IO tried to join public witnesses in the proceedings or specially at the time of arrest and has failed to point out the place of recovery and no site plan is prepared either in this context.

18. The lapses pointed out by learned counsel for the Appellant are not serious enough and does not go to the roots of the matter in the first place and in any case, the lapses on the part of the Investigating Officer, cannot be permitted to be snowballed in such manner, so as to take away the entire



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prosecution's case. Reference in this context can be made from the following judgments:-

In **C. Muniappan Vs. State of T.N. (2010) 9 SCC 567**, the Supreme Court held that it was a case of highly defective investigation but this was not the end of the matter, for if primacy was given to omissions and lapses by perfunctory investigation, faith and confidence of the people in criminal justice administration would erode. In such case, there is a legal obligation on the part of the Courts to examine prosecution evidence *de hors* such lapses, to find out whether evidence is reliable or not, and to what extent it is reliable and whether the lapses had affected the object of finding the truth. Reference was made to several decisions in support of said ratio.

In **Ganga Singh Vs. State of M.P., (2013) 7 SCC 278**, it was held that Courts cannot acquit an accused on the ground that there were some defects in the investigation, unless such defects cast reasonable doubt on the prosecution case.

Similar findings were recorded in **Sunil Kundu & Anr. Vs. State of Jharkhand, (2013) 4 SCC, 422**, holding that lapses or irregularities in investigation would not be material if the evidence produced on record, despite the said lapses or irregularities, does not go to the root of the matter and dislodges the substratum of the prosecution case.

In **Surajit Sarkar Vs. State of West Bengal, (2013) 2 SCC 146**, after referring to several earlier decisions, it has been held that deficiencies in investigation by way of omission and lapses by the investigating agency cannot themselves justify total rejection of the prosecution case and where prosecution evidence *de hors* such lapses, when carefully scrutinised and evaluated, does not affect the object of finding of truth.

19. Irrespective of the aspect of prosecutrix being minor or major, the consistent stand taken by her in her statements, that is, the one recorded by a Judicial Magistrate under Section 164 Cr.P.C and the substantive statement recorded in Court, she has maintained that she was enticed and was taken away by the Appellant Jagdish @ Jagga and was raped. As regards, the element of force as well as enticement, from the perspective of Appellant,



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there are certain aspects which remained un-clarified and thus, become questionable, *qua* which no proper explanation has come on record. If the prosecutrix was forcibly taken away by the Appellant then where was the occasion with her to enjoy the movie in a movie theatre, where according to her own admission, police was also present apart from fellow viewers. Why she did not make any issue or complaint that she has been forcibly taken by the Appellant? However, her substantive statement clearly blames the Appellant for her kidnapping. Her testimony could not be completely shaken in the cross-examination, thus, has to be accepted.

20. It is not the case of the prosecution or the prosecutrix, that some sort of threat was extended to the prosecutrix in order to secure her silence. Additionally, the stand taken by the prosecutrix before the Doctor while giving the background / history, she has, in a way, not blamed the Appellant in any manner, rather stated that she was not subjected to any sexual contact. The doctor who had prepared the MLC has been examined as PW-5, who has clarified that history of the case was given by the prosecutrix herself. PW-5 Dr. Lisa has not mentioned the fact as to whether the hymen was recently torn or was an old tear, while admitting that hymen can also be torn, due to other factors without establishing any sexual contact, as has also been argued by learned counsel for the Appellant.

21. Learned counsel for the Appellant has tried to portray that the Appellant was falsely implicated as in fact, it was essentially a dispute between the employer and the employee, between the Appellant and father of the prosecutrix, without success though. The defence witness i.e. DW-2 Pushpa examined on behalf of the Appellant, to show that there was some monetary dispute between the Appellant and father of the prosecutrix. However, this fails to evoke any conclusion in favour of the Appellant in



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view of the deposition of the prosecutrix with regard to her being kidnapped and subjected to sexual assault. On the contrary, the said dispute could be a reason with the Appellant to do what he did to the prosecutrix. Even if it is presumed that the prosecutrix accompanied the Appellant out of her own free will, but it does not give licence to the Appellant to rape her, inasmuch-as, on the aspect of rape, she is clear that it was a forcible sexual assault on her by the Appellant. The stand taken by her in the MLC is quite baffling though as she denied any sexual contact. However, this aspect has not been put to the prosecutrix in her cross examination. Therefore, in absence of any confrontation and emergent clarification, the Appellant cannot take advantage of these facts. As a result, the Appellant fails to carve out a case in his favour for reversal of the impugned judgment. As such, the judgment of conviction is upheld.

22. On the aspect of sentence, learned counsel for the Appellant has sought that he may be considered for the lighter sentence, in view of the fact that he was about 21 years of age at the time of incident and now after lapse of about 23 years, things have taken a different shape where the Appellant has, so is the prosecutrix too, moved ahead in their respective lives with their families etc. Sending the Appellant to jail at this stage would not bring any good to anyone, either to the Appellant, to the prosecutrix or to the Society at large, especially when the Appellant has spent considerable time in custody. It is sought that the period spend in custody may be treated as sufficient punishment and may be released against the period already undergone by him.

23. Considering the entire gamut of facts and circumstances, more particularly, the fact that more than two decades have gone in between and that no fruitful purpose is going to be served by sending the Appellant



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behind bars for completion of entire sentence awarded to him, therefore, the sentence awarded to the Appellant is reduced to the punishment already undergone by him, which according to the Nominal Roll is more than 07 years, which is the minimum punishment for offence punishable under Section 376 IPC. As regards the offence punishable under Section 366 IPC also, the period undergone is taken as the sentence sufficient, while the aspect of fine shall remain unaltered to the extent that he shall deposit Rs. 5,000/- each qua the offences under which held guilty, convicted and sentenced with slight modification qua punishment in default, which shall be 06 months (SI) qua the offence under Section 376 IPC and 03 months (SI) qua the offence under Section 366 IPC. The sentences to run concurrently. The Appellant, however, shall be entitled to the benefits of set off under Section 428 Cr.P.C.

24. As a result, the appeal together with application(s), if any, stands disposed of accordingly. Appellant to surrender forthwith to undergo the remaining sentence, if any.

25. Copy of the judgment be transmitted to the learned Trial Court and Prison Authorities for information and necessary compliance.

VIMAL KUMAR YADAV, J.

AUGUST 31, 2026/hk/ps/bj/NY