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

Date of reserving Judgment: 30th April, 2026

Date of decision: 11th May, 2026

IN THE MATTER OF:

\+ CRL.A. 654/2009

MOHD. QUASIM .....Appellant

Through: Mr.Samar Singh Kachwaha, Mr.Arsh Ranpal, Ms. Kavita Vinayak and Mr.Yash Dadriwal, Advs.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Nawal Kishore Jha, APP for the State with ASI Inder Singh, PS Farsh Bazar.
Ms. Astha, Adv. DHCLSC with Ms. Megha Singh for prosecutrix.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Fragmented, stratified and deeply divided Indian society across all the classes left no room practically for the young lovers to choose their partners. If the prescribed barriers are to be breach then, the consequences have been so severe that they have had to pay with their lives at times. In such a deeply divided society, which has not only divided the lives, religion, caste, region or language but even inter-se divisions have been found within a particular social group. In such circumstances, an inter-religious alliance was no less than a sin against such a scenario, where an inter-religious alliance was met with the

obvious resistance so much so that one of the partners, that is the prosecutrix herein, who had taken an initial stand of aligning with the Appellant in every aspect from voluntarily accompanying him, to marrying him, having the marriage registered and living with him for about two months, turned tables and shifted the entire blame on the Appellant when she came to depose before the Court, contrary to what she has stated in her statement under Section 161 and 164 of the Criminal Procedure Code, 1973 (Cr.P.C.).

2. The Appellant has primarily assailed the Impugned Judgement dated 23.05.2008 on two counts that the prosecutrix was mature enough and major, having reached the age of consent, as per the pre-amendment provisions and that she had herself of her own violition accompanied the Appellant, took a TSR to reach to a railway station and from there boarded a train to the hometown of the Appellant somewhere in West Bengal and enroute stayed for about 3 ½ hours at Aligarh railway station. On reaching there, she voluntarily opted to marry with the Appellant and got her marriage registered under Special Marriage Act, 1954 prior to the police swooping in on the Appellant and the prosecutrix. Both of them were brought to Delhi where case FIR No.169/2004 was registered on the complaint of the father of the prosecutrix. Police recorded the statement, inter-alia of the prosecutrix under Section 161 Cr.P.C., and got her and the Appellant medically examined etc. To make things sure, statement of the prosecutrix under Section 164 Cr.P.C. was also recorded. And she was sent to the Nari Niketan (Home for women) run by the Government of N.C.T of Delhi.

With these contentions, the counsel for the Appellant has assailed Impugned Judgment and in order to buttress and strengthen his arguments he has placed reliance on the following judgments:-

i. ***Rahul Dev v. State***, 2014 SCC OnLine Del 3930;
ii. ***Shweta Gulati v. The State Govt. of NCT of Delhi***, 2018 SCC OnLine Del 10448;
iii. ***Jaya Mala v. Home Secretary Govt. of J & K***, (1982) 2 SCC 538;
iv. ***State of NCT of Delhi v. Shiva***, 2012 SCC OnLine Del 1622;
v. ***Avdesh Kumar v. State (Govt. of NCT of Delhi)***, 2015 SCC Online Del 10666;
vi. ***Sunil v. State of Haryana***, (2010)1 SCC 742;
vii. ***Tilku v. State of Uttarakhand***, 2025 SCC OnLine SC 353;
viii. ***Mohd. Imran Khan v. State***, 2009 SCC OnLine Del 4021;
ix. ***Nirmal Premkumar v. State***, (2024)20 SCC 293;
x. ***Siddaruda v. State of Karnataka***, 2023 SCC OnLine SC 585; and
xi. ***State v. Rahdey Shyam***, 2014 SCC OnLine Del 6812

3. However, appreciating the contentions aforesaid it will be apt to have a brief idea of the facts. On 16.05.04 one Kanhiya Lal (Complainant) went to police station Fresh Bazar and disclosed to the duty officer about his missing daughter (hereinafter referred as

prosecutrix) since noon on that day. The complainant expressed his suspicion/ doubt regarding the involvement of one Qasim (accused) in the crime in question. Finding it prima facie a cognizable offence, duty officer registered FIR no. 169/2004 u/s 363 IPC. Investigation was marked to SI Vinay Yadav. The letter procured a photograph of prosecutrix and flashed message the missing person i.e. the prosecutrix, all over India.

4. Learned APP while countering the contentions raised on behalf of the Appellant came up with the plea that the prosecutrix had not reached the age of consent therefore, her consent was immaterial and the act of taking away / enticing the prosecutrix by the Appellant amounts to offence under Section 363 / 366 Indian Penal Code, IPC, under which the Appellant have been convicted in addition to the offence under Section 376 IPC inasmuch as the prosecutrix was subjected to be raped during her stay of about 02 months with the Appellant.

5. Learned APP has contended that the substantive statement before the Court only falls into the scope and ambit of evidence and the evidence is heavily loaded against the Appellant. As such, it is sought that the Impugned Judgment and sentence does not required to be disturbed and should maintained.

6. Determination of age is a very vital aspect of the instant case or so to say holds the key towards its outcome. With regards to the aspect of age, the guiding principle is under Section 94 of the Juvenile Justice Act, 2015, which is almost akin to Rule 12 of Juvenile Justice Rules,

2007 which provides as under:-

> *"Section 94. Presumption and determination of age.*
> *(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*
> *(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—*
> *(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*
> *(ii) the birth certificate given by a corporation or a municipal authority or a panchayat*
> *(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:*
> *(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."*

7. However, in a recent judgment Hon'ble Supreme Court has fallen back on Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 qua age determination in ***K.P. Kirankumar @ Kiran vs. State by Peenya Police Crl. Appeal No.5614/2025*** arising out of SLP (Crl.) No.11287/2025 dated 19.12.2025, the observation made in ***Jarnail Singh v. State of Haryana***, 2013 SCC OnLine SC 507:

> *"23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is*

concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion."

8. As can be seen from the aforementioned judgment that the first document which is of utmost importance is the certificate issued by the Education Board with regard to the 10th standard qualification having the age also. In the absence of the same, the other document which becomes relevant is the date of birth certificate issued by a Municipal body and in the absence of the same, as a last resort the ossification test has been prescribed to determine the age.

9. In the instant case, the child has not studied up to the 10th

standard, therefore, there is no scope of having that 10th standard board certificate. This brings us to the second option of having a birth certificate from any municipal body, which too is not there. With regards to the documents, only the school leaving certificate and other relevant entries are there which have been relied upon by the prosecution. In this context, the question would be as to whether these entries/documents are to be looked into or not inasmuch as it was the contention of the learned APP that there was no reason for the parents of the prosecutrix to give any other date of birth except the one which was the actual one. They could not have foreseen that a situation would emerge sometime in the future where the date of birth/age determination would become relevant and important. In these circumstances, the documents like school leaving certificate and similar other documents for date of birth can be looked into.

10. The date of birth certificate has not been not proved in terms of chapter V of the Evidence Act, 1872 dealing with documentary evidence, but if the school certificate is taken into consideration, even then no conclusive proof of age is there. In ***Birad Mal Singhvi v. Anand Purohit,*** 1988 Supp SCC 604: 1988 SCC OnLine SC 449

> *"**14.** ... The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone*

else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value."

11. As per that, in the instant case, the school leaving certificate (Ex. PW-6/D) clearly reflects that the date of birth of the prosecutrix was 10.01.1990 and as per that, on the relevant date when the accused enticed her and took her away, she was a minor. Therefore, presuming what has been contended by the learned counsel for the Appellant, that the prosecutrix accompanied the Appellant of her own, the same becomes irrelevant. In this context, learned counsel for the Appellant had relied upon a judgment in ***Sunil v. State of Haryana, (2010) 1 SCC 742***.

*"**25.** The prosecution also failed to produce any admission form of the school which would have been primary evidence regarding the age of the prosecutrix. The school leaving certificate produced by the prosecution was also procured on 12-9-1996, six days after the incident and three days after the arrest of the appellant. As per that certificate also, she joined the school in the middle of the session and left the school in the middle of the session. The attendance in the school of 100 days is also not reliable. The prosecutrix was admitted in the school by Ashok Kumar, her brother. The said Ashok Kumar was not examined. The alleged school leaving certificate on the basis of which the age was entered in the school was not produced.*

***26.** Bishan, PW 8, the father of the prosecutrix has also not been able to give correct date of birth of the prosecutrix. In his statement he clearly stated that he is giving an approximate date without any basis or record. In a criminal case, the conviction of the appellant cannot be based on an approximate date which is not supported by any record. It would be quite unsafe to base conviction on an approximate date."*

12. Additionally, it has been further asserted on behalf of the

Appellant that why not fall back on the report of the ossification test in the context of determination of age, when the statute clearly provides for it and for that matter the prosecutrix had also gone for the ossification test. The result of the ossification test Ex. PW-11/A clearly reflects that the age of the prosecutrix was between 14 to 16 years old at the relevant time and given the concept of margin of error which provides that it could be plus(+) minus(-) 02 years as such, the age of the prosecutrix could be in the range of 12 to 18. It has been asserted that it is a settled proposition of law that the ossification test, with the margin of error, is to be read in favour of the accused/Appellant herein. According to the same, the age of the prosecutrix at the relevant time becomes 18 years which is far beyond the age of consent in the pre amended era when it was 16 years in respect of offence of rape. As such, it has been asserted on behalf of the Appellant that the evidence in its entirety clearly reflects that the prosecutrix was neither enticed nor persuaded to go with the Appellant rather she herself took the decision to accompany the Appellant as she was in love with him. In this context, learned counsel for the Appellant pointed out towards the letters written by the prosecutrix to the Appellant, which are Ex. PW-1/DB, Ex. PW-3/D1, Ex. DW/D2, Ex. DW3/D3, Ex. PW-4/B, Ex. PW-4/D, PW-3/D, Ex. PW-3/D7, Ex. PW-3/D8, Ex. PW-3/D9.

13. It has been further contended that on behalf of the Appellant that the prosecutrix being a major having the legal sanction of exercising the discretion chose to marry the Appellant, as can be seen from the fact that application for marriage was moved before the competent

authority under the Special Marriage Act, on 07.06.2004 and the marriage took place on 09.07.2004. The certificate dated 09.07.2004 mark PW-1/A to C clearly reflects that it was all done by the prosecutrix of her own without there being any force, coercion or pressure.

14. The prosecutrix was completely aligned with the Appellant as long as she was with him and was there in the Nari Niketan, which can be inferred from the fact that in her statements under Section 161 and 164 Cr.P.C. she has not complained against the Appellant in any manner. The MLC Ex. PW-7/B is a further reflection of the prosecutrix having consensually moved out with the Appellant and married him, inasmuch as she had deliberately refused for her internal examination otherwise, she would have definitely gone for it to facilitate the collection of evidence to nail down the Appellant. Incidentally, the MLC also reflects that she was suffering from a medical condition kown as amenorrhea for at least two months which indicates, if not directly but indirectly that she could have been pregnant as pregnancy is known to be one of the most common causes of this condition.

15. It is correct that the statement made before the court during the trial stage is taken to be the substantive statement/evidence which is relevant for consideration. However, statement made 'On Oath' before a magistrate cannot be completely ignored either. It is the comprehensive justice which should be the aim and object of the judicial process. In the observation made by Hon'ble Supreme Court can be looked for guidance in ***P.Yuvaprakash v. State of T.N.,*** (2024)

17 SCC 684:

> *"**34.** The prosecution did not even cross-examine this witness. Having regard to these overall factors, the Court is of the opinion that M's statement under Section 164CrPC contained a truthful narration of the events. This, in other words, meant that there was no penetrative sexual assault on her. Therefore, the provisions of the Pocso Act will not be applicable in this case. The impugned judgment [P. Yuvaprakash v. State, Criminal Appeal No. 400 of 2016 sub nom N. Rasu v. State, 2016 SCC OnLine Mad 32189] set aside the charge under Section 366IPC against the appellant. The charges against him, under Section 6 of the Pocso Act as well as Section 10 of the Prohibition of Child Marriage Act, cannot be sustained; the findings of the courts below i.e. conviction and sentences imposed are, therefore, set aside."*

16. The conduct of the prosecutrix also reflects that her so called substantive statement before the Court during the trial was under some sort of social or parental pressure and certain aspects are there which could not be explained by her during cross-examination. The prosecutrix had numerous opportunities to draw the attention of not only the public persons but the Government Authorities as well, had she been forcefully taken by the Appellant or was enticed by him. She had travelled for more than 1500 kms in public transport right from the TSR to a bus, to a train to reach to the native village of the Appellant in West Bengal. It is nearly impossible to believe that the prosecutrix did not have even a single opportunity to raise alarm and attract the attention of the public police or the Government officials at the bus station, railway station or even during the travel. It is a matter of common knowledge that every train has some RPF personnels who keeps patrolling inside the train during its journey, all the stations have one or the other RPF Police post and in any case, given the huge

population of this country, it is nearly impossible to find anyone travelling in isolation in any in the public transport. It is not the case of the prosecutrix that she was threatened with any weapon which forced her to keep quiet, therefore, in such circumstances, had she been taken against her will, she had all the opportunities to raise alarm. Her silence in such circumstances only indicates that she was an ally of the Appellant and accompanied him by her own choice, will and desire.

17. The copies of the letters purportedly written by prosecutrix are Ex. PW-1/DB, Ex. PW-3/D1, Ex. DW/D2, Ex. DW3/D3, Ex. PW-4/B, Ex. PW-4/D, Ex. PW-3/D, Ex. PW-3/D7, Ex. PW-3/D8, Ex. PW-3/D9 which put a stamp on this, notwithstanding, the fact that the prosecutrix has tried to wriggle out of the labyrinth of letters by saying that she was forced to write these letters. It is against common sense that a person who has got a marriage certificate would force the prosecutrix to write such letters as if he was some kind of preemptive measure the contents of letters further belie any such action or situation on the part of the Appellant.

18. Thus, what emerges on record is that the prosecutrix had herself, of her own volition not only accompanied the Appellant but, got married under Special Marriage Act. The marriage certificate is part of record. So far as, the age of the prosecutrix is concerned, with the margin of error it can be taken as 18 years i.e. the age when a female can marry and can also have consensual relationship with anyone of her choice. The statement made before the Court is not believable and seems to be stemming out of social and family pressure. She had

herself refused her internal body examination and was suspected to be pregnant also. She had not only lived with the Appellant for months together but had travelled with him in various public transports and covered distance of not less than 1500 KM. Thus, the prosecutrix had every opportunity to protest and raise attention of the public and the police authorities, if she was being taken by the Appellant under some kind of force or was otherwise enamoured and enticed, but not a willing party.

19. Additionally, as regard, the offence of rape, Exception 2 to Section 375 IPC comes into play which clarifies that sexual intercourse or sexual act by a man with his own wife and the wife being not under 15 years of age is not an offence of rape. Thus, on the parameters of the statute, she being wife of the Appellant, even if she was less than 18 years of age, cannot be treated to have been raped by the Appellant. She has herself given her age as 18 years in the statement recorded under Section 164 Cr.P.C. she has also stated the same age in the MLC Ex. PW-7/B too. In this context, reference can be made to the judgments in: ***State vs Rahdey Shyam @ Radhey*** 2014 SCC OnLine Del 6812 & ***Siddaruda @ Karna vs State of Karnataka*** 2023 SCC OnLine SC 585.

20. In any case the age of the prosecutrix has to be taken as 18 years and therefore on account of this fact also the Appellant cannot be held responsible.

21. As such considering the entire gamut of facts and circumstances, as discussed herein before, it is evident that the Appellant cannot be

held responsible for any of the offences with which he has been charged.

22. Accordingly, the appeal is accepted and the Appellant stands acquitted. Copy of the judgment be transmitted to the Trial Court and the prison authorities for information and compliance.

23. Bail bond stands discharged and applications, if any, stands disposed of accordingly.

VIMAL KUMAR YADAV, J

MAY 11, 2026/*hk/ps/tng*