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

Date of reserving Judgment: 05<sup>th</sup> August, 2026

Date of decision: 16<sup>th</sup> September, 2026

IN THE MATTER OF:

# **CNR No. DLHC011256612012**

+ **CRL.A. 904/2012**

**NAZRE ALAM @ RAVI & ANR** .....Appellants

Through: Mr. Javed Ahmad and Ms. Aakriti  
Aditya, Advs.

versus

**STATE OF NCT OF DELHI** .....Respondent

Through: Mr. Mukesh Kumar, APP for the  
State.  
Ms. Astha, Adv. DHCLSC with Ms.  
Megha Singh for the prosecutrix.

**CORAM:**  
**HON'BLE MR. JUSTICE VIMAL KUMAR YADAV**

**JUDGMENT**

**VIMAL KUMAR YADAV, J.**

1. On 05.07.2011, a girl reached Police Station, Burari and reported the matter about the ordeal, which she was undergoing for the last about one month. Her statement (Ex. PW-1/A) laid the foundation of the FIR registered under Sections 363/372/373/376(g)/344 read with Section 34 Indian Penal Code, 1860 ('IPC'). The sum and substance of the FIR was that the prosecutrix was enticed by one Babul, who was working in the "Kirana shop" of the father of the prosecutrix, who brought her to Delhi. In fact, he had promised to marry her and on this assurance the prosecutrix



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accompanied the said Babul, who incidentally could not be arrested despite the fact that it was not difficult to locate and arrest or at least have him declared a proclaimed offender, in view of material on record. Here in Delhi, the said Babul allegedly sold the prosecutrix for a sum of Rs. 16,000/- to one Nazre Alam @ Ravi and Rajiv, who not only raped the prosecutrix but thrown her into the Nadir world of prostitution in which the mother and the wife of the Appellant Nazre Alam @ Ravi were also involved. The prosecutrix was fortunate enough to dodge the Appellants i.e. Nazre Alam @ Ravi, his wife Noorjahan and mother of Nazre Alam. She somehow escaped from there clutches and reached to the Police Station, Burari, Delhi.

2. After registration of the FIR, the prosecutrix was medically examined where the Doctors handed over some samples to the Investigating Officer in a box, which was seized through Memo (Ex. PW-10/A).

3. A raid was conducted at the instance of the prosecutrix and both the Appellants i.e. Nazre Alam @ Ravi and Noorjahan, found present at the said address, were arrested and the paper work in this context was also carried out, which included preparation of Search memo, Arrest memo, recording of their disclosure statement including the medical examination of the Appellant Nazre Alam @ Ravi, from where also the Doctor handed over some samples which too were seized by the Investigating Officer through Memo (Ex. PW-10/C). Astonishingly the mother of the Appellant Nazre Alam Smt. Munni managed to escape and could not be arrested at all. On the next day i.e. 06.07.2011, the statement of the prosecutrix was got recorded under Section 164 Cr.P.C.

4. On completion of investigation, a charge-sheet was filed. The



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samples which were collected during this period were sent to Forensic Science Laboratory. In the month of October 2011, the prosecutrix aborted the foetus in DDU Hospital, and the relevant documents including the foetus was collected by the Investigating Officer through Seizure Memo (Ex. PW10/G). All the samples, including the foetus were sent to Forensic Science Laboratory (FSL) on 17.11.2011. Appellant-Nazre Alam @ Ravi was also taken to the FSL on production warrant for taking his blood sample. The FSL form (Ex. PW-10/J) in respect of Nazre Alam was filled up. The FSL result (Ex. PW-12/A) was subsequently filed in the Court.

5. Two of the accused, who were named by the prosecutrix including Babul, who had lured her to Delhi, could not be arrested and for that matter there is no reference of Munni, i.e. the mother of the Appellant Nazre Alam @ Ravi as according to the statement of the prosecutrix, she was an active partner so far as forcing of the prosecutrix in prostitution is concerned. It is pertinent to note here that Investigation was not carried out in right earnest. Arrest of all the three i.e. Munni, Rajeev and Babul was possible. At least Babul, the main author of the offence must have been arrested. It has come on record that Babul was the son-in-law of the Aunt (Mausi) of the prosecutrix. The document Ex. PW/7A, i.e, the disclosure statement of Appellant Nazre Alam contains this fact. It was, thus, easy to locate him/his address.

6. Based upon the allegations contained in the charge-sheet, Appellant Nazre Alam @ Ravi and his wife were charged under Sections 368 and 373 IPC whereas, Appellant Nazre Alam @ Ravi was allegedly charged under Section 376 (2) (g) IPC for committing gang rape with the prosecutrix along with the Rajiv, who could not be arrested. To the charge so framed the Appellants pleaded not guilty. During the trial, 12 witnesses were



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examined by the prosecution, and thereafter, the evidence coming on record was put to the Appellants resulting into the recording of the statement under Section 313 Cr.P.C. Through the impugned judgment, both the Appellants were held guilty and convicted to undergo Rigorous Imprisonment ('RI') for a period of 02 years and to pay a sum of Rs. 10,000/- in default of which to further undergo Simple Imprisonment ('SI') for 03 months under Section 368 IPC whereas, the Appellant Nazre Alam @ Ravi was acquitted under Sections 373/376 (2) (g).

7. Against the backdrop of the aforesaid facts, the Judgment of conviction dated 13.07.2012 and the Order on Sentence dated 19.07.2012 came under challenge whereby the focus of the argument was that the Appellants were not aware that the prosecutrix was kidnapped. They had merely provided shelter to the prosecutrix at the instance of Rajiv, who was a friend of Nazre Alam inasmuch as, said Rajiv had represented the prosecutrix as his sister and that he was going to his native place. It is, thus, asserted that on behalf of the Appellant that they provided shelter without knowing about the plight of the prosecutrix. As the relevant of knowledge is important, therefore, in the absence of the element of knowledge of the victim being kidnapped or abducted, the Appellants cannot be held responsible for the offence under Section 368 IPC. The prosecution, it is asserted, has failed to prove this knowledge, which is indispensable qua the offence under Section 368 IPC. As such, in view of these facts, the Appellants cannot be held responsible, argued the learned counsel. It is further submitted that there is no evidence that the prosecutrix was confined and concealed by the Appellant, which can be inferred from the testimony of the prosecutrix herself where she has admitted that she was treated well and no wrong was done to her by the Appellants. It is thus



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submitted that the requisite ingredients of Section 368 IPC could not be brought on record, therefore, conviction of the Appellants is not inconsonance and inconformity with the provisions of law and the facts. The learned counsel for the Appellants has placed reliance on the Judgments **Puran Singh & Ors Vs. State of Bihar** MANU/SC/1617/2001 and **Griftar Alla Baux & Ors Vs. The State** MANU/UP/0307/1971 to emphasise and fortify his contention that in the absence of any evidence to connect the Appellants with the requisite knowledge they cannot be held accountable.

8. Learned APP, on the other hand, asserted that the prosecutrix, who has been consistent with her stand involving Babul, Rajiv Appellants Nazre Alam and his wife and for that matter the mother of Nazre Alam, Munni, wherever she had an opportunity to narrate her tale of woe be it the report lodged with the Police Ex. PW-1/A, the narrative given to the Doctor and, as recorded in the MLC (Ex. PW-2/A) or in her statement recorded under Section 164 Cr.P.C. by Judicial Magistrate that too under oath. It is further pointed out by the learned APP that all these took place within a span of two days i.e. 05.07.2011 and 06.07.2011. The prosecutrix has come to depose before the Court on 18.11.2011 and while deposing in the Court she, although narrated about her fate of being lured away by Babul and being sold to Rajiv where she was forced to indulge into prostitution by the said Rajiv and Babul but gave a clean chit to Appellants. The further deposition of the prosecutrix is focused and directed to save the present Appellant i.e. Nazre Alam and his wife Noorjahan. Though she had stated that she was left at the house of Nazre Alam not by Rajiv but Babul whereas in terms of the case of the prosecution Babul had left immediately after selling the prosecutrix to Rajiv and thereafter Rajiv and Nazre Alam



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not only raped her but forced her to indulge into prostitution. The prosecutrix has out of blue started saying that she was kept properly by Appellants Nazre Alam and Noorjahan and nothing wrong was done to her. She though had stated that she had gone to Police Station where her statement was recorded and admits that it was signed by her, however, it was not read over to her. It is further submitted that even if the prosecutrix had turned hostile, her testimony can still be looked into in conjunction with other evidence to draw an appropriate inference based upon the evidence coming on record. According to learned APP, the inference which surface after the analysis of the evidence brought on record and from the statement of the prosecutrix under Section 164 Cr.P.C. and narrative given to the Doctor the Appellants Nazre Alam and Noorjahan cannot be absolved, notwithstanding the fact that the prosecutrix has tried to save them.

9. The present case is a strong mix of empathy and apathy, where the conduct of the police officials seems empathetic towards the prosecutrix as they were prompt enough not only to record her statement on 05.07.2011 but get her medically examined also so was qua recording her statement under Section 164 Cr.P.C. However, empathy or for that matter devotion towards duty has been frustrated by the apathy of the medical, scientific and technical persons involved in the process of investigation. In an abhorric incident, where a young woman has been lured and sold into prostitution, she instead of coming out against her tormenters, seemingly subdued and won over by them. In such circumstances, the technical, scientific and medical evidence could have become handy and substantiated the case of the prosecution but for the fact that the medical personals/Doctors have not been very careful vis-a-vis preservation of



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foetus. It is not that the Doctor conducting the medical examination and sampling etc. was not aware about the nature of the case as it was the Doctor, who was recording the version of the prosecutrix on the MLC, thereby being fully aware that foetus would be subjected to medical examination in order to ascertain the DNA etc. As such the foetus was required to be preserved in such a manner that it was available for the forensic analysis.

10. The medical termination of the pregnancy of the prosecutrix took place on 13.10.2011 at Deen Dayal Upadhyay Hospital and in terms of Ex. PW-10/F, the foetus and placenta was handed over to ASI Alma Minj, the Investigating Officer in this case. However, it was primarily the responsibility of the Doctors at Deen Dayal Upadhyay Hospital, the preserve the foetus in such a manner that the DNA fingerprinting can be carried out. It seems that the Doctor there, oblivious of the consequences of preserving the foetus in 'Formalin' went ahead and did something which ought not have been done. Set back to the case of the prosecution comes in the shape of inappropriate sampling and preservation of the foetus by the medical Doctor and in this context testimony of PW-12 Doctor A.K. Shrivastava, Deputy Director, FSL Rohini, Delhi can be looked into:

*"On 17.11.11, in the case FIR no 219/11, we received two sealed parcels with the seal of CMO DDU hospital and on the same day, the blood sample of accused Nazre Alam was also collected in the lab. The details of the parcels are mentioned in the detailed FSL report. The exhibit 1, 2 and 3 were subjected to DNA isolation. The DNA was isolated from the exhibit 1 to 3. The DNA finger printing profile prepared for the exhibit 3. However, DNA profile could not be generated for the source of exhibit 1 and 2 due to non-amplification. The detailed report is Ex.PW10/H and Ex.PW10/J signed by Ms. Shashi Bala, who is senior scientific officer and 1 identifies her signature.*

*During the preservation of foetus by the doctor, Formalin*



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*chemical was mixed with the foetus so it is not possible to develop DNA profiling when Formalin chemical was used for preserving the sample of the DNA. Today I have also seen the FSL report Ex.PW12/A and Ex.PW12/B prepared by Dr. Naresh Kumar and I also identify his signatures.”*

11. In view of what has been categorically stated by PW-12, foetus should not have been kept preserved in the mixture of Formalin Chemical which prevents the DNA profiling. Therefore, adding Formalin to preserve the foetus was the lapse on the part of the Doctor, who put the foetus in the said chemical. Had it not been there, the DNA profiling would have had some impact on the fate of the case, as in terms of the initial narrative, Nazre Alam @ Ravi Appellant herein, was also one of the rapist of the prosecutrix.

12. In the MLC (Ex. PW-2/A) it has been stated by the prosecutrix that she was subjected to sexual assault by multiple persons in the last one month and that she was sold by the known person i.e., who has not been named but it took place about a month back, which means that it was somewhere in the beginning of the month of June 2011. She has also stated that she was kept in confinement by one female and his son in Sant Nagar near Burari and forced to do sex work.

13. The MLC is to be read in conjunction with the statement of PW-2 Doctor Namrta Saxena which goes under:

*“I have been posted in the above said hospital since January, 2011. On 05.07.2011 I conducted gynecological examination of prosecutrix Reena Begum. She stated to me that she was brought by Babul and sold to Ravi and she was staying at the house of Ravi and she also gave history of sexual assault by multiple persons in last month. She also stated that lastly the sexual assault was done on her on 02.07.2011 and thereafter she had changed her clothes. She was three days over due (her mensuration date being 02.06.2011), however the urinary pregnancy test was negative on 05.07.2011. The pregnancy may come positive after one week over*



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*due. My examination notes are EX PW-2/A encircled from point-A to Al, bearing my signatures at point-X."*

It can be inferred from the aforesaid observations in the MLC and testimony of Doctor that the last menstrual period was on 02.06.2011 whereas the last sexual assault was on 02.07.2011. The incident was reported to the Police on 05.07.2011. The pregnancy test was found negative qua which PW-2 has explained that the pregnancy may come positive after one week over due. The day when test of pregnancy was carried out, the prosecutrix was not overdue so far as the menstruation is concerned as it was still within a week. That seems to be the reason why she was found pregnant later and that abortion was to be carried out. If the testimony, as stated by the prosecutrix herself is taken into consideration irrespective her becoming hostile witness, it still would reflect that Appellant Nazre Alam has something to do with the pregnancy of the prosecutrix. She has categorically stated in her cross-examination carried out by the learned APP that she remained at the house of the accused person for about one month. In such circumstances, if she was not forced into prostitution or was not raped by anybody, then in that eventuality it is only Nazre Alam, who only could be responsible for pregnancy but for the fact that there is no scientific evidence on record, apparently due to the apathetic and irresponsible actions of medical professionals at the DDU Hospital where they did not preserve the foetus in the manner in which it should have been.

14. It is settled law that testimony of hostile witness can also be looked into and cannot simply be thrown out, as has been observed by the Hon'ble Supreme Court in ***Khuji @ Surendra Tiwari v. State of Madhya Pradesh***, (1991) 3 SCC 627, while relying on the judgments in the cases of ***Bhagwan***



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**Singh v. State of Haryana**, (1976) 1 SCC 389, **Sri Rabindra Kuamr Dey v. State of Orissa**, (1976) 4 SCC 233, **Syad Akbar v. State of Karnataka**, (1980) 1 SCC 30, wherein it was held as reproduced hereunder:

*“that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.*

10. This Court, in the case of *C. Muniappan and Others v. State of Tamil Nadu*<sup>10</sup>, has observed thus:

*“81. It is settled legal proposition that: (Khujji case, SCC p. 635, para 6)*

*'6. the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.'*

82. In *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543], *Gagan Kanojia v. State of Punjab*, (2006) 13 SCC 516] *Radha Mohan Singh v. U.P.*, (2006) 2 SCC 450], *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360] and *Subbu Singh v. State*, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in



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*accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.*

*85. It is settled proposition of law that even if there some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide Sohrab v. State of M.P., (1972) 3 SCC 751, State of U.P. v. M.K. Anthony, (1985) 1 SCC 505, Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217, State of Rajasthan v. Om Prakash, (2007) 12 SCC 381, Prithu v. State of H.P., (2009) 11 SCC 588, State of U.P. v. Santosh Kumar, (2009) 9 SCC 626 and State v. Saravanan, (2008) 17 SCC 587”*

15. In the instant case, it is only the testimony of the prosecutrix, which is of utmost importance and since she has given a clean chit to the Appellants therefore, the contention of the learned counsel for the Appellant that the Appellant should not have been held guilty by the Trial Court seems correct on the face of it. However, when the evidence is digged deep, then a different story starts emerging, which certainly does not absolve the Appellants completely.

16. Prosecutrix was, kidnapped by one Babul as per her own version. She was subjected to rape by the said Babul at least once and thereafter, Rajiv and other persons brought by Rajiv/Nazre Alam. The narrative of the prosecutrix is indeed consistent on these lines that she was kidnapped, lured to Delhi and sold into prostitution, but not by the Appellant but by Babul and Rajiv, who are the persons who could not be traced out.



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However, certain questions are there, the answers of which have the potential to turn the tables on the Appellants. If the Appellants, more particularly, Nazre Alam had such close relations with Rajiv that the latter chose to entrust the custody of his so called sister, the prosecutrix herein, to Appellant Nazre Alam then it cannot be believed that Nazre Alam would not be knowing the requisite particulars of the said Rajiv. Why he has not disclosed about Rajiv, if he was innocent and that no mala fide was there on his part. If, according to the prosecutrix, she was kept properly and was not subjected to anything wrong by the Appellants, then where was the need for her to sneak out and go to, of all places, the Police Station. The feeble and meek explanation furnished by the prosecutrix that she wanted to go home that is why she went to the Police Station. Strangely, she should have gone to Railway Station instead going to a Police Station. And in any case, if Rajiv was to come back, then she should have waited.

17. Why then prosecutrix approached the Police and lodged a complaint (Ex. PW-2/A). The report is signed by the prosecutrix, then there is no reason with the prosecutrix to disown the statement. She has very cleverly, seemingly under guidance and tutoring, stated that the statement was not read over to her. Her going to the Police Station in itself is a circumstance, which indicates that something wrong was there and that wrong was disclosed by the prosecutrix in her statement made to the Police which laid the foundation of the instant case. If the prosecutrix was so naive that she, instead of going to Railway Station went to the Police Station, in that eventuality she should have insisted to be dropped back to her place. Why did she accompany and what was the reason with the Police to take her to Hospital for her medical examination. Again, a circumstance which stands and stares at and against the Appellants.



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18. The prosecutrix was taken to the Hospital, in that eventuality she could have said that there was no need to carry out medical examination as she approached the police only to go back home and in any case, a general medical test would have been carried out instead of the kind of tests she had undergone. All of these facts show that the prosecutrix has been won over by the Appellants or somebody else at the behest of the Appellants.

19. Where was the occasion with the Police and for that matter with the prosecutrix to appear before a Judicial Magistrate, and make a statement under oath. She was not a child and would have certainly conveyed as to what she wanted to. There is no reason to disbelieve that the version given in the statement under Section 164 Cr.P.C. is not the true and correct version of the plight of the prosecutrix. All this took place within a span of two days, therefore, no chances of her being won over was there for anyone and therefore, the truth surfaced and is consistent till she came to depose before the Court. In this context, testimony of the prosecutrix can be looked into as has been reproduced hereunder:

*“My father is running a shop of vegetables at the village. One boy, namely, Babul asked me at the village to accompany him and promised to marry me by coming to Delhi. Then he brought me to Delhi to the house of his friend Rajeev, situated at Burari, where Rajeev raped me and Rajeev and Babul also forced me to have sexual relations with other persons. After about one month. Babul left me at the house of Ravi and Noor Jahan, accused present in the court. I was kept properly by Ravi and Noor Jahan and I was not made to do any wrong thing by the accused. I wanted to go home and therefore I came to police station. My statement was recorded by the police and I signed the same. I was sent to Nirmal Chhaya. I got pregnant and the abortion has been now done. The accused Ravi and Noor Jahan had not done any wrong to me.*

*At this stage, Ld. APP request to cross-examine the witness as she is resiling from her earlier statement made before the police. Heard. Allowed.*



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XXXXX By Ld. APP for State.

*It is correct that my statement EX PW-I/A bear my signatures at point-A. My statement was not read over to me. It is incorrect to suggest that Babul had sold me to Ravi @ Nazre Alam, accused present in the court and to Rajeev in Rs. 16,000/-. It is incorrect to suggest that accused Ravi established physical relations with me or that Ravi alongwith his wife Noor Jahan and mother Munni confined me to their home. It is incorrect to suggest that they forced me to indulge in to prostitution, (confronted with statement EX PW-I/A, wherein it is so recorded) It is correct that my statement was recorded before the Magistrate EX PW-I/B, bearing my sign, at point-A (sealed envelop is opened and shown to the witness). It is correct that at the time of recording of my statement, me and judge were only present. It is incorrect to suggest that I stated before the Magistrate that accused persons confined me at their home and accused Ravi and Rajeev had also raped me. It is incorrect to suggest that I also stated about my sale for Rs. 16,000/- and also about forcible indulging in prostitution at the hands of accused persons. It is incorrect to suggest that I am deposing falsely having been won over by the accused. I remained at the house of accused persons for about one month. I was medically examined. It is incorrect to suggest that I am giving false statement. It is correct that I on my own went to the police station and lodged the report.”*

Especially the last line of the cross-examination conducted by the learned APP, i.e. “*it is correct that I on my own went to the police station and lodged the report*”, is read in conjunction with the report and the narration given to the Doctor and the statement recorded under Section 164 Cr.P.C, then there remains no doubt that the prosecutrix is deliberately trying to save the Appellants and that brings a sinister role of the Appellants, which enters into the realm of Section 376 and 370 IPC.

20. Since the Appellants have been convicted under Section 368 IPC only and therefore, the contentions of the learned counsel for the Appellant revolve around the fact that the requisite ingredients, which are mandatory to be proved, have not been brought on record, therefore, the Appellants cannot be held responsible. For ready reference Section 368 IPC is



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reproduced herein below:-

***“368. Wrongfully concealing or keeping in confinement, kidnapped or abducted person. —***

*Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.”*

21. A bare reading of the aforesaid Section reveals that the confinement of the victim post-kidnapping, can only result into an offence under Section 368 IPC if, either the person who has kidnapped has confined the victim or that the accused knows that the person confined has been a victim of kidnapping / abduction and despite this knowledge the accused concealed and confined the victim wrongfully. The Hon’ble Supreme Court in the landmark judgment of ***Saroj Kumari v.State of U.P.***, (1973) 3 SCC 669, has laid down the following ingredients, essential to constitute an offence under Section 368:-

*“...10. To constitute an offence under Section 368, it is necessary that the prosecution must establish the following ingredients:*

- 1) The person in question has been kidnapped.*
- 2) The accused knew that the said person had been kidnapped.*
- 3) The accused having such knowledge, wrongfully conceals or confines the person concerned...”*

22. Knowledge of the victim being kidnapped is a very crucial and integral part to be proved in order to bring home a case under Section 368 IPC. In ***Puran Singh and others v. State of Bihar***, JT 2001 (8) SC 647, the Court observed that :-

*“4. The sine qua non for attracting provisions of Section 368, Indian Penal Code is that a person who either wrongfully conceals or confines the Victim, must have the knowledge that, the victim had been kidnapped or had been abducted and on proof of that, the accused can be punished in the same manner as if he had kidnapped*



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*or abducted the victim with the same intention or knowledge, or for the same purpose as that with which he concealed or detained the victim..."*

23. Thus, what has to be established by the prosecution in order to bring home the case against the Appellant under Section 368 IPC i.e. (i) A person has been kidnapped or abducted, (ii) The accused was aware about the said fact and (iii) that the accused must have concealed or confined such person having the knowledge of victim being kidnapped or abducted.

24. Counsel for the Appellant has vehemently argued that there is nothing on record to establish the fact that the Appellants had this "knowledge" that the prosecutrix was a victim of kidnapping / abduction. In any case while highlighting the testimony of the prosecutrix he has emphasized that in view of her categorical statement that she was not harmed in any manner by the Appellants and that she was kept properly by the Appellants takes the case out of the teeth of Section 368 IPC. There is, infact, no evidence of what all was stated by the victim in the report lodged with the police, in her statement before the learned Magistrate under Section 164 or for that matter narrative given to the medical professionals. As has been discussed earlier she has apparently been won over and has consciously and deliberately turned hostile in order to save the Appellants, disowning her own case, for the reasons best known to her, albeit not very difficult to gauge out and infer. Nevertheless in the absence of the evidence that the Appellants kept and confined the prosecutrix despite having knowledge of she being a victim of kidnapping / abduction, the conviction of the Appellants cannot be sustained.

25. As a result, the Appeal is allowed. Application(s) pending, if any, stand disposed of as well.



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26. Bail Bond(s) stands discharged.
27. Copy of the judgment be transmitted to the Trial Court and Prison Authorities for information and necessary compliance.

**VIMAL KUMAR YADAV, J**

**SEPTEMBER 16, 2026/ps/my**