



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

Date of reserving Judgment: 08th September, 2026

Date of decision: 18th September, 2026

IN THE MATTER OF:

CNR No. DLHC010824512009

+ **CRL.A. 409/2009**

JAHANGIR

.....Appellant

Through: **Mr. S.P. Sharma, Mr. Deepak Sharma
and Mr. Javed Saifi, Advs.**

versus

STATE OF NCT OF DELHI

.....Respondent

Through: **Mr. Shoaib Haider, APP for the State
with SI Naveen Kumar PS Hauz Qazi.
Ms.Astha Kaushik, Advocate from
DHCLSC for the prosecutrix (through
VC) with Ms.Megha Singh, Adv.**

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. The present appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), the Appellant, Jahangir, assails the judgment of conviction (hereinafter referred to as "impugned judgment") dated 18.04.2009 and the order on sentence (hereinafter referred to as "impugned order") dated 20.04.2009 passed by the learned Additional Sessions Judge, Central District, Tis Hazari Courts, Delhi, in Sessions Case No. 103/2008, arising out of FIR No. 176/2007, Police Station Hauz Qazi, registered under Sections 342, 376 and 506 of the



Indian Penal Code, 1860 (hereinafter referred to as “IPC”). Based upon the contents of the chargesheet, a formal charge was framed under Sections 363, 368, 376 and 506 IPC to which the Appellant pleaded not guilty. He was finally, after the trial, convicted for the offences under Sections 363 and 368 IPC, while he was acquitted for the offences under Sections 376 and 506 IPC. By the order on sentence dated 20.04.2009, he was sentenced to undergo Rigorous Imprisonment (RI) for 3 years and a fine of Rs. 2,000/- for the offence punishable under Section 363 IPC and in default of payment of fine to further undergo Simple Imprisonment (SI) for 03 months and 4 years RI and a fine of Rs. 2,000/- for the offence under Section 368 IPC, in default of payment of fine, to undergo three months SI. Both sentences were ordered to run concurrently. The Appellant was granted the benefit of set off under Section 428 Cr.P.C.

2. The prosecution case primarily rests upon the testimonies of PW-1 (name withheld, prosecutrix being a minor), PW-2 (Bua of the prosecutrix), PW-3 (father of the prosecutrix), PW-4 Dr. Bhim Singh (the Assistant Professor of Forensic Medicine, who conducted the Ossification Test), PW-8 Dr. Suparna Bhattacharya (the Medical Officer who examined the prosecutrix), PW-11 Ct. Nirdesh Kumar (the PCR Van Constable who first reached at the spot), PW-14 SI Indu Rani (the subsequent Investigating Officer who got the Ossification Test conducted and filed the chargesheet), PW-15 ASI Krishan Chander (the police officer who recorded the first statement of the prosecutrix and registered the FIR), PW-20 Sh. Sandeep Yadav (the learned Metropolitan Magistrate who recorded the prosecutrix's statement under Section 164 Cr.P.C.), PW-22 Mohd. Javed (the landlord of Sapna Building who witnessed the prosecutrix's presence in the room), PW-24 SI Virender Singh (the primary IO who prepared the site plan, arrested



the accused, and collected the exhibits from the hospital), and PW-25 SI Kushal Kandulna (PCR In-charge who rescued the prosecutrix and proved the PCR logs).

3. The Appellant's statement under Section 313 Cr.P.C., was recorded on 15.10.2008, wherein the Appellant denied the incriminating evidence put to him, pleading false implication, but led no defence evidence.

4. The prosecutrix, V.C. (PW-1) was the eldest daughter of PW-3, a Government Teacher of Village Bagrajpur, District Sultanpur, Uttar Pradesh. In 2006, the prosecutrix came to Delhi to look after her paternal Aunt (Bua) (PW-2), at Chawri Bazar, following the latter's surgery for kidney stones, during which stay she became acquainted with the Appellant, who lived in the adjoining house and was working in a nearby shop. The prosecutrix returned to her native at Sultanpur in Uttar Pradesh in January 2007.

5. On 04.05.2007, following a quarrel with her mother, the prosecutrix left home without informing her parents and travelled, via Lucknow, to Delhi, reaching the New Delhi Railway Station at about 6:00 p.m. on 05.05.2007. While walking towards her Bua's house, she was spotted by the Appellant, who offered to escort her, claiming to be going the same way. Both availed the cycle-rickshaw for the same. Instead of dropping her home, the Appellant stopped near Sapna Building, Ballimaran, and led her to a room on the top floor on the pretext of checking whether her Bua was at home or not. Appellant returned after an hour to falsely claim that the Aunt (Bua) of prosecutrix was not at home. He then locked the room from outside and left for his work. He went on to fetch food that night and again the next morning, locking her in on each occasion. It is alleged that in the intervening night, he attempted to molest the prosecutrix despite her warning to raise



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alarm.

6. In the intervening night of 06/07.05.2007, the Police Control Room, on receiving information that a minor girl was concealed in a room on the top floor of Sapna Building, dispatched a patrol vehicle manned by Ct. Nirdesh Kumar (PW-11) and ASI Kushal Kondulna (PW-25); they reached the said place and found the prosecutrix confined there with the Appellant. Both were taken to Police Station Hauz Qazi, where, on the prosecutrix's statement, FIR No. 176/2007 was registered under Sections 342, 376 and 506 IPC.

7. The prosecutrix's MLC recorded no external injury and no hymenal tear, with no sign of forcible intercourse or resistance; the Appellant, too, was medically examined, and nothing was found to suggest his incapacity for intercourse. He was formally arrested on 07.05.2007.

8. The prosecutrix in her statement under Section 164 Cr.P.C., recorded on 08.05.2007 before the Metropolitan Magistrate, supported the allegations of kidnapping, confinement and rape. She was, thereafter, handed over to her aunt, Smt. Sunita (PW-16), on an undertaking to produce her as and when required. Investigation was transferred to W/SI Indu Rani (PW-14) of the Crime Against Women Cell, on whose initiative the prosecutrix's age determination through Ossification Test at the Maulana Azad Medical College was carried out. She was found to be between 15 and 16 years, consistent with her father's statement that she was about 16 years of age and had studied up to Class VII.

9. Out of the twenty-five witnesses examined, the prosecutrix, while corroborating her age, her travel to Delhi, her meeting with the Appellant, and her confinement at Sapna Building, resiled on the allegations of sexual assault, stating that she had left home after a quarrel with her mother and



that her earlier statements had been recorded under police coercion. Her Bua similarly turned hostile on the material facts, though admitting that she had been summoned to the police station on the night of the rescue itself. The rescue itself stood proved through the police officials who broke open the door which was corroborated by the owner of Sapna Building (PW-22) Javed, who deposed to having seen the prosecutrix and the Appellant in the portion let out to one of his tenants, namely, Raju.

10. Learned counsel for the Appellant while assailing the impugned judgment put forth four-fold arguments; *firstly*, that victim had turned hostile; *secondly*, that there is no evidence with regard to victim being minor; as even her father examined as PW-3, could not tell the exact date of birth of the victim, *thirdly*, that there was love-affair between the Appellant and the prosecutrix and *fourthly*, that the Appellant who was about 18 years of age at the relevant time, has clean antecedents, therefore, he may, in the event of appeal being dismissed, be considered for the benefit of probation.

11. In order to hammer his point that prosecutrix had herself accompanied the Appellant, therefore, the Appellant cannot be held responsible for kidnapping, learned counsel for the Appellant has placed reliance of following judgment(s):-

- (i) **Pawan Kumar & Anr. vs. State**, 2010 SCC OnLine Del 632;
- (ii) **Nayab & Anr. vs. State**, 2022 SCC OnLine Del 3508;
- (iii) **State vs. Hitesh**, 2025 SCC OnLine Del 962.

12. Incidentally, none of the above three judgments relied upon by learned counsel for the Appellant has direct bearing on the facts of the case and therefore unable to bring any solace to the Appellant.

13. Learned APP for the State submitted that allegations under section 376 IPC could not be proved as the victim had not, in her substantive



statement, stated anything about the offence of rape committed on her by the Appellant. Perusal of MLC Ex.PW-8/A reflects that 'hymen' was intact, thus Appellant was acquitted under section 376 IPC, whereas, he has been convicted for offences under section 363 IPC and 368 IPC, and rightly so by the learned Trial Court. While elaborating the contentions, it is submitted that the Appellant has enticed and lured the prosecutrix and took her alongwith him on the pretext that he too was going towards the house of the paternal aunt of the prosecutrix and that he shall drop her there. He, instead of taking the prosecutrix to her Aunt's place, took her to Sapna Building and confined her in a room, although, he had fed her in the night and morning too, but the offence of confining and kidnapping stand established. Notwithstanding the fact that the prosecutrix voluntarily accompanied the Appellant. The prosecutrix accompanied the Appellant under the false promise made by the Appellant that he would drop her at her Aunt's place. The prosecutrix being acquainted with the Appellant during her last visit, had no reason to disbelieve him. The Appellant whereas had malafide intentions.

14. In an offence of this nature, age is a very important and decisive factor. It is correct that the father of prosecutrix, who was examined as PW-3, could not give the exact date of birth and in the absence of any such record which may reflect the correct age of the prosecutrix, the prosecution has opted to go for 'Ossification Test'. According to the said test, age of the prosecuterix was between 15 & 16 years, as can be seen from the Age Estimation Report Ex.PW4/A. So, even if the benefit of margin of error of 2 years is given to the Appellant, even then victim was not more than 18 years of age at the time of incident. Thus, the victim was minor at the time of commission of the offence.



15. The offence of kidnapping has been defined in Section 361 IPC, which is reproduced as under for ready reference:-

361. Kidnapping from lawful guardianship.—Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.— The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

(Exception)— This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

16. Hon’ble High Court of Chhatisgarh in **Rakesh Sona vs. State of Chhatisgarh**, CRA.1057 of 2016 decided on 29.08.2025, detailed necessary ingredients of section 361 IPC which have been elaborated as under:-

“10....Section 361 has four ingredients:-

- (1) Taking or enticing away a minor or a person of unsound mind.
- (2) Such minor must be under sixteen years of age, if a male, or under eighteen years or age, if a female.
- (3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
- (4) Such taking or enticing must be without the consent of such guardian.

So far as kidnapping a minor girl from lawful guardianship is concerned, the ingredients are:

(i) that the girl was under 18 years of age; (ii) such minor was in the keeping of a lawful guardian, and (iii) the accused took or induced such person to leave out of such keeping and such taking was done without the consent of the lawful guardian.”

17. It is a settled principle of law that if a female is under 18 years of age, who is a minor and if she has been moved out of the lawful guardianship, then the offence of kidnapping is made out. The guardianship of prosecutrix



was constructively with her parents. In any case, the Appellant not only lured and enticed, but took her and confined her in a room on the pretext of taking her to her paternal aunt's place. It is pertinent to note here that prosecutrix was new to the city, being resident of Sultanpur, U.P. She had an occasion to come and visit Delhi earlier when her paternal aunt (Bua) was unwell and that was the time when she came to know the Appellant being a neighbour. This seems to be the reason why she trusted the Appellant and accepted his offer to be dropped by him at her paternal aunt's place.

18. The aforesaid facts of the instant case, when tested on the parameters, referred above, then the complicity of the Appellant clearly surfaces, that he lured the prosecutrix and kidnapped her on the false assurance that he too, was going the same way and that he would drop the prosecutrix to her Aunt's place, having no such intention in-fact.

19. Learned counsel for the Appellant has put forth an argument that there was love affair between the Appellant and the prosecutrix, but there is no evidence on record which may even remotely suggest that there was some kind of relationship between the Appellant and the prosecutrix or that they were more than acquainted with each other leave alone being in love.

20. The Appellant has, consciously, deliberately and knowingly took away the prosecutrix by misrepresentation and in a way, betrayed her trust. He took her to a place called 'Sapna Building' and confined her in a room. Apart from the prosecutrix, there were two more persons who are witness to this fact, as also deposed by PW-22 Mohd. Javed, owner of Sapna Building, who in a way endorsed the factum of Appellant being there with the prosecutrix, more particularly, at the relevant time, which fortifies the case of the prosecution. The testimony of PW-11 Ct. Nirdesh Kumar further cements it, as both the prosecutrix and the Appellant rather prosecutrix was



recovered from the said room in the Sapna Building on 07.05.2007. Thus, once the age of prosecutrix is found to be less than 18 years of age, then, even if her consent was there, it becomes immaterial and the offence of kidnapping stands constituted.

21. It has also come in evidence that the prosecutrix was found in a room in Sapna Building by the Appellant, who cannot run away from the fact that he knew fully well that the prosecutrix has been in a way lured to accompany him. This allurements and bringing the prosecutrix to the rented room in Sapna Building, amounts to kidnapping, as has been observed hereinbefore too. And by confining her in the room, the essential ingredients of Section 368 IPC also emerge on record.

22. If there was no malafide on the part of Appellant, then instead of bringing her to Sapna Building, he could have straightway taken her to her Aunt's place. Wherefrom the occasion arose with the Appellant to confine and lock the prosecutrix in a room and go to ascertain whether the aunt of the prosecutrix was at her place or not. This goes on to show that the intention of the Appellant was certainly malafide.

23. While interpreting and elaborating section 368 IPC, it was observed in **State vs. Tapan Kumar Mandal (2012)** SCC OnLine Del 2422 in the following words:-

"5. In order to invoke Section 368 IPC, three ingredients must beproved i.e. (a) a person has been kidnapped or abducted; (b) the accused was knowing about that fact and (c) the accused must haveconcealed or confined such person..."

24. 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..."

25. 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 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..."

26. It is thus evident that the victim should not only be a target of kidnapping / abduction, but the person who has confined or concealed the victim, must have the knowledge that the victim is kidnapped or abducted. In the instant case, the Appellant himself had kidnapped and confined the victim in a tenanted room of Sapna Building, therefore, the requisite knowledge is there with the Appellant which is mandatory for an offence under Section 368 IPC.

27. In view of the overwhelming and ample evidence of the prosecutrix being lured to accompany the Appellant, on the pretext of being taken to her Aunt's place, the Appellant took her to another place and confined the prosecuterix, with an assurance that he was going to find out about the availability of the prosecutrix's aunt. No effort was made by him as there was no such intention contrary to what was portrayed before the prosecutrix.



The intentions were malafide, as unfolded on the same night of 05.05.2004 and the following day. The contentions raised on behalf of the Appellant are thus, without any substance and the findings recorded by learned trial court are in-consonance with the facts and law on the subject, thus does not call for any interference.

28. Accordingly, the judgment dated 18.04.2009 holding the Appellant guilty under section 363 and 368 IPC is upheld and conviction is maintained.

29. The contentions on behalf of learned counsel for the Appellant that the Appellant was barely out of his teenage at the time of incident, therefore he should be considered for the benefit of probation.

30. Having held so, the court feels that there are several factors which may not be relevant to determine the guilt but must be seen with a humane approach at the stage of sentencing. Hon'ble the Supreme Court in ***State of Madhya Pradesh v. Surendra Singh*** (2015) 1 SCC 222 on the need for proportionality emphasized in the following words:-

"13. We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society."

31. True it is that there cannot be any mechanical reduction of sentence unless all relevant factors have been weighed, evaluated and analyzed



properly and the Court finds it to be a case of gross injustice, hardship, or palpably capricious award of an unreasonable sentence. It would thus depend upon the facts and circumstances of each case whether Appellate Court should interfere with, and resultantly enhance or reduce the sentence. Applying such considerations to the peculiar facts of the case in hand, the Court is of the considered opinion that the quantum of sentence awarded to the Appellant deserves to be revisited.

32. The reasons enumerated below are required to be considered and looked into:

- (i) There is no evidence to suggest that force was used in the act of kidnapping ;
- (ii) No weapon was used in the commission of the offence ;
- (iii) There was no evidence of any sexual act having been committed ;
- (iv) The MLC of the prosecutrix records that her vital parameters were normal ;
- (v) The MLC further records that, on local examination, there was no abrasion, injury, or bleeding. The hymen was found to be intact. There was no injury suggestive of any attempt of forced sexual intercourse.
- (vi) It is also admitted that food was provided to the prosecutrix during the relevant period.
- (vii) The prosecutrix admitted that she had not voluntarily made the statement under Section 164 CrPC before the learned Magistrate and stated that the allegation of rape was made at the instance of the police.
- (viii) The young age of the appellant at the time of the incident



is also a relevant mitigating circumstance which cannot be overlooked at the stage of sentencing.

(ix) Owing to the protracted nature of the trial and delays at different stages of the proceedings, more than nineteen years have elapsed since the occurrence.

(x) There are no other charges, antecedents, or subsequent criminal cases against the Appellant, either prior to 2007 or thereafter.

33. Given these multiple unique circumstances, the court is of the opinion that the sentence awarded by the Trial Court, needs to be modified.

34. The Appellant had both time and opportunity to use force or coerce the victim, but he chose not to do so. He, in a way took care of the prosecutrix and fed her appropriately. Both the Appellant and the prosecutrix were young at that time having a very normal age difference between two of them. Apart from the statement of the prosecutrix, the MLC also is a testimony of the fact that no force was used by the Appellant. What was cooking in his mind, can be anybody's guess, but then despite having a sort of control over the prosecutrix, he did not misuse the same. Therefore, the contention raised on behalf of learned counsel for the Appellant that he should be considered for the benefit of probation, seems appropriate in the totality of the circumstances. As such, the sentence stands modified and the Appellant is given the benefit of probation and released on furnishing a bond of good conduct for a period of 02 years in the sum of Rs. 25,000/- to be furnished before the learned Trial Court. He is further directed to deposit a sum of Rs. 30,000/- as cost of proceedings, which shall be realised as fine in case the Appellant fails to deposit the same. In case, the costs of proceedings



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are deposited, the same shall go to the prosecutrix as compensation. Fine, if any, already deposited shall be adjusted out of the aforesaid cost of proceedings.

35. The appeal stands disposed of accordingly, together with pending application(s), if any.

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

VIMAL KUMAR YADAV, J

SEPTEMBER 18, 2026/bj/VS/NY