



2026:DHC:5864



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

Date of reserving Judgment: 08th July, 2026

Date of Decision: 22nd July, 2026

IN THE MATTER OF:

+ CRL.A. 925/2008

RAM CHANDER @ CHHOTU

.....Appellant

Through: Mr. Hans Raj Singh and Mr. Gaurav
Nagar, Advs.

versus

STATE

.....Respondent

Through: Mr. Nawal Kishore Jha, APP for State
with Insp. Shailender Kumar and SI
Sonu Kumar, PS Okhla Industrial
Area.

Ms. Astha, Adv. (DHCLSC) with Ms.
Megha Singh, Adv. for prosecutrix
with prosecutrix in person.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. William Shakespeare one of the world's most famous playwright in his play Romeo and Juliet wrote, "what is in name? That which we call a rose by any other name would smell as sweet."

2. More or less similar sentiments echoed on the Indian soil in the words of 15th Century Indian mystique poet and saint Kabirdas when he said "जाति न पूछो साधु की, पूछ लीजिये ज्ञान। मोल करो तरवार का, पड़ा रहन दो म्यान॥". In English, it would go as "Don't ask about the saint's caste, ask about his knowledge instead. Judge a sword by its own worth, not by the scabbard it rests in", so



to say that it is about not judging the people by external things like background, caste, looks or appearance, respects someone for their wisdom, character and ability. In other words, do not judge the book by its cover and do not judge the persons by the names rather look at what they do, not what they are called.

3. Had it been so that the names would have determined the personality, then every Ramchandra in India would have been upholder of values and would have been *Maryadapurshottam*. All this goes on to show that the names, however, fancy, ideal or meaningful they are, it is not the name but the person who matters. It had been a common practice in the north heartland of India and to some extent even now to name children as 'RAM' or invariably the first part of the name would contain Ram, as in Islam it is invariably found that 'Mohammad' comes before any other part of the name of a score of Muslim persons. The idea and expectation in naming kids with such names is to expect them to be like their names. It can be seen that in every religion there is a tendency of naming the children by deriving from the God, Godly or Saintly figures from their respective religious and mythology texts and no religion is an exception to this. But names do not shape the personality, person, conduct and behaviour etc.

4. In these circumstances, philosophy of '*Karmyog*' given by Lord Krishna in GITA seems more near, close and practical, which emphasize on the deeds (Karma) which are of utmost importance irrespective of the name or any other thing. So any Ram Chander in this world may not have all those virtues which Lord Rama of Satyug had and upheld. The present Appellant Ram Chander is no exception to what goes on in Kalyug irrespective of Name.



5. The indispensable facts against the backdrop of which the the instant appeal emerged are as below. A young girl of about 13 years of age went missing from her house and trepidated by the long absence, the mother of the girl lodged a complaint on 06.04.2006 suspecting that she has been kidnapped by someone inasmuch as the child was missing from 04.04.2006 and could not be tracked or traced down till 06.04.2006. In fact the elder sister of the girl went to the local police post on that very day when the child went missing but no FIR was registered, rather an entry in Daily Dairy was made on 04.04.2006.

6. Based upon the said complaint (Ex. PW-2/A) made by the mother of the child on 06.04.2006 the FIR No. 264/2006 under Section 363 of the Indian Penal Code, 1860 (IPC) was registered by the Police Station Okhla Industrial Area, New Delhi.

7. The efforts put in by the police officials could not bear any fruit. However, the breakthrough came in the case on 09.04.2006 when the brother of the missing girl and her uncle came to the police post and informed the Investigating Officer ASI Shri Ram that they came to know about the whereabouts of victim / prosecutrix and the Appellant herein that they are staying somewhere in Madangir area of South Delhi.

8. A raid was proposed to be conducted accordingly. The team consisting of the brother and uncle of the prosecutrix, together with Constable Brij Mohan and the Investigating Officer went out in the area of Madangir. They, after some time, spotted the prosecutrix and the Appellant coming from the side of Khanpur, while the raiding team was present at the Madangir bus stand. On the pointing out and identification of the brother and the uncle of the prosecutrix, both were apprehended.



9. The requisite proceedings of recovery, recording of statement, medical examination of the prosecutrix and the Appellant at AIIMS etc. were carried out. On conclusion of the investigation, a chargesheet was filed and in view of what has been stated by the prosecutrix in her statement under Section 164 (Ex. PW-12/A), coupled with the MLC and the FSL results, Section 376 IPC was added in the chargesheet.

10. To the charge framed under Section 363 and 376 IPC, the Appellant pleaded not guilty. He was, ultimately, held responsible and convicted upon the testimony of 15 prosecution witnesses examined in this context. That too after taking into account his explanation, under Section 313 Cr.P.C. and the submissions and contentions raised on behalf of the Appellant. The learned Trial Court did not find the explanations and submissions potent enough to acquit the Appellant. Through the impugned judgment of conviction dated 29.08.2008, the Appellant was held guilty, convicted and sentenced as detailed below:

SL. No.	Section	Sentence	Fine
1.	376(1) IPC	07 years Rigorous Imprisonment (RI)	Rs 300/- (in default of which to undergo Simple Imprisonment (SI) for 10 days)
2.	363 IPC	01 year Simple Imprisonment (SI)	Rs 200/- (in default of which to undergo Simple Imprisonment (SI) for 10 days)



11. Learned counsel for the Appellant while assailing the judgment, has confined his arguments broadly on the contradictions in the evidence and the circumstances including pre, at and post incident circumstances, coupled with the fact that the prosecutrix was major and since she herself had voluntarily accompanied the Appellant, therefore, no offence of kidnapping is made out. In addition to that it is further submitted that the recovery of the prosecutrix was not from the Appellant, therefore, also the Appellant cannot be held responsible for kidnapping.

12. Learned counsel for the Appellant, seemingly, felt emboldened by the fact that the prosecutrix along with her counsel had appeared before the Court on at least two occasions and categorically stated that she does not want any action against the Appellant, since she had herself accompanied the Appellant and that the Appellant cannot be faulted in any manner and thus, gave clean chit to him.

13. The prosecutrix has been identified by the holding Investigating Officer (IO). However, there was no answer with the prosecutrix as to why she did not disclose these so called true and correct facts before the Trial Court, if these were, verily, the correct facts, to which she responded that she was, at the relevant time, guided by her parents and when it is asked as to what makes her to come before the Court now and submit what has been submitted by her, to which she responded that now her husband has guided her to take this stand. Be that as it may, mere oral submissions in such circumstances are almost inconsequential.

14. Learned APP, on the other hand, assisted by the counsel for the prosecutrix submitted that the evidence on record is clear, categorical and cogent that the prosecutrix was kidnapped by the Appellant. There is no dispute about the identity, date and the place of incident. It is further



emphasized with the aid of MLC Ex. PW-8/A that sexual assault too was there. It is pointed out that slides of vaginal smear were made and handed over to the lady constable and was subjected to forensic examination, which clearly substantiates and corroborates that the prosecutrix was sexually assaulted. Her hymen was absent as has been observed during the medical examination substantiating and indicating what was told by the prosecutrix that she was raped by the Appellant was correct.

15. The medical evidence has been further supplemented, supported and corroborated by technical / forensic evidence. A sort of confirmatory test was done in the shape of examination of the sample i.e. Exhibit-3 underwear about which the examination was carried out at the Forensic Science Laboratory (FSL). The result of the examination at FSL is Ex. PX, which clearly established that it was the Appellant who had committed rape upon the prosecutrix since presence of semen was noticed on Exhibit 3.

16. Thus, on the strength of the aforesaid facts i.e. deposition of the victim, her relatives coupled with the MLC and the FSL result it is asserted on behalf of the prosecution and the prosecutrix that the Impugned Judgment is in consonance with the facts and the relevant law on the subject, therefore, does not require any interference.

17. Learned counsel for the Appellant has albeit tried to draw mileage though unsuccessfully from the fact that the prosecutrix was major on the date of incident, which according to him can be inferred from the result of the Ossification Test (Ex. PW-7/A). Determination of age is vital in such cases but only when the consent is reflected. In the instant case there is nothing on record which may indicate that the prosecutrix was a consenting party either to accompany the Appellant or to the sexual intercourse which



took place between two of them. As such, this contention about the prosecutrix being major is inconsequential.

18. Learned counsel for the Appellant has further tried to infer the willingness of the prosecutrix from the fact that the prosecutrix had plenty of opportunities to report the matter either to the police personnel or to the public at large but she chose not to resort to it. According to the version of the prosecutrix, she was taken to Kalkaji Mandir that too at the time of Navaratri Festival, when the temple is full of public and presence of police ‘bandhobast’ was also there.

19. In such circumstances, silence on the part of the prosecutrix indicates that she had either acquiesced to the act of the Appellant or that she was a willing and consenting party, so far as her movement from her lawful guardianship is concerned. It is asserted that the Appellant cannot be held responsible for ‘Taking Away’ or ‘Enticing’ the prosecutrix, therefore, he cannot be held responsible for the offence under Section 363 IPC. In this context, the counsel for the Appellant has placed reliance on the result of the Ossification test of the prosecutrix (Ex. PW-7/A) and according to that the prosecutrix was in the age bracket of 14 to 16.4 years at the relevant time. As such, given the element of margin of error, which is to be read in favour of the Appellant, her age can be safely inferred to as 18.4 years. It was as such, the age of consent which according to the learned counsel for Appellant, further takes away the case of the prosecution from the realm of Section 363 IPC.

To some extent the contention on behalf of the Appellant has some force in it, if it is to be ascertained and visualized that the Appellant had ‘Taken Away’ or the prosecutrix accompanied him. The incident took place



in broad daylight, they both travelled in public transport, visited a crowded temple, which was teeming with not only the people but a good number of police presence can very well be inferred. In her cross-examination, the prosecutrix (PW-1) has categorically admitted about the crowd at the Kalkaji Temple at Navratri festival, apart from admitting that she had moved with the Appellant in full public glare and in public transport but did not raise alarm or sought any help from anyone about her being forcibly kidnapped. The relevant para of the deposition of PW-1 is as below:-

“I do not remember the time when the accused had taken me to Kalka temple. It was about 7 or 7:30 AM when accused had taken me to Central College. There was large crowd at Kalka Temple due to Navratra celebrations. I did not raise any alarm there. I did not lodge any complaint to any person regarding my forcible kidnapping by the accused.”

20. In such circumstances, if the prosecutrix was not a willing party or was not under some kind of force or coercion then she had all the reasons to raise alarm and save herself. What made her keep quite is anybody's guess as it is not that the Appellant had threatened her with any harm or with any weapon. This dents the prosecution's case to some extent especially when the counsel for the Appellant is able to show that the prosecutrix was more than 18 years of age.

21. Section 361 IPC which defines kidnapping is reproduced herein below 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...”



22. The bare reading of Section 361 which defines kidnapping from the lawful guardianship clearly indicates that in case of a female the age should be 18 years or below. In the instant case it has been brought on record that the victim was 18.4 years of age with the reading of margin of error in favour of the Accused / Appellant. Thus, this takes away the case from the ambit of Section 361 IPC. This is all the more evident from the fact that the act of the Appellant cannot be put in the frame of 'Takes Away' or 'entices any minor'. By taking away one is supposed to do something which may vitiate or affect the willingness of the persons so taken away.

23. Although the victim / prosecutrix herein has deposed that on her refusal to accompany the Appellant, he forcibly made her to sit in a TSR, this in itself, on the face of it, does not appear to reason, logic and the circumstances existing at the time of the so-called forcible taking away by the Appellant and the post incident conduct and circumstances. The other aspect is that the victim might have been enticed away in some manner. In the instant case the enticement does not seem to be there in view of the categorical statement made by the prosecutrix that she was in a way forcibly, made to sit in the TSR. It is, thus, to be ascertained as to whether the act of the Appellant fits into the definition of 'Taking Away' the prosecutrix.

24. If the testimony of the victim / prosecutrix is taken into account in totality then it is evident that no element of force was there and if at all some sort of force was there, the same did not remain constantly present as the prosecutrix had ample opportunities and occasions to frustrate the act of the Appellant if it was against her will or that she had either not consented or acquiesced to it or that she was not a willing party.



25. As noted herein above also that the prosecutrix herself has admitted in her cross-examination that she was taken to Kalkaji Temple and it was occasion of 'Navaratri', when the temple was full of people. She was taken in a public transport amidst the public gaze, police presence can very well be visualized at the temple at that particular point of time. In these circumstances if the victim was being moved or taken away against her will or without her consent then she should have raised alarm and attracted the attention of the people so as to save herself from the clutches of the Appellant especially when she had ample opportunities and was not under any kind of threat etc. There is no answer as to why no such attempt was made by the prosecutrix as she admits categorically in her cross-examination that she did not complain to anyone nor raised alarm qua her so-called forcible kidnapping. In such circumstances, the offence under Section 363 for which the Appellant has been charged and punished seems to be not made out.

26. The second set of allegations/charge and the conviction of the Appellant is under Section 376 IPC. The evidence on record reflects that the Appellant and the prosecutrix lived together for 2-3 days and during those days, as per the version of the prosecutrix she was raped by the Appellant. The MLC Ex. PW-8/A of the prosecutrix reflects in the alleged history given by her, that she was forcibly taken away by the Appellant who raped her two times on 07.04.2006.

27. The hymen was found absent as mentioned in the MLC Ex. PW-8/A. No external injuries were found by the Doctor. Nevertheless it does indicate that sexual activity took place but that cannot be conclusive evidence. The Doctor had prepared certain slides of the vaginal smear which were handed over to the police official for forensic examination. As per the endorsement



on MLC Ex. PW-8/A the clothes of the prosecutrix were given to a woman in whose house the victim was discovered. The slides so taken were sent to FSL, where those were subjected to the analysis from the forensic stand point. The clothes (undergarment) of the prosecutrix was seized through seizure memo Ex. PW-11/C on 09.04.2006 and was also sent for forensic examination and analysis. Apart from the clothes of Appellant and his blood sample through seizure memo Ex. PW11/A.

28. The FSL report Ex. PX reflects presence of semen on one underwear seized, presumably of the victim and the other may also be belonging to the prosecutrix as it is not clear. The blood in gauze was also taken but then there is no conclusive opinion about the blood group so as to connect the Appellant with the semen traces which were found on the underwear of the prosecutrix. However, the circumstances strongly points out to the fact that it could not have been semen of anybody else except the Appellant, for the simple reason that it was the Appellant who took away the victim on 04.04.2006 and since then, as per the material available on record, the prosecutrix was in the care, custody and control of the Appellant. They were apprehended on 09.04.2006 when they were seen coming together from the side of Khanpur thus in view of what has been deposed by the prosecutrix in her testimony there is no possibility of anybody else having been responsible for the act and presence of the human semen. The position with regard to the slides of the vaginal smear is unclear as no traces of human semen were noticed.

29. The evidence on record indicates only one possibility when taken into consideration with the medical record FSL result and the testimony of the victim that it could not be anybody else except the Appellant whose semen it was, although there is no conclusive scientific evidence in this context but



the circumstantial evidence is indicative and points out towards this conclusion, may not be exclusively only but very strongly. However, two aspects are there which put a question mark on the report of Forensic Science Laboratory. The MLC Ex. PW-8/A has an endorsement in the hands of the Doctor concerned that clothes of the prosecutrix were handed over to a woman in whose house she i.e. the prosecutrix was discovered. In these circumstances, where from and which clothes were handed over to the Doctor and what are the clothes which were sent for the FSL examination.

30. The FSL result Ex. PX also becomes questionable in view of the cuttings made in the report which have not been authenticated by anyone. The impact of those cuttings may or may not be affecting the case vitally but then it definitely vitiates the FSL result and makes it vulnerable. In such circumstances, the FSL result cannot be fully relied upon.

31. Another dimension to the case of the prosecution is added by the fact that the police officials have not brought the correct facts on record inasmuch as in terms of the endorsement made by the Doctor, which definitely stands out from what was told by the prosecutrix, that she was discovered at a house and not at the bus stop. Whereas, the brother and uncle of the prosecutrix and the police officials have deposed that the prosecutrix was recovered while she was coming along with Appellant from the side of Khanpur towards the bus stop of Madangir where the police team along with the brother and uncle of the prosecutrix were present. Why these facts have been brought differently as both these facts cannot be true. The case of the prosecution gets a rubbing on this count and no palpable factors are forthcoming along any cogent explanation.

32. The conduct of the prosecutrix however, appears to be questionable as no attempt whatsoever was made by her at any point of time to avoid the



situation in which she landed up right from the inception. She had ample occasions and opportunities to not to go with the Appellant either forcibly or voluntarily in the TSR if she was not willing. If at all she was taken under some kind of enticement to Kalkaji Temple on a Navaratri day, and she was not a willing party she, as any ordinary person, should have raised alarm. No such attempt was made by her and then again when she was taken away from one place to the another in some sort of public transport, then also she has chosen not to protest or raise alarm. She according to her own testimony, was raped by the Appellant but still she kept moving with him from one house to another without attempting to escape or raise alarm or by doing anything in order to save herself.

33. She was spotted coming normally from the side of Khanpur to the Madangir bus stand along with the Appellant in broad daylight as if she was accompanying him and not being dragged or taken away or forced to move with the Appellant. Again no attempt to save herself, raise alarm or anything was there. Why nothing of that sort was resorted to by the prosecutrix is the riddle about which no appropriate answer is forthcoming. All these give reasons to put a question mark on the credibility and veracity of the versions of prosecutrix and in turn to the prosecution's case.

34. As noted herein-before, the circumstances unequivocally points out towards the complicity of the Appellant in the act of committing the rape, but then element of doubt cannot be ignored which too, has sneaked in the absence of any conclusive scientific evidence connecting the Appellant with the act of rape. This primarily stems from the fact that the kind of resistance, protest etc. which should have been there, in the case when the prosecutrix was not a willing party which is not there. It is not the case of the prosecution, as nothing has been deposed by the prosecutrix, that she was



put under some kind of potent threat of harm by the Appellant, which prevented her from raising alarm, protesting or trying to run away and save herself. There is no reference of any potential physical harm, threat oral or physical or use of any arm or weapon to extend and make the threat potent enough.

35. As per the Ossification test the prosecutrix could be anywhere between 14 to 16.4 and if the testimony of the PW-7 Dr. Anindita Sinha is taken into consideration then margin of error of two years is an acceptable norm recognized by both the streams, that is, medical and legal. This brings the age of the prosecutrix to 18.4 years, as the margin of error is to be read in favour of the Accused / Appellant. The relevant part of the testimony of PW-7 reads as below:-

“It is correct that there is a error of two years either side while determining age.”

36. In these circumstances, how far the Appellant can be held responsible for doing something against the will of the prosecutrix forcibly or otherwise. This becomes all the more relevant when the conduct of the prosecutrix at the appellate stage is also taken into consideration apart from her shaky evidence full of improbabilities. She has appeared more than once before the Appellate Court, identified by the IO where she has repeatedly stated that she does not want any action against the Appellant as she had herself accompanied him and that the Appellant had no fault.

37. Thus, taking into account the entire gamut of facts and circumstances it appears unsafe to act upon the testimony of such a witness, which has not been conclusively supported by scientific and forensic evidence leaving scope for error. Additionally, on the scale of probabilities and improbabilities, also prosecutrix's version is highly improbable and do not



appeal to reason and logic in a given set of facts and circumstances. As such, the Appellant is given the benefit of doubt.

38. As a result, the appeal is allowed. Bail bonds stand discharged.

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

VIMAL KUMAR YADAV, J

JULY 22, 2026/hk/NY