



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRA-S-820-SB-2004**

**Reserved on: 18.05.2026**

**Pronounced on: 21.07.2026**

**Uploaded on: 21.07.2026**

*Whether only operative part of the judgment is Pronounced: NO*

*Whether full judgment is pronounced: YES*

**SAHIB ALAM**

**....Appellant**

**V/s**

**STATE OF HARYANA**

**....Respondent**

**CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL**

Present: Mr. Surinder Singh Siao, Advocate for the appellant.

Mr. Gagandeep Singh Chhina, Sr. DAG Haryana.

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**RUPINDERJIT CHAHAL, J. (ORAL)**

1. The present appeal is directed against the judgment of conviction dated 11.07.2003 and the order of sentence dated 11.07.2003 passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court No. II, Faridabad, arising out of FIR No. 785 dated 28.12.2001 registered under Sections 363, 366 and 376 of the Indian Penal Code, 1860, at Police Station City Ballabgarh, District Faridabad, whereby the appellant Sahib Alam has been convicted for the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code, 1860.

By the order of sentence, the appellant was sentenced to undergo imprisonment for a period of three years and to pay a fine of ₹500/-, and, in default of payment of fine, to further undergo imprisonment for two months, under Section 363 IPC; to undergo imprisonment for a period of five years and to pay a fine of ₹750/-, and, in default of payment of fine, to further undergo imprisonment for



three months, under Section 366 IPC; and to undergo imprisonment for a period of seven years and to pay a fine of ₹1,000/-, and, in default of payment of fine, to further undergo imprisonment for four months, under Section 376 IPC. All the substantive sentences were ordered to run concurrently, and the benefit of set off under Section 428 Cr.P.C. was extended to the appellant for the period of custody undergone during investigation and trial.

2. The prosecution case, in brief, is that the FIR in question came to be registered on the statement of the complainant Idris (PW-1), the father of the prosecutrix, alleging that his minor daughter, aged about fifteen years, had gone missing from the house. As per the prosecution, the appellant Sahib Alam, who was residing as a tenant in a portion of the house owned by the father of the prosecutrix and was thus known to and familiar with the family, took advantage of the said familiarity and, on 22.12.2001, enticed and took away the prosecutrix from the lawful custody of her parents.

Despite searches made by the complainant and his relatives, the prosecutrix could not be traced, whereupon the complainant approached the police and the present case came to be registered on 28.12.2001. During the course of investigation, the prosecutrix was recovered on 01.02.2002 from the Bus Stand of old Faridabad, where the appellant had left her, and her statement was recorded. She alleged that, after taking her away from the lawful custody of her parents, the appellant had kept her at various places and had subjected her to sexual intercourse against her will during the period she remained in his company.

The prosecutrix was got medically examined; the appellant was arrested on 16.03.2002 and was also got medically examined and found fit to perform sexual intercourse. The vaginal swabs of the prosecutrix were sent to the



Forensic Science Laboratory, and, as per the report Ex.PH, human semen was detected thereon. Upon completion of the investigation, the challan was presented against the appellant.

3. In order to substantiate its case, the prosecution examined eleven witnesses. PW1, Idris, the complainant and father of the prosecutrix, and PW2, the prosecutrix, deposed regarding the occurrence. PW3, Dr. Chander Bhan, medically examined the accused and opined that he was capable of performing sexual intercourse. PW7, Dr. Rashmi Gupta medically examined the prosecutrix and proved her Medico-Legal Report (MLR). PW10, Dr. S.P. Jayant, Radiologist, conducted the radiological examination of the prosecutrix for determination of her age. PW11, Darshana Devi, the then Principal of the concerned school, proved the School Leaving Certificate (Ex. PN) relating to the age of the prosecutrix. PW4 HC Rajinder Singh, PW5 HC Ram Singh, PW6 Draftsman Ashok Kumar, PW8 SI Ram Bhagat and PW9 SI Jai Prakash are the official witnesses who deposed regarding the deposit and transmission of the case property, preparation of the site plan, recovery of the prosecutrix, investigation conducted in the present case and the arrest of the accused. The prosecution also tendered in evidence the documentary record comprising the Medico-Legal Reports of the prosecutrix and the accused, the radiological report (Ex. PM), the School Leaving Certificate (Ex. PN), and the report of the Forensic Science Laboratory (Ex. PH).

4. Finding a prima facie case, the learned trial Court framed charges against the accused for the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code, to which he pleaded not guilty and claimed trial. Upon the closure of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded, wherein all the incriminating



circumstances appearing against him in the prosecution evidence were put to him. The accused denied the prosecution allegations in *toto* and pleaded false implication. He set up the defence that he was residing as a tenant in the house of the father of the prosecutrix, who wanted to evict him from the tenanted premises and, on that account, had falsely implicated him in the present case.

In support of his defence, the appellant examined five witnesses, namely DW-1 Manoj Kumar, DW-2 Harchand (Clerk in the office of the Assistant Food and Supplies Officer, Ballabgarh), DW-3 Abdul Rasid, DW-4 Yusuf Khan Numberdar and DW-5 Iyyazudin, Ex-Sarpanch, and tendered in evidence the ration card application Ex.D1.

The learned trial Court, upon an appreciation of the entire oral as well as documentary evidence on record, held the prosecution to have proved its case beyond reasonable doubt and, accordingly, convicted and sentenced the appellant as noticed above. Aggrieved thereby, the present appeal has been preferred.

5. Learned counsel for the appellant has vehemently assailed the impugned judgment primarily on the ground that the learned trial Court failed to appreciate the evidence in its correct perspective. It is contended that the prosecution failed to establish that the prosecutrix was a minor on the date of the alleged occurrence. Elaborating the submission, it is argued that though reliance has been placed upon the School Leaving Certificate (Ex.PN), the prosecution neither produced the birth certificate of the prosecutrix nor examined the person who had furnished the date of birth at the time of her admission to the school, and that, in the absence of such foundational evidence, the School Leaving Certificate could not have been safely relied upon for determining the age of the prosecutrix.



5.1 It is further submitted that the radiological examination conducted by PW-10 assessed the age of the prosecutrix to be around sixteen years, and that the witness himself admitted, during cross-examination, that the age determined by the ossification test could vary by about two years on either side, and that the benefit of such variation ought to have been extended to the appellant.

5.2 The next limb of the argument is that the evidence on record unmistakably indicates that the prosecutrix had voluntarily accompanied the appellant, inasmuch as she remained in his company for about forty-two days, travelled through public places and public transport and came into contact with numerous persons, yet did not raise any alarm or make any attempt to escape, which conduct, according to the learned counsel, is wholly inconsistent with the allegation that she had been forcibly taken away or subjected to sexual intercourse against her will.

5.3 It has further been argued that the statement of the prosecutrix cannot be relied upon as the medical evidence does not lend support to the prosecution version, as no external injury was found on the person of the prosecutrix, nor was any injury noticed on her private parts during the medical examination, which, according to the learned counsel, probabilises the plea that the physical relationship, if any, was consensual.

5.4 It has additionally been contended that the relatives who had allegedly participated in the search for the prosecutrix were not examined during the trial, and that such omission to examine material witnesses casts a serious doubt on the veracity of the prosecution case. On the strength of the aforesaid submissions, learned counsel prays that the impugned judgment of conviction and the order of sentence be set aside and the appellant be acquitted of the charges.



6. Per contra, learned State counsel has supported the impugned judgment in its entirety and submitted that the learned trial Court has meticulously appreciated the oral as well as documentary evidence and returned findings which are fully borne out from the record and do not suffer from any illegality, perversity or misreading of evidence warranting interference by this Court. It is argued that the prosecution has led cogent evidence to establish that the prosecutrix was below sixteen years of age on the date of the occurrence. Apart from the testimony of PW-1 and the prosecutrix herself, reliance has rightly been placed upon the School Leaving Certificate (Ex. PN), which was duly proved by PW-11, the custodian of the relevant record. Learned State counsel submits that the said document had come into existence much prior to the occurrence and there is no material whatsoever to suggest that the entry regarding the date of birth had been manipulated or fabricated. It is further submitted that the testimony of the prosecutrix is natural, consistent and inspires confidence. Despite extensive cross-examination, no material contradiction or improvement has been elicited so as to discredit her version. Her testimony also receives assurance from the medical and scientific evidence brought on record by the prosecution. Learned State counsel contends that the absence of external injuries is not decisive in the facts of the present case, particularly when the prosecutrix had remained in the company of the appellant for a considerable period before her medical examination. It is also argued that the non-examination of certain formal or peripheral witnesses does not affect the substratum of the prosecution case when the material witnesses have been examined and their evidence inspires confidence. With regard to the defence taken by the appellant, learned State counsel submits that the plea of false implication on account of an alleged tenancy dispute is a bald assertion, unsupported by any evidence whatsoever. The appellant neither examined any



witness nor produced any document to substantiate the existence of such a dispute. On the contrary, the suggestions put to the prosecutrix during her cross-examination indicate that the defence itself attempted to project a case of consensual relationship, thereby rendering the plea of complete false implication inherently inconsistent. It is, therefore, contended that the learned trial Court has rightly rejected the defence version and recorded the conviction.

7. I have heard learned counsel for the parties and have carefully gone through the entire record.

7.1 Before adverting to the rival submissions, it would be apposite to notice the statutory provisions that fall for consideration. Sections 361 and 366 IPC, and Section 375 IPC as it stood at the relevant time, read as under:

**“Section 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.”*

**“Section 366. Kidnapping, abducting or inducing woman to compel her marriage, etc.-**

*Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or*



*knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.”*

**“Section 375. Rape.-**

*A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-*

*Firstly.-Against her will.*

*Secondly.-Without her consent.*

*Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.*

*Fourthly.-With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

*Fifthly.-With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

*Sixthly.-With or without her consent, when she is under sixteen years of age.*

*Explanation.-Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.”*

**7.2** A conjoint reading of the aforesaid provisions makes it manifest that, for the offence of kidnapping from lawful guardianship, the statutory age of a female is under *eighteen* years, whereas, for the offence of rape falling within the sixth description of Section 375 IPC as it then stood, the material age is that the girl is *under sixteen* years, in which event the act constitutes rape “with or without her consent”. The consent of a minor is, therefore, of no legal consequence, either qua the offence of kidnapping or qua the offence of rape.

**8.** The first and foremost question that arises for consideration is whether the prosecution has been able to establish that the prosecutrix was below sixteen years of age on the date of the occurrence. The answer to this question assumes



considerable significance, because the principal defence projected by the appellant is that the prosecutrix had voluntarily accompanied him and that the physical relationship, if any, was consensual, a plea whose very acceptability depends upon the age of the prosecutrix.

**8.1** The prosecution has sought to establish the age of the prosecutrix through both oral and documentary evidence. PW-1, the father of the prosecutrix, deposed that at the relevant time his daughter was aged about fifteen to fifteen and a half years. The prosecutrix, while entering the witness box as PW-2, also disclosed her age to be about fifteen years. Though such oral statements may not by themselves constitute conclusive proof of age, they nevertheless furnish relevant evidence which cannot be ignored and are required to be evaluated in conjunction with the remaining material proved on record.

**8.2** PW-7 Dr. Rashmi Gupta, who medico-legally examined the prosecutrix, recorded her age as about fifteen years in the medico-legal report. Though during cross-examination she candidly stated that she cannot recollect as to whether the age of the prosecutrix was given by the prosecutrix, by police or by her guardian. The age mentioned in the medico-legal report cannot, therefore, be treated as determinative, and has only a limited evidentiary value.

**8.3** The prosecution is also relying upon the radiological evidence and has examined PW-10 Dr. S.P. Jayant, Radiologist who deposed that on the basis of the radiological examination conducted by him, the age of the prosecutrix was assessed to be about sixteen years. During his cross-examination, the witness fairly conceded that the age determined by ossification test is only an estimate and that a variation of about two years on either side is medically possible. The radiological opinion, therefore, cannot be construed as furnishing the exact age of the



prosecutrix. It is only one of the relevant pieces of evidence which is required to be appreciated along with the other evidence available on record.

**8.4** The prosecution is strongly relying upon the school leaving certificate of the prosecutrix to prove that on the alleged day of occurrence the prosecutrix was below sixteen years of age. To prove the school leaving certificate Ex.PN, the prosecution has examined PW-11 Smt. Darshna Devi, the then Principal of the school concerned, who proved the School Leaving Certificate (Ex.PN). As per the said certificate, the date of birth of the prosecutrix is recorded as 07.10.1986. Reckoned on that basis, the prosecutrix was aged about fifteen years and two months on the date of the occurrence, i.e, 22.12.2001, and was thus below sixteen years of age. This witness was cross-examined at length but nothing substantial could be elicited in her cross-examination to doubt the authenticity of the school leaving certificate proved by her.

**8.5** The submission of the learned counsel for the appellant that the School Leaving Certificate could not have been relied upon because the prosecution failed to examine the person who had originally got recorded the date of birth, though attractive at first blush, does not merit acceptance in the facts of the present case. It is no doubt true that the prosecution has neither produced the birth certificate of the prosecutrix nor examined the person at whose instance the date of birth came to be recorded in the school record. However, that by itself does not render the school record inadmissible or wholly unreliable. The School Leaving Certificate has been proved by the then Principal of the school concerned who had issued the same; more importantly, the document had admittedly come into existence much prior to the registration of the present case.



8.6 The submission advanced on behalf of the appellant that the School Leaving Certificate ought to be discarded merely because the prosecution did not examine the person who had originally furnished the date of birth cannot be accepted. The evidentiary value of a school record has repeatedly been considered by the Hon'ble Supreme Court. In *State of Maharashtra v. Gajanan @ Hemant Janardhan Wankhede, (2008) 8 SCC 38*, the Supreme Court held that where the school leaving certificate and the school register stand duly proved by the competent Headmaster or custodian of the record, and there is no material suggesting fabrication or manipulation, the Court cannot reject such documentary evidence on conjectures or surmises. The Court disapproved the approach of discarding an unimpeached school record on the speculative assumption that parents generally understate the age of their children at the time of admission, observing that in the absence of any evidence to the contrary such an inference is legally impermissible. It was further emphasized that, where the school record had come into existence much prior to the occurrence and remained unshaken in cross-examination, it constituted reliable evidence for determination of age.

8.7 The same principle has been reiterated in *Parhlad v. State of Haryana, (2015) 8 SCC 688*. While considering an argument founded upon the ossification test, the Supreme Court held that radiological examination merely furnishes an approximate opinion and cannot be regarded as infallible proof of age. Expert evidence is essentially advisory in character and is intended to assist the Court; it cannot override trustworthy documentary evidence. Referring to the earlier decisions in *Ramdeo Chauhan v. State of Assam* and *Vishnu v. State of Maharashtra*, the Court reiterated that ossification tests are subject to recognised margins of error and must always be appreciated together with the entirety of the



evidence on record. Consequently, where the school record is duly proved and inspires confidence, primacy must ordinarily be accorded to such documentary evidence rather than to an approximate medical opinion.

8.8 Tested on aforesaid principles the evidence regarding the age of the prosecutrix, when appreciated cumulatively, presents a consistent picture. PW-1 has stated that his daughter was about fifteen and a half years old; the prosecutrix herself disclosed her age to be around fifteen years; the radiologist assessed her age to be approximately sixteen years, while acknowledging the accepted margin of variation (about two years on either side) and the School Leaving Certificate records a date of birth as 07.10.1986 which also indicates that she had not completed sixteen years of age on the date of the occurrence. None of these pieces of evidence materially contradicts the other. Rather, each lends assurance to the other. The learned trial Court, upon a comprehensive appreciation of the aforesaid evidence, recorded a finding that the prosecutrix was below sixteen years of age on the date of the occurrence. Having independently re-appreciated the evidence, this Court finds no reason to take a different view. The finding recorded by the learned trial Court on this aspect is fully supported by the material available on record and calls for no interference. This Court, hence, has no hesitation in holding that the prosecutrix was minor on the day of occurrence that being so the principal defence founded upon consent consequently loses all legal significance.

9. Having held that the prosecutrix was a minor on the date of the occurrence, the principal contention advanced on behalf of the appellant that she had voluntarily accompanied him and had consented to the physical relationship must now be examined, though, in view of the finding on the age of the prosecutrix, it stands substantially answered against the appellant.



**9.1** Insofar as the offence of kidnapping from lawful guardianship is concerned, the consent of the minor is wholly irrelevant. In *State of Haryana v. Raja Ram, (1973) 1 SCC 544*, the Hon'ble Supreme Court held that the object of Section 361 IPC is as much to protect minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards; that the gravamen of the offence lies in the taking or enticing of a minor out of the keeping of the lawful guardian without the consent of such guardian; and that, on a plain reading of the section, the consent of the minor who is taken or enticed is wholly immaterial, it being only the guardian's consent that takes the case out of its purview. It was further held that it is not necessary that the taking or enticing be by force or fraud; persuasion or inducement by the accused which creates a willingness on the part of the minor to be taken out of the keeping of the lawful guardian is sufficient to attract the section.

**9.2** Applying the aforesaid principles to the facts of the present case, the ingredients of the offence stand fully satisfied. The prosecutrix, a minor, was residing in the lawful keeping of her father PW-1. The appellant, taking advantage of his position as a tenant in the same house, enticed and took her away from that keeping, without the consent of her father, and with the intent that she be seduced to illicit intercourse. The offences under Sections 363 and 366 IPC are thus clearly made out, and the voluntary conduct of the minor, even if assumed, does not exonerate the appellant.

**10.** The submission that the prosecutrix had several opportunities to raise an alarm or to escape from the company of the appellant, and that her failure to do so probabalises the defence version, does not persuade this Court to take a view



different from that recorded by the learned trial Court. The conduct of a victim has to be examined in the proper perspective and not in isolation. Merely because a helpless minor did not raise an alarm at every available opportunity or seek assistance from persons whom she may have encountered during the period she remained with the appellant cannot, by itself, lead to an inference that she was a willing party to the occurrence. Human conduct is not capable of being measured by any fixed formula, and the reaction of a victim to a particular situation may vary depending upon the surrounding circumstances. This position finds authoritative support in *State of Punjab v. Gurmit Singh, (1996) 2 SCC 384*, wherein the Hon'ble Supreme Court deprecated the approach of discrediting a prosecutrix, aged below sixteen years, on the ground that she had not raised an alarm, observing that such an approach overlooks human psychology and the situation in which a helpless minor finds herself in the company of a person who threatens and overpowers her.

11. The next circumstance emphasized on behalf of the appellant is the absence of external injuries on the person of the prosecutrix and the absence of any injury over her private parts. PW-7 Dr. Rashmi Gupta, who medically examined the prosecutrix, did not notice any external injury, nor did the medical evidence record any injury over the genital region. However, the medical witness has nowhere opined that sexual intercourse had not taken place. The medical evidence, therefore, does not negate the prosecution version; it merely indicates that no injuries were detected at the time of examination.

11.1 It is pertinent to notice that the prosecutrix was medically examined after she had remained away from her parental home for a considerable period. In such circumstances, the absence of injuries cannot, by itself, be regarded as a



circumstance sufficient to discard her otherwise reliable testimony. It is by now well settled that the absence of external injuries does not negate the occurrence of rape, particularly where the prosecutrix is a minor. In *State of U.P. v. Chhotey Lal, (2011) 2 SCC 550*, the Hon'ble Supreme Court reiterated that a woman who is a victim of sexual assault is not an accomplice to the crime, that her evidence cannot be tested with suspicion as that of an accomplice, and that the testimony of the prosecutrix, if found to be reliable, may by itself be sufficient to sustain a conviction without any corroboration, the absence of injuries notwithstanding. The medical evidence in a case of this nature is corroborative in nature and cannot be treated as the sole basis for determining the truthfulness of the prosecution case.

11.2 The scientific evidence brought on record further assumes relevance. The report of the Forensic Science Laboratory (Ex.PH) reveals the presence of human semen on the exhibits sent for examination. Though the said report does not by itself identify the person responsible for the sexual act, it does corroborate the prosecution case to the extent that the prosecutrix had been subjected to sexual intercourse. The scientific evidence, therefore, is not inconsistent with the version of the prosecutrix; rather, it lends assurance to her testimony.

12. The testimony of the prosecutrix constitutes the foundation of the prosecution case, and it must now be examined. The prosecutrix has consistently deposed that the appellant had taken her away from the custody of her parents and had established physical relations with her. A careful reading of her deposition shows that she remained steadfast on the material aspects of the prosecution case.

The law does not treat the prosecutrix in a case of sexual assault as an accomplice, and her evidence, if it inspires confidence, is entitled to the same weight as is attached to the evidence of an injured witness, as held in *State of*



*Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550*, and reaffirmed in *Gurmit Singh (supra)*. Tested on this touchstone, the testimony of the prosecutrix is found to be natural, consistent and trustworthy, and it receives due assurance from the medical, scientific and documentary evidence on record.

13. The learned counsel for the appellant has also made a passing reference to the delay in lodging the FIR, the occurrence being of 22.12.2001 and the FIR having been recorded on 28.12.2001. The delay, however, stands satisfactorily explained. It has come in evidence that the complainant, along with his relatives, first searched for his missing daughter, and it was only when the search did not meet with success that he reported the matter to the police. In matters involving the dignity and honour of the family, particularly of an unmarried girl, a certain reluctance and hesitation in approaching the police is only natural. In *Gurmit Singh (supra)*, the Hon'ble Supreme Court has observed that a delay in the lodging of a complaint in sexual offences can occur for a variety of reasons, particularly the reluctance of the prosecutrix and her family to approach the police in a matter concerning the reputation of the prosecutrix and the honour of the family. The delay in the present case, therefore, does not cause any dent in the prosecution case.

14. The contention that the relatives who had participated in the search for the prosecutrix were not examined, and that an adverse inference ought to be drawn on that account, is equally devoid of merit. The prosecution is required to examine only such witnesses as are necessary to unfold its case; the law does not mandate the examination of every person who may have had some connection with the events. In the present case, the prosecution has examined the complainant, the prosecutrix, the medical experts, the official witness who proved the school record



and the investigating agency, i.e. the material witnesses whose testimony forms the substratum of the prosecution case. The relatives who allegedly joined the search were neither eyewitnesses to the occurrence nor witnesses to any material fact in issue, and their non-examination does not affect the core of the prosecution case or give rise to any adverse inference.

**15.** The defence of false implication set up by the appellant that the father of the prosecutrix, being desirous of evicting him from the tenanted premises, had falsely involved him in the present case does not inspire confidence. The appellant has not placed any material on record to substantiate the existence of the alleged tenancy dispute; no witness has been examined, nor any document produced, to probabalise that the complainant had any reason to falsely implicate the appellant, and his own unmarried minor daughter, in an offence of such a serious nature merely to secure eviction from the tenanted premises. No father would ordinarily stoop so low as to put forth his young daughter to level false allegations of rape, thereby tarnishing her honour and that of the family in society, merely to have his tenant evicted. The plea, therefore, remains a bare assertion unsupported by any evidence.

**15.1** What is equally significant is that the defence sought to be projected during the cross-examination of the prosecution witnesses does not align with the explanation furnished by the appellant in his statement under Section 313 Cr.P.C. While the statement under Section 313 Cr.P.C. proceeds on the footing of complete false implication, the tenor of the cross-examination proceeds on the premise that the prosecutrix was a consenting party. Though an accused is not precluded from taking alternative pleas, the Court is required to examine whether such pleas find support from the material on record. In the present case, neither of the two pleas



finds any substantive support, and the plea of consent, being that of a minor, is in any event rendered legally untenable.

**16.** On an overall appraisal of the evidence, this Court finds that the prosecution has succeeded in establishing, beyond reasonable doubt, that the prosecutrix was below sixteen years of age on the date of the occurrence; that she was taken away by the appellant from the lawful guardianship of her father without his consent; and that she was thereafter subjected to sexual intercourse. The testimony of the prosecutrix, which forms the substratum of the prosecution case, has remained consistent on all material particulars and inspires confidence, and it finds due assurance from the medical evidence, the report of the Forensic Science Laboratory and the documentary evidence relating to her age. The findings recorded by the learned trial Court are based upon a proper and balanced appreciation of the oral as well as documentary evidence. Having independently re-appreciated the entire evidence, as is required while dealing with an appeal against conviction, this Court finds no perversity, misreading of evidence or omission to consider any material circumstance which would justify interference with the judgment under challenge.

**16.1** The defence set up by the appellant has failed to probabilise his innocence. The plea of false implication on account of an alleged tenancy dispute is a mere assertion unsupported by any independent evidence, while the alternative suggestion of a consensual relationship is rendered legally untenable in view of the finding that the prosecutrix was below sixteen years of age. The defence by leading evidence has also not been able to prove that the prosecutrix was a major on the day of occurrence. None of the submissions advanced on behalf of the appellant is



sufficient to create a reasonable doubt in the prosecution case or to dislodge the well-reasoned findings recorded by the learned trial Court.

17. In view of the foregoing discussion, and finding no merit in the present appeal, the same is hereby dismissed. The judgment of conviction dated 11.07.2003 and the order of sentence dated 11.07.2003 passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court No. II, Faridabad, convicting and sentencing the appellant Sahib Alam under Sections 363, 366 and 376 IPC, are hereby affirmed.

18. The sentence of the appellant having been suspended during the pendency of the appeal, the appellant, if on bail, shall surrender before the learned trial Court/Chief Judicial Magistrate concerned within a period of two weeks from today to undergo the remaining part of the sentence awarded to him, failing which the learned trial Court shall take appropriate steps, in accordance with law, to secure his custody.

19. Pending miscellaneous application(s), if any, shall stand disposed of. The trial Court record be sent back forthwith along with a copy of this judgment.

21.07.2026  
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(RUPINDERJIT CHAHAL)  
JUDGE

|     |                            |        |
|-----|----------------------------|--------|
| i)  | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable?        | Yes/No |